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THE PLACE OF QUASI CONTRACTS IN PHILIPPINE JURISPRUDENCE

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CHAPTER I

INTRODUCTORY

It has been said that there is no contract without the consent of the parties; that there is some looseness in supposing that reason and justice ever dictate any contract between the parties or impose same upon them; because all contracts grow out of the intention of the parties to the transaction and are dictated only by their mutual and accordant wills, as consent is the primordial source of all civil obligations and can only be manifested in one of the two ways: expressly or by implication. The express consent constitutes the conventional obligation or express contract; the tacit consent gives life to what is called implied contract, in which the consent is inferred, implied or presumed from circumstances as really existing. But a principle of law, known as non-conventional obligations and properly called Quasi Contracts, that has been handed down to us from time immemorial, we are to treat of in this work. It is a principle which has for ages been considered by jurists and men of the profession, but the course of time has not as yet succeeded in reconciling the different views and opinions entertained by those legal minds, as "the science of the law has not been able to extricate this question from the confusion and ambiguity in which it has been involved from the beginning."

The change of sovereignty and the subsequent introduction of American legislation with its incidents of common and statutory laws, has wrought many changes both in the substantive and procedural laws continued in force in these Islands by proclamation of the Commanding General of the United States Army of Occupation on August 14, 1898. Some of these have since then been repealed by express provision and others by necessary implication. (Vargas's Thesis, Philippine Law Journal, Vol. I, p. 113). Fortunately enough, amidst these many changes, still stands untouched, except perhaps in matters of prescription and proof, by any action of the local legislature, the ancient institution of Quasi Contracts engrafted from the Spanish laws into our Civil Code in its Book IV, Title XVI. Of this subject we are now to enter into a legal discussion.

I. WHAT IS QUASI CONTRACT?

As it has been adverted to in the foregoing statements, the field of quasi contracts is not within settled and precise limits. The term "quasi contract" may with propriety be applied to all non-contractual obligations which are treated for the purpose of affording a remedy as if they were contracts. (Woodward, The Law of Quasi Contracts, p. 1.) Blackstone, in his Commentaries, recognized the existence of this class of contracts but avoided making a definition of it, and only satisfied himself with the statement that "implied contracts are such as reason and justice dictate and that which the law presume: that every one undertakes to perform." (2 Bl. Com. 443.) Blackstone is said to have introduced this idea about reason and justice dictating contracts in order to embrace, under this definition of an implied contract, another class of relations which involve no intention to contract at all though they may be treated as if they did. Thus, whenever, not our variant notions of reason and justice, but the common sense and justice of the country (and, therefore, the common law) imposes upon any one a duty irrespective of any contract and allows it to be enforced by a contractual remedy, he calls this a case of implied contract; whereas the later writers called it constructive contract as distinguished from the implied (Keener on Quasi Contracts, p. 3).

Professor Woodward, after showing how the term "quasi contract" may be applied to certain juridical relations, was compelled to define it as that "legal obligation arising without reference to the assent of the obligor, from the receipt of a benefit the retention of which is unjust, and requiring the obligor to make restitution (Woodward, The Law of Quasi Contracts, p. 4).

The Italian Code, in article 1140, defines quasi contract as a voluntary licit act in which there results an obligation with respect to a third person or a reciprocal obligation between the parties. This definition, which was adopted in the Spanish Civil Code, is said to have been derived directly from article 1371 of the Code Napoleon and is reproduced in article 1887 of our Civil Code, which reads:

> Quasi contracts are licit and purely voluntary acts by which the author thereof becomes obligated with regard to a third person, and, sometimes, by which there results a reciprocal obligation between the parties concerned."

This definition has been criticized as unscientific and incomplete, because all quasi contracts are not comprehended in it. It does not include accession to property wrought by natural causes, or by legal necessity, as the will of the creditor. It can not alone be based upon unlawful enrichment as it has been pretended by the force of Professor Woodward's definition, because of the nature of the *negotiorum gestio*. Giorgi even said that it is impossible to define quasi contracts. (Giorgi, *Tratado de las Obligaciones en el Derecho Moderno*, vol. V, p. 25.) But Heinecio in his "Institutes," par. 965, gave a synthetic definition by saying that quasi contracts are licit acts which are encouraged by force of equity." This definition was later

on upheld by Pothier in stating that the juridical relation of quasi contract arises from equity (Pothier, *Tratado de las Obligaciones*, vol. 1, p. 99). Sánchez Román amplified this definition thus:

> "Certain lawful acts, generally voluntary, which by virtue of the principle of justice and by operation of law produce unilateral or bilateral relations between two or more persons." (Sánchez Román, *Derecho Civil*, vol. IV, p. 996.)

From the common law authorities, this following definition is established:

> "A class of obligations which are imposed or created by law without regard to the assent of the parties bound, on the ground that they are dictated by reason and justice and which are allowed to be enforced by an actio ex contractu." (9 Cyc. 243; 2 Bl. Com. 443; Hertzog *v.* Hertzog, 29 Pa. St. 465; People *v.* Speir, 77 N. Y. 144.)

For the purpose of this work the last two definitions are accepted as expressing the true foundation of quasi contract.

II. ORIGIN OF QUASI CONTRACT

A. UNDER THE CIVIL LAW.—The word "quasi contract" is said to have originated way back in the days of Gaius, who first used it under the name of "quasi ex contractu nascuntur" in his classification of obligations. (Gaius, Institutes, III, 88.) At the time of the codification by Justinian with the praetor's edict in the year 529 A. D. (Institutes of Roman Law, Lecture XX, Lobingier), the compilers met the passages used by Gaius in classifying obligations into *ex contractu*, *quasi ex contractu*, *ex maleficio* and *quasi ex maleficio*. In this manner the expression "quasi contract" was recognized with its technical meaning in the synthetical classification of obligations by Justinian in his "Institutes" (Lobingier, Inst. of Civil Law (Roman), Lect. XXVII) as a source of an obligation, resulting not from agreements but from facts or events. Our Civil Code, after establishing the sources of obligations in article 1089, defines personal licit acts as the foundation of obligations which are not conventional; and, following the unscientific traditional classification, considers these licit acts based upon the principles of morality as quasi contracts.

B. UNDER THE COMMON LAW.—The doctrine of quasi contracts at common law seems to have begun in 1760 when such kind of obligation was first enforced in the King's Bench, England, as a distinct species of common law obligations in the famous case of Mosses *v.* Macferlan (2 Burr, 1005) which arose in the following manner:

Mosses had indorsed notes of one Jacob to Macferlan upon the latter's agreement that no suit would be brought against Mosses on the notes. In violation of this agreement, Macferlan had sued Mosses upon his indorsement and had obtained a judgment, the court taking the view that it had no jurisdiction over the collateral agreement not to sue, which Mosses had set up as a defense. Mosses paid the judgment and then brought *indebitus assumpsit* in King's Bench to recover the money so paid. For the defendant it was objected that the case was neither one of a genuine

promise by the defendant nor one to which the action of debt applied, and consequently the action of assumpsit would not lie. But Lord Mansfield, desiring to extend the scope of that simple and advantageous remedy and finding his justification in Roman Law (Woodward on Quasi Contracts, p. 3), declared that the objection was without merit, saying:

> If the defendant be under an obligation, from the ties of natural justice, to refund, the law implies a debt and gives this action founded in the equity of the plaintiff's case as if it were upon a contract (*quasi ex contractu* as the Roman law expresses it). This action to recover back the money, which ought in justice to be kept, is very beneficial and therefore much encouraged. It lies for money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition; or extortion; or oppression; or an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances. The gist of the action is that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.

Thus by the device of a fictional promise, the door was opened to the enforcement of those obligations, previously unrecognized by the common law, which are now known as quasi contracts.

C. THE BLENDING OF THE TWO SYSTEMS.—It is not an untimely occasion to predicate the future possibility of the blending of these two systems of quasi contracts in the Philippines as they existed under the civil law and under the common law countries. As in the case of a few other subjects originally derived by the Anglo-Saxon from the Roman law, the doctrine of quasi contract split in two opposite directions hundred of years ago. And thus, "originating from a common source, flourishing in different countries, among different peoples and diverse institutions, surrounding and conditions," the two streams, after circumnavigating the world, are now bound to meet and mingle on common ground in the Philippine Islands. Signs are not wanting that the prestige of this institution in the common law countries will undoubtedly influence the substantive provisions in our Civil Code, although at the present time they still stand unique and unchanged by any statute so far enacted by our Legislature. For, "while it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Islands, nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are found upon sound principles applicable to local conditions and are not in conflict with existing law (U. S. *v.* Cuna. 12 Phil. 241), nevertheless, many of the rules, principles and doctrines of the common law have, to all intents and purposes, been imported into this jurisdiction as a result of the enactment of the new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority." (Alzua *v.* Johnson, 21 Phil. 308).

III. NATURE AND JURIDICAL FOUNDATION OF QUASI CONTRACT

A. JURIDICAL FOUNDATION.—Paragraph 21 of the "Ley de Bases" for the preparation of the Civil Code, approved by the law of May 11, 1888, provides in

part that "the concept of quasi contracts should be maintained, fixing the responsibility which may arise from the different voluntary acts which produce them, in conformity with the high principles of justice on which the doctrine of the old law, unanimously followed by modern codes" was founded. (Cited in the Spanish Civil Code, p. 17; Manresa XII, p. 550.) The Commissioners of the General Codification adopted article 1887 of the Civil Code as the basis of all quasi contracts. This article gives the juridical notions of quasi contracts in that they are not the product of the concordant wills of the parties, but that they arise from licit acts purely voluntary. Intention is imputed to the parties by virtue of said acts in accordance with the principles of justice and equity. (Manresa XII, p. 551; 9 Cyc. 243). Sánchez Román mentions three theories which have been advanced by the commentators of the Civil Code as the true fundamental basis of this class of obligations: (1) tacit consent (Falcón, Derecho Civil, IV, p. 420; Bonel, Derecho Civil, IV, 881); (2) consent presumed by law. (Del Viso, Derecho Civil, III, p. 525; Morató, Derecho Civil, II, p. 481; Gutierrez, Códigos, V, p. 595); (3) Natural equity. (G. de la Serna, Derecho Civil y Penal, II, p. 584; Pothier, Tratado de las Obligaciones, I, p. 99.) But he criticizes and refutes each one of these theories in the following manner: The theory of tacit consent is erroneous, because in quasi contracts there is no element which authorizes us to confirm the intervention of that tacit consent. If it were true that there was such consent, there would be a real implied contract and not a quasi contract. As to the theory based upon consent presumed by law, he likewise considers it as faulty, because this presumption can not take place except by declaration of law, which will convert it into a legal fiction absolutely devoid of any foundation, thus reducing it to a mere reason of justice of its provisions. And lastly the theory of natural equity is entirely inadequate to justify the existence of quasi contracts, because it will become unnecessary under it to create this class of obligations. It will be a useless fiction incapable of giving any force to due compliance with the dictates of justice and equity, as they were sanctioned by the law to be obligatory. In concluding, this same author gives his own view thus: That there is no real scientific basis for the existence of this juridical entity, known as quasi contracts, and it is sufficient to consider it as one which only derives its origin from certain agreement established by its continual use in the history of law; that the real thing in this relation is the juridical obligation coming from different sources; and lastly, that the juridical relation is the result of three factors: of certain human acts of singular character, of certain definite principles applicable to said acts, and of operation of law which imposed under the supposed facts the application of said principles of justice,—all together making a series of obligations creating the juridical relation known as quasi contracts. (Sánchez Román, Derecho Civil, IV, p. 996.)

In view of this conflict and confusion as to the real basis of this juridical entity even among the commentators of the Civil Code, it would not be prudent for the writer to express his own view on the subject. It may be said, however, that from

all these discussions there seems to be one apparent and prevailing idea running through all the arguments in support of the different theories. This is equity, illumined by the great principles of justice, reason and morality, which commands that we should do to others what we should have done for us under like circumstances; that he who receives a thing should not reject its consequences; that it is presumed that all consent in all that brings them benefit and that no one should be allowed to enrich himself to the prejudice of others. (See Manresa XII, p. 548; 2 Bl. Comm. 443; Keener on Quasi Contracts, p. 6; Pothier I, p. 100.)

B. NATURE.

a. Chief Distinguishing Characteristics:

1. They are paramount or irrecusable, as distinguished from consensual or recusable obligations; that is, they are imposed by law without reference to the assent of the obligor.

2. They are particular as distinguished from universal, that is, they are imposed because of the special state of facts and in favor of a particular person, and do not rest upon one at all times and in favor of all persons.

3. They are based upon equitable considerations, but have their origin in the courts of law and are enforced by legal remedies.

4. They require that the obligee shall be compensated, not for any loss or damage suffered by him, but for the benefit which he has conferred upon the obligor.

(Woodward on Quasi Contracts, p. 4; Arts. 1887, 1893, C. C.; Sánchez Román, IV, p. 996; 6 R. C. L. 588).

b. *Quasi Contracts Distinguished from Contracts.*—The contractor's obligation is one that he has voluntarily assumed. He made himself bound by a promise or undertaking which the law will enforce. The difference between an express contract and a contract implied from certain facts is that in the former the promise or undertaking is verbal, while in the latter it is an implication from the promisor's conduct. Quasi contractual obligations are imposed without reference to the obligor's assent. He is bound not because he has bound himself to make restitution, but because he has received a benefit, the retention of which would be inequitable. (Manresa 12, p. 548; Amandi, Derecho Civil 4, p. 419; Gutierrez, Códigos, 5, p. 595; Law 12, title 12, Partida 5.) Tacit consent, like the express one, gives place to a true contract, but in quasi contractual obligations the implication of consent from facts can never be the basis of a contract. (G. de la Serna, Derecho Romano, 2, p. 351.) Implied contract arises under circumstances which according to the ordinary course of dealing and common understanding of men show a mutual intention to contract (9 Cyc. 243, and cases cited). The

term "contract" is applied to it in the sense that it is enforcible by contractual remedy. The promise in such case is purely fictitious, as we might call it, and is implied in order to fit the actual cause of a contract to the remedy. Hence, the liability exists from an implication of law that arises from the facts and circumstances independent of agreement or presumed intention. Thus, in consensual contract the agreement defines the duty, in quasi contract it is the duty which defines the contract (3 Bl. Com. 159-166; 6 R. C. L., p. 588, and cases cited; Hertzog *v.* Hertzog, 29 Pen. Rep. 465; Addison on Contract, p. 82; 1 Pothier, Ch. 113).

c. *Quasi Contracts Distinguished from Torts* (Culpa Extracontractual.—Torts, like quasi contracts, arise from certain facts or positive acts without regard to the intention of the tortfeasor. They differ, however, in the sense that while quasi contracts arise from licit acts and are purely voluntary, in torts the obligation is caused by certain acts or omissions which are illicit or unlawful, although not punishable by penal laws (Manresa XII, p. 611; Del Viso, Derecho Civil, III, p. 525). In quasi contracts the obligation is imposed by operation of law regardless of the consent of the defendant; but treating a tort as a violation of a right *in rem*, the obligation differs in an important particular: for while to avoid committing a tort one needs only to forbear, to discharge the obligation imposed by quasi contracts one must act (Austin, Jurisprudence, Lect. XIV). And lastly, quasi contract is a positive obligation, while tort is a negative one. (Keener on Quasi Contracts, p.15.)

IV. ENUMERATION OF QUASI CONTRACTS

The number of quasi contracts can not be determined, as the number of licit acts, out of which they grow, can not be ascertained in detail (Manresa, 12, p. 549; Falcón, Derecho Civil, 4, p. 504; Bonel, Derecho Civil, 4, p. 883). The eminent writers and commentators on the subject have, however, attempted at classifying them in the following manner:

A. UNDER THE ROMAN LAW.

I. Enrichment *sine causa* and *ex injusta causa*.

a. Enrichment *sine causa*.—Where, in view of the actual circumstances of the case, the enrichment of A at the expense of B, appears inconsistent with the policy of the law.

Cases: 1. *Solutio indebiti*.—Payment by mistake of money which is not owed.

2. *Dare ob causam*.—The turning over of property by one person (A) to another (B) in anticipation of some future event.

3. *Where "dare" fails to take effect.*—Where A turns over property to B, intending thereby to produce a legal result.

b. Enrichment *ex injusta causa.*—Where the enrichment is directly opposed to the policy of the law.

Cases: 1. *Theft.*—The possession of stolen property enriches the thief and therefore the owner can recover the same.

2. *Dare ob turpem causam.*—The giving of property under circumstances which render its acceptance immoral. Payment of ransoms extorted by brigands.

3. *Dare ex injusta causa.*—Paying of debt which is disproved by law.

II. *Receptum, nautarum, couponum, stabulariorum.*—A shipowner, innkeeper, or stable-keeper who takes charge of property belonging to a traveler is answerable for such property in like manner as though he had concluded an express contract to that effect.

III. *Negotiorum gestio.*—Where one person, without previous authority, manages another person's affairs.

IV. *Tutela.*—As soon as the guardian enters his duties, there arises between him and his ward a relationship similar to *mandatum.* It confers a right on the ward to require his guardian to exercise care in the management of the guardianship.

V. *Communio* or *Community Property.*—It gives rise as between co-owners to a relationship similar to *societas.*

VI. *The Heir.*—By entering on his inheritance incurs a quasi contractual obligation to pay over to the legatees all such legacies as he had validly charged with the testator. (Sohm's Institute of Roman Law, sec. 83; Buclanda, Elementary Principles of Roman Private Law, sec. 133; Giorgi, *Tratado de las Obligaciones en el Derecho Moderno,* 5, p. 25; Sánchez Román, 4, p. 994.)

B. UNDER THE CIVIL LAW.

I. Before the promulgation of the Civil Code.

a. *Negotiorum gestio.*
b. *Communio incedens.*
c. *Indebiti solutio.*
d. *Tutelae vel curae gestio.*
e. *Haereditatis additio.*

(Giorgi, *De las Obligaciones en el Derecho Moderno,* V, p. 26).

II. Under the Civil Code.

Following the modern tendency and it being impossible to enumerate all quasi contracts or include them in a methodical, regular classification, the Civil Code only occupies itself with two kinds, which are the most common and practical:

a. *Negotiorum gestio,* or the administration of others' property.

b. *Indebiti solutio*, or the payment by mistake of what is not owed.

This does not mean, however, that the code admits no other manifestations of quasi contracts (Manresa, 12, pp. 549, 553, 554). Thus, Sánchez Román mentions, in addition to the classification given by the Civil Code, four more alleged quasi contracts:

1. Administration of a thing owned in common.
2. Guardianship.
3. Administration of inheritance.
4. *Litis contestatio*. (Sánchez Román, IV, 1008-1010.)

C. UNDER THE AMERICAN LAW.

1. Recovery upon a record.
   (A) Upon a judgment.
   (B) Upon a recognizance.
2. Recovery upon.
   (A) Statutory duty.
   (B) Official duty.
   (C) Customary duty.
3. Recovery upon the doctrine that no person shall be allowed to enrich himself at the expense of another unjustly.
   (A) For benefits conferred voluntarily.
      (1) In the absence of contractual agreement.
      (2) In the performance or under the inducement of a contractual agreement.
   (B) For benefits not conferred voluntarily.
      (1) Mistake.
         (*a*) Of fact.
         (b) Of law.
      (2) Constraint.
         (*a*) By fault of defendant.
         (*b*) Duress of defendant.
         (*c*) Compulsion of law.
      (3) Waiver of tort.

(Woodruff's Cases on Quasi Contracts; see also Prof. J. H. Wigmore's classification, 20 Am. Law Review, 695-726; Prof. Keener on Quasi Contracts, pp. 16-25.)

We are to treat in this work only of the two kinds of quasi contracts considered by the Civil Code and to exclude the other alleged quasi contracts, because although in reality they constitute other sources of non-contractual obligation and are true quasi contracts, yet they are made the subject of special titles of the Code, whose provisions form the principles and authority governing them.

CHAPTER II

NEGOTIORUM GESTIO

I. DEFINITION, NATURE AND CHARACTER

We see in the enumeration of quasi contracts in the first chapter of this work that one of the principal classes of quasi contractual obligations in the Roman law was *negotiorum gestio*, "spontaneous agency" or "justifiable intervention in others' affairs" as the American authors call it. Sánchez Román, basing his definition of *negotiorum gestio* on the laws of the *Partidas*, said: "It is the act of administering the affairs of others or their property without mandate express or implied and even without the knowledge of the owner" (Sánchez Román, IV, p. 997). Del Viso defines it as an act by virtue of which a person takes charge voluntarily and extrajudicially of the agency or administration of the affairs of others without the order of the latter and is obliged thereby to secure as much benefit in his administration and to render an account of the same to owner. (Del Viso, III, p. 527.) Either one of these two definitions comprises the true character of this class of quasi contracts. Justinian in his Institutes, expounding the nature of *negotiorum gestio*, spoke in the following words: "If one man has managed the business of another during the latter's absence, each can sue the other by the action on uncommissioned agency; the direct action being available to him whose business was managed, the contrary action to him who managed. It is clear that these actions cannot be properly said to originate in a contract, for their peculiarity is that they lie only where one man has come forward and managed the business of another without having received any commission so to do, and that other is thereby laid under legal obligation even though he knows nothing of what has taken place. The reason of this is the general convenience; otherwise, people might be summoned away by some sudden event of pressing importance, and without commissioning any one to look after and manage their affairs, the result of which would be that during their absence those affairs would be entirely neglected and of course no one would be likely to attend to them if he were to have no action for the recovery of any outlay he might have incurred in so doing. Conversely, as the uncommissioned agent, if his management is good, lays his principal under a legal obligation, so too he is himself answerable to the latter for an account of his management; and herein he must show that he has satisfied the highest standard of carefulness, for to have displayed such carefulness as he is wont to exercise in his own affairs is not enough, if only a more diligent person could have managed the business better." (Book III, Title XXVIII. *De Obligationibus Quasi ex Contractu*, as translated in Scott "Cases on Quasi Contracts," p. 1.)

Thus we find that this class of quasi contracts is a species of administration of the business of others, but is distinguished from other kinds of administration in that the administrator assumes his duty without the order of anyone or of the court, nor has he any legal obligation whatsoever to undertake the task. Its existence has been recognized by reason of public interest in order to protect from abandonment the business of an absentee and even of those who are present, but are negligent, sick or incapacitated to manage their own business (S. February 26, 1867).

The dutiful intervention in others' affairs is very similar to an implied agency, but is distinguished from the latter in certain respects. An implied agency is founded on tacit consent or the lack of contradiction of the action of the supposed agent by the supposed principal, which constitutes his conformity simultaneously to the celebration of the contract; in the management of another's property there exists no consent express or implied which might be the basis of a contract of agency, but merely a fiction or supposition of said consent which is presumed to have been given by one for whose benefit the administration is made after he knows it. The motive of tacit agency is the same as that of the express one, while that of quasi contract gives rise to a principle of necessity or convenience growing out of the circumstances and the special situation in which the property is found. Lastly, they differ in their nature. Implied agency is a true contract with all the consequences of its own, while the management of others' business is a mere quasi contract producing actions and diverse juridical effects. What have been so far said is summarized by Manresa in four distinct points: (1) by their nature, (2) by their foundation, (3) by the terms of their constitution, and (4) by their juridical effects. (Manresa XII, 557-558.)

II. ESSENTIAL REQUISITES

There are certain essential requisites which should exist in order that *negotiorum gestio* may take place:

A. It must refer to a definite thing or affairs belonging to others;

B. The business must be abandoned or neglected;

C. The affairs must be susceptible of being complied with without mandatum;

D. There must be no express or implied authority from the owner or want of a legal pre-existing obligation;

E. The gestor must be prompted by an honest intention to protect the interest of the owner;

F. Want of prohibition of the owner or interested party. (Manresa, XII, p. 558; Sánchez Román, IV, p. 998; Giorgi, *re Obligaciones*, V, p. 27; Law 29, Title XII, *Partida* V.)

A. DEFINITE THINGS OR AFFAIRS BELONGING TO OTHERS.—The essence of quasi contracts is that they give rise to particular obligations as distinguished from real contracts from which universal obligations grow. Quasi contractual obligations are derived from the circumstances of each case and from the special status of the business or property which is the object of administration; hence, it is an indispensable requisite that a definite thing or affair must exist in order that *negotiorum gestio* may take place.

If a person upon the belief that he is administering the property of others, which in fact belongs to him, continues said administration, can he call himself a gestor? Clearly no; because no one else but himself was concerned in his activities directly or indirectly in the preservation of his own interests. But one who administers a

business which is partly his and partly belonging to others must be of right considered a gestor as to the part belonging to the latter. In case upon administering one's own affairs a benefit incidentally accrues to a third person, can he claim the right of a gestor against the latter? We think not, excepting the case where he could not deal with his own business without including at the same time the interest of the other. (Giorgi, *re Obligationes*, V, p. 35.) If the gestor mistakes the identity of the owner, as when he believes he is managing the property of A when in fact he is administering the property of B, he still comes under the rule of *negotiorum gestio* according to the opinion of the same writer. But Laurent holds just the contrary. (Laurent XX, 325; see also Art. 1888, C. C.)

B. THE THINGS MUST BE ABANDONED OR NEGLECTED.—It is another indispensable requisite of *negotiorum gestio* that the things or affairs to be administered are abandoned through the absence, negligence, sickness or incapacity of the owner. (Amandi, IV, p. 420.) Under this rule comes the dutiful discharge of another's obligation provided in article 1894 of the Civil Code. This status of abandonment is essential to this kind of quasi contract, because if a thing or business is properly attended to by its owner and some one intrudes and meddles with the administration of the same without the knowledge or consent of said owner, it would be a flagrant usurpation of his right to enjoy and dispose of the thing belonging to him freely and without further limitations than those established by law. (Art. 348, C. C.) Professor Woodward said that certain circumstances should be present in order to bring the case under this requisite and make the intervention a justifiable source of an obligation:

1. That the obligation is of such a nature that actual and prompt performance of it is of grave public concern;

2. That the person upon whom the obligation rests has failed or refused with knowledge of the facts to perform it, or that it reasonably appears that it is impossible for him to do it;

3. That he who intervenes is under the circumstances an appropriate person.

SUNDRY INSTANCES.—The performance of one's legal obligations by another is necessarily beneficial to him, since it saves him the necessity either of performing the duty himself or of paying the penalty for non-performance thereof. But a case may arise where the protection of one's property may not always constitute a benefit to the owner, because one is not bound to protect his own property or interests if they are not worth the effort and expense for the protection. (Mulligan *v.* Henny, 34 La. 50.) As it was said in the case of Earl *v.* Coburn, 130 Mass. 596, "there are only certain cases where the law will imply a promise to pay by a party who protests he will not pay; those are cases where the law creates a duty to perform that for which it implies a promise to pay, like a man who absolutely refuses to furnish food and clothing to his wife and children."

But if the benefit was conferred without the expectation of compensation, there is no injustice in the retention of the benefit. (Woodward on Quasi Contracts,

p. 314.) Such is the situation when the conduct of the intervenor was a heroic one in preserving life or property in an emergency case. The presumption is that the services were rendered gratuitously. Professional services are, however, excepted. For although the physician's services are usually prompted by motives of humanity, they are generally rendered with the expectation of compensation. (Cotman *v.* Wisdom, 12 L. R. A. (N. S.) 1090; Raol *v.* Newman, 59 Ga. 408.) But our statute (Civil Code) holds the contrary rule that the owner is liable when his property was managed by the *gestor* to avoid any eminent danger or manifest damage to property even when no profit results therefrom (Art. 1893, par. 2, C. C.). We are rather inclined to adopt an intermediary rule, depending upon the gravity of the damage to be avoided. We think that if the danger to be avoided is so great that the task is attended with a high degree of risk the gratuitous presumption established by the American rule should not be given any effect and the liability provided in the Code should be enforced; but if the danger to be avoided requires only the ordinary act of men, the presumption should be established that the service was gratuitous until the contrary were proven (Bartolome *v.* Jackson, 20 Jones (N. Y.) 28).

(1) *Necessaries Furnished Infants for Support.*—For necessaries of life furnished in a non-emergency case, the intervenor should recover his expenses, unless it appears that he gave them out of charity and without intention of recovering them back. Such are the necessaries furnished to infants or insane persons for support with or without the knowledge of the person who is bound to support them (Art. 1894, C. C.; Kilgore *v.* Rich, 22 Atl. 176; Ex parte Northington, 37 Ala. 4964; McConnell *v.* McConnell, 74 All. 875; Earl *v.* Read, 10 Met. (Mass.) 387). The question whether or not the infant has made an express promise to pay is immaterial. He is held liable on a promise implied by law from the necessity of his situation and not on his actual promise (Trainer *v.* Trumbull, 141 Mass. 52). An exception to the rule is that the presumption of expectation of payment does not arise when the service is rendered by one member of the family to another member. The reason for this is that the household family relationship is presumed to abound in reciprocal acts of kindness and good will which tend to the mutual comfort and convenience of the members of the family and are gratuitously performed. (Disbrow *v.* Durand, 24 Atl. 445; Friermuth *v.* Friermuth, 46 Cal. 42; Hudson *v.* Hudson, 90 Ga. 581; Marple *v.* Morse, 180 Mass. 588; Harris *v.* Smith, 6 L. R. A. 702; Bill *v.* Rice, 50 Neb. 547.)

(2) *Support of Wife.*—The husband is under a plain legal duty to support his wife (Art. 143, C. C.) unless she lives apart from him without his fault, and if he fails to perform this duty, one who furnishes her support may recover the reasonable value thereof (Clothier *v.* Sigle, 63 Ala. 865). The wife is regarded as the "agent of necessity" of her husband; although the real basis of the liability of the husband is the quasi contractual doctrine of dutiful intervention in others' affair, notwithstanding the fact that the person who furnished her with supplies knew that the husband did not intend to pay for them. She is authorized to pledge the credit of her husband (Cunningham *v.* Reardon, 98 Mass. 538).

(3) *Liability of Parents.*—Inconceivable as it may seem, at common law there is a different juridical opinion as to the existence of an obligation on the part of the parent to support his infant child (Tiffany's Persons and Family Relations, p. 251), but in our jurisprudence there is an absolute duty recognized by the Civil Code for the parent to support his infant child (Art. 143, C. C.; U. S. *v.* Alvir, 9 Phil. 576; Pelayo *v.* Lauron, 12 Phil. 453. Hence, there is no doubt that if a parent fails to discharge it, a third person can reasonably claim against him for support and necessaries supplied to the child by virtue of a quasi contractual relation. (See Stanton *v.* Wilson's Executor, 3 Am. Dec. 255; Porter *v.* Powell, . L. R. A. 716; Manning *v.* Wells, 29 N. Y. 1044; Waldion *v.* Davis, 70 N. J. L. 788.)

(4) *Funeral Expenses.*—The Civil Code provides that funeral expenses in proportion to the status of the person and to the custom of the locality, must be paid by those who during life would have had the obligation to support the deceased, even though he left no property. (Art. 1894, par. 2, C. C.). But in testamentary succession generally the executor should contract for the interment of the deceased, pay the expenses and charge the same to the estate. Not infrequently, however, it is impossible or impracticable to ascertain at once who is named executor in the will and to secure his authority. Such a situation clearly demands that some one intervene, represent the executor and perform the duty for him. For such expenses the executor is liable. Thus, suppose a person dies suddenly at a place far from his home. What should be the proper step in such a case? The common principles of decency and humanity, the common impulse of our nature would direct every one, as a preliminary step to provide a decent funeral at the expense of the deceased's estate. (Patterson *v.* Patterson, 17 Am. Rep. 384; Gregory *v.* Hooker's Administrator, 9 Am. Dec. 646; O'Reilley *v.* Kelly, 50 L. R. A. 483.) Only in case the deceased left no property should the *gestor* be obliged to claim reimbursement from those who would be obliged to support the deceased during life, for the sanctity of the family relationship demands that the latter should answer for funeral expenses. In Robertson *v.* Petterson, the New York Supreme Court, among other things, said: "Expenses occasioned in the execution of one's funeral services paid by a stranger shall be restored to the latter by the party who is really obliged to take care of the deceased if he were living." (Robertson *v.* Petterson, 59 N. Y. 574.)

A decision of the Supreme Court of Spain allowed a recovery not only for the advances made for funeral expenses, but also for the professional services of the physician, and the repairs to the house left by the deceased, where those expenses were advanced by a dutiful intervenor. (S. January 18, 1808.)

(5) *Who Is an Appropriate Person to Intervene?*—One who takes charge of the administration of the affairs of an infant or of providing for the funeral expenses of the deceased to the exclusion of another who by ties of friendship or civil relation to the deceased or infant would have acted gratuitously, should act in the manner the person excluded intended to act, and should answer for the injuries that may arise from his negligence, fraud or fault. (Law 34, Title XII, *Part.* V.) This provision of the

old law properly gives the relative, friend or neighbor preference over a mere stranger. But if in obvious disregard of all propriety, one takes up the administration in place of the more suitable person, he thereby becomes an officious meddler and is not entitled to any compensation. (Quim *v.* Hill, 4 Den. (N. Y. S. C.) 69.)

C. DUTIES SUSCEPTIBLE OF BEING COMPLIED WITH WITHOUT MANDATUM.—The principal duties which naturally devolve upon the *gestor* are to preserve the property he is administering, maintain it in a productive condition, pay the debts of the estate and prevent the prescription of actions—all of which are susceptible of being complied with without the authority of the owner. Although the object of *negotiorum gestio* is to create a juridical relation between the *gestor* and the interested party, yet it may also affect the interest of a third person. Thus, in the prevention of the prescription of action, it may be necessary for the *gestor* to bring suit against a third person who will not heed his demand, for the protection of the property or business he is administering. But can he do this in his own name by virtue of the capacity he has voluntarily assumed? According to the Roman law he can, although it must be with the express consent or authority of the owner or interested party (Giorgi, *re Obligaciones* V, p. 37). According to our present Code of Civil Procedure all actions must be brought in the name of the real party in interest (Sec. 114, Act 190; Arroyo *v.* Granada, 8 Phil. 490). Hence, the authority of the *gestor* in bringing suit to prevent the prescription of actions in his own name authorized by the old legislation cannot be carried out now.

The management of others' affairs may also be constituted upon contracts which are in their nature acts of administration. Such is the situation of a gestor who has already assumed his duty as such and is compelled to contract in the interest of the affairs he is administering. For without this authority he might be made to respond for his omissions in the preservation of the interests under him. In these cases the capacity of the interested party to contract will not be an essential requisite for the validity of the contract so made, since if the owner becomes obligated under the contract, it is not because of his will or intention to make it, but rather by virtue of the fact that his affairs have been administered. The converse is true with regard to the incapacity of the gestor. In this respect the obligations of the incapacitated gestor are much less than his rights. A gestor who is a minor is not bound by the contract, because he can plead his want of capacity to bind himself and then rescind the agreement which is voidable as to him; but the other party on whose side the contract is perfectly valid and enforceable, has not the right to rescind the same, and is left bound by whatever chance the minor might take. This principle of quasi contracts is predicated upon the rule of true contracts that a minor's right to obligate himself is imperfect, which must also, be true in quasi contracts.

D. NO EXPRESS OR IMPLIED AUTHORITY OR A PRE-EXISTING LEGAL OBLIGATION.—The Italian jurisprudence establishes that the intervention in others' affairs should be voluntary, spontaneous and without previous contractual or legal obligation

(Cas. Florencia, Dec. 29, 1890; Cas. Napoles, April 23, 1900). As corollary to Roman law, the law of the *Partidas* requires spontaneity, good faith and lack of agreement, express or implied, to constitute *negotiorum gestio*. (Law 12, Title XII, *Partida* V.) The Civil Code, on the other hand, mentions voluntary acts without authority in the administration of another's business (Art. 1888, C.C.). It is needless to observe, that if there is express authority or tacit consent, there takes place no quasi contract. The ratification by the owner of the act of the gestor amounts to an express authority and converts the juridical relation into a real agency; so also the acceptance of the benefits and advantages of the administration constitutes tacit consent and converts the juridical relation into an implied agency (Art. 1892, 1893 C. C.; Manresa XII, 576-580). But an interesting question might be asked. Is mere knowledge of the fact of administration on the part of the owner or interested party sufficient to constitute a tacit consent as to convert the relationship into an implied agency? According to the Code Napoleon, from which some of the provisions of our Code referring to quasi contracts were directly taken, simple knowledge is not sufficient to constitute a tacit consent. (Art. 1372, Code Napoleon.) But modern writers, like Troplong, hold just the opposite view and say that all dutiful intervention made with the knowledge of the interested party is an implied agency (Troplong's *Mandat*, p. 71), if the latter had an opportunity to oppose the action of the intervenor, but kept silent and tolerated it. If he learns about it after the act has been performed and makes no protest, it will be presumed that he ratifies it. The former view is more in accord with the provision of the Civil Code, which expresses clearly, in its article 1892, that the ratification of the management by the owner of the business provides the effect of an express agency; and which, in the next following article, provides that the acceptance of benefits and advantages of the administration constitutes tacit consent or implied agency. (12 Manresa 577.) The legal effects of these two articles induce us to conclude that unless these requirements are present, there can be no agency express or implied, and the quasi contractual relation of *negotiorum gestio* cannot exist between the parties. Justice Torres, in the case of Smith *v.* Lopez, said:

> As the defendants did not make any objection to the performance of the necessary work, it must, therefore, be presumed that they approved of the work done upon the house and ratified the action of their father in the premises as though the latter had acted under an express power from them. But assuming that the defendants did not expressly ratify or approve the acts of their father, the fact remains that the house was improved by said work and for this reason the owners are liable for the obligations incurred by their agent, for their benefit and advantage. (5 Phil. 78.)

E. INTENTION TO PROTECT THE INTEREST OF THE OWNER.—Bonel said that the dutiful intervention in others' affairs is an act of benevolence to save the owner thereof from an irreparable loss or injury which might befall his interest. (Bonel, *Derecho*

Civil, IV, p. 486.) It would therefore, be a treachery on the part of the gestor to assume the administration of others' affairs with bad intention. . Such intrusion cannot be recognized as to prejudice the rights of the interested party. He who deals without good intention in managing others' business must be reimbursed only to the extent of the advantages received by the owner; and even if he managed property properly, if his management produce no benefit, he is precluded from asserting any further claim. (Cas. Palerno, December 18, 1897.)

F. WANT OF PROHIBITION OF THE OWNER.—If, notwithstanding the prohibition of the owner of an abandoned property, an officious gestor takes charge of and proceeds with the administration of the same, he thereby makes himself responsible for all the consequential liabilities that might result, while he acquires no right in his favor. (Manresa, XII, p. 556.) Justinian said that having acted with knowledge of the prohibition, the intention of the gestor to donate must be presumed; but later writers strongly criticized this view on the theory that the intention to give should not be presumed. Troplong, on the other hand, made a distinction if the prohibition was reasonable and yet the gestor continued to deal with the property, the intention to give might be presumed; but if the prohibition was merely capricious, the responsibility should be attached to the interested party irrespective of such prohibition. The latter view seems to be more in consonance with the general principles of law in protecting the interests of a benefactor.

III. OBLIGATIONS OF THE GESTOR

A. DURING THE ADMINISTRATION.—At this stage of the administration the obligation of the gestor may be classified under three headings:

a. To fulfill his charge with all the diligence of a good father of the family;

b. To continue the management of the affairs until the end of the business, or until the owner is in a condition to assume the management by himself;

c. To submit himself to all the consequences of the business under his administration.

a. *Diligence that Should Be Used by the Gestor.*—The gestor should employ in his administration the diligence of a good father of a family. The courts, nevertheless, may reduce the amount of the indemnity, should he be liable for any, according to the circumstances which induced the gestor to assume the administration (Art. 1889, 3. C.). He becomes obliged to prosecute the management with the same interest and zeal that he would employ in his own affairs. The reason for this is clear. The obligation of the gestor arises from a voluntary service rendered spontaneously and without previous permission from the owner. As it is the primordial duty of every man not to offend another, so in assuming the administration of others' business he is supposed to have done it with the noble purpose of averting damage and of not omitting anything that would contribute to its success. And there is such a damage when the management of the gestor is not beneficial or convenient

to the owner, or not conducted in the usual way such business is carried out. There is omission of what is useful when the gestor fails to do what the owner would have done himself for the good of the business. To this effect, it is but logical and necessary that the gestor should use the diligence of a good father of the family.

However, this obligation of the gestor can be more or less great according to the motive more or less just and reasonable which impelled him to assume the administration of the business, or its necessities and opportunities, taking into account the habit of the owner, and the aptness of the gestor to manage the same as well as his relations to the owner. (Giorgi, *re Obligaciones*, V, p. 79.)

Should the gestor embark on dangerous or risky undertakings in the management of the business, as of contracting a vessel and taking it to sea, when it was not the ordinary habit of the interested party to do so, according to his best knowledge and belief, he thereby renders himself liable for any damage that fortuitous events may occasion to the business (Laws 29, 33, Title XII, *Partida* V.). He can only be protected from liability if he used the ordinary and necessary methods of management. But should the owner hold the gestor responsible for the fortuitous event, he can not at the same time claim the benefits of the administration, except only those which necessarily result in due course of administration. Pothier said that in emergency cases when the owner is absent, the gestor is not responsible for his imprudence or negligence, because he then acts under the stress of necessity and should therefore not be held liable except for gross negligence or fault. The Civil Code, however establishes a general principle applicable to all cases, by only requiring the discharge of ordinary diligence of a good father of the family and holding the gestor responsible only for damages caused by his fault or negligence.

b. *Must Continue Management to the End.*—The authorities do not seem to agree as to the rule that the gestor is obliged to continue the management until the end of the business. Its severe effect against the interest of the gestor was criticized with the result that some writers came to the conclusion that the spirit and not the letter of the law should be considered. Beranger supported the letter of the law theory as a strict constructionist. He said that one who spontaneously assumes the administration of the affairs of others must be obliged to continue the same to the end, because it is not to be supposed that he should take charge of those affairs and then leave them in the same condition in which he found them by refusing to continue the administration. Manresa is of the same opinion, and adds "that as the law cannot and ought not to presume that the gestor assumes the administration for illicit or immoral purposes, but only for the benefit of the owner or interested party, it gives to the former the character of an agent and requires him to comply with his duty under conditions analogous to those of the agent." The contrary view simply asks for a modification of the statement as to make it conform to the spirit of the law. The supporters of this view say that when the act is one of charity, the gestor must only be held to the extent that the owner or interested party is not left in bad plight

and that when the gestor finds it impossible to continue, he can leave the administration upon previous notice to the interested party. Laurent, who is one of the supporters of the loose construction, exemplifies his view by saying that when one who goes to war and his neighbor assumes the task of cultivating his land, he cannot oblige the latter to continue the cultivation until he returns. The gestor can of course leave the administration when the owner so desires, or when the latter becomes insolvent or bankrupt. In the latter case, the gestor loses the hope of being compensated (in accordance with the opinion of Troplong). Another example given in which the letter of the law cannot be applied is when the gestor becomes gravely ill, or by imperious necessity is obliged to sail away to foreign lands or for some reason or other is obliged to attend to his own affairs exclusively. Manresa, in upholding the provisions of the code, further believes that the option which is given the gestor to require the owner to substitute him in the administration, when the owner is able to do so, is a guarantee given to protect the right of the gestor to use his discretion in choosing whether he should continue the administration or not; and if he fails to make use of this right, then he is obliged to continue to the end of the administration and the necessary incidents thereof. This argument, however, does not seem to cover the graphical examples cited above. The writer is more inclined to follow the contrary view that the spirit, and not the letter of the law, should be followed in this regard.

c. *To Submit Himself to the Consequences of the Business Under Administration.*—As a general rule, the gestor is not responsible for his omissions. But the true criterion and reason for the rule that the gestor submits himself to the consequences of the administration, is found in those omissions which cause damage to the party interested or owner, which would not have happened had not the gestor assumed the task. Among the many affairs of his friend, the gestor can assume the administration of one or two of them and leave the others. But in those which he voluntarily assumed; he is responsible not alone for the positive result, but also for the omission, because, having chosen to assume them, he has thereby taken the double responsibility of not doing anything injurious and not omitting anything necessary and useful.

B. AFTER THE ADMINISTRATION.—This topic may be treated under three subdivisions:

a. To render account of his administration;

b. To return to the owner all that is left in his possession belonging to the estate or business he has administered and all that has been gained at the expense thereof,

c. To indemnify the owner for damages to the patrimony administered.

These three rules can be discussed together. The Laws of the Partidas provide that the gestor contracts the obligation to give accounts to the owner of the business he administers (Law 26, Title 12, P. V.). Following this rule, it has been decided by the Supreme Court of Spain that the administration of another's affairs creates a duty to render an account to the owner of the business (S. February 20, 1884). Should the gestor delegate the administration to a third person, which he is at perfect

liberty to do (Art. 1890, C. C.), he should answer for the acts of the delegate, without prejudice to the direct obligation of the latter to the owner of the business. The delegate, then, and not the gestor, is obliged to render the account as may be inferred from the decision that one who preserves under his control the property of others, managing it and making business with it with freedom, contracts an obligation which is natural and proper of all those who administer others' affairs, whatever be the nature of his intervention, and must account for it. (S. June 23, 1891.) If there are more than one administrator, each one is obliged to render his own account, and it may be judicially or extra-judicially done at the cost of the owner, because it is done for his own interest.

After the rendition of account, it naturally follows that the gestor must return to the owner all that is left in his possession belonging to the latter, as well as those things which, at the expense of the administration, have been gained. (Law 26, Title 12, *Part.* 5; S. February 20, 1884.)

Lastly, the gestor should answer for the indemnity which may be charged against him, for any damage his administration might occasion to on the patrimony administered. The Laws of the Partidas provide four degrees of responsibility:

1. In ordinary administration, the gestor is liable for deceit (*engaño*), gross negligence (*culpa lata*), and ordinary negligence (*culpa leve*). (Gregorio Lopez's Interpretation of Law 30, Title XII, *Part.* V);

2. If the gestor takes charge of the affairs of an absentee, which have been abandoned without anyone taking care of them, he shall answer for damages arising from fraud (*dolo*) or gross negligence (*culpa lata*). (Interpretation, Lopez, cited above);

3. If the gestor administered the business of an absentee in place of someone who desires to do the same with much care, he should answer for deceit (*engaño*), fault and slight negligence (*culpa levísima*) (Interpretation by jurists of Law 34, Title 12, *Part.* V);

4. If the gestor should carry the administration of the property of an absentee in the manner which the latter was not accustomed to do, he should answer even for loss due to fortuitous events if it be proved that he entered the administration in bad faith. (Law 29, Title 12, Part. V; Art. 1891, C. C.; Del Viso, *Derecho Civil*, III, pp. 528, 529.)

The Civil Code, however, following the modern tendency to do away with these different degrees of responsibility, adopted a most general rule by providing that the gestor should exercise the diligence of a good father of a family. Thus, a gestor should answer (1) for all that ought and could be collected during his administration, but which was not collected through his negligence; (2) for all that was maliciously done to the damage of the owner; (3) for all that resulted from the positive fault; (4) for all omission inconsistent with the diligence of a good father; and (5) for casual loses if he engaged in dangerous and risky undertakings contrary to the presumed will of the owner.

IV. OBLIGATIONS OF THE OWNER

The administration is well managed if the intention was good at the moment of the assumption of the affairs, although later events of superior force might have paralyzed the good intention of the gestor. The law apparently provides that the gestor is entitled to reimbursement when the management shows that necessary and useful work was done at the beginning of the relationship, and that the acts of the gestor are in conformity with the proper and usual administration, tending to the betterment of the business, and that he has not been guilty of any negligence or fault which a good father of a family would not commit. So was it said that only when the administration is bad and useless from the beginning, can the gestor be made responsible for the consequences of his imprudence and inaptness? (Cas. Turin, March 7, 1888.) Giorgi cites a graphical example where the owner can refuse to pay the cost of a good administration. If, in the absence of A, the gestor takes the liberty of making costly repairs on a house left by the former, when the owner would have preferred to leave the house to ruin than to spend so much money, the gestor has no action against A, because he can not allege that he has administered A's affairs well. In such case, A could well answer the gestor that had he asked him previously, the answer would have been a refusal. (Giorgi, *re Obligaciones*, V, p. 85.)

Assuming that there was a good administration, what obligation does the owner contract? The owner must, (a) reimburse the gestor for the necessary and useful expenses which the latter may have incurred and for the losses that he may have suffered in the discharge of his duties; and (b) comply with the obligations contracted in his name by the gestor.

A. To Reimburse the Gestor.—In the case of agency, the agent is entitled to reimbursement for all the advances made whether they exceed what the principal himself would probably have spent because he simply acts by virtue of an order in the execution of which he is entitled to use all means. (Art. 1728, C. C.). But in *negotiorum gestio*, the gestor can recover only for all necessary and useful expenses. So that if he failed to observe all the economy necessary in the discharge of his trust, the owner has the right to make a reduction of the expenses, limiting the reimbursement strictly for necessary and useful expenses which are manifest. This question being one of fact, the court is the one to determine it in case of disagreement.

B. To Comply with Obligations Contracted in his Name.—Obligations may be contracted by the gestor in the name of the owner or in his own name when such obligations are necessary incidents of the administration. In case the gestor contracts in the name of the owner, the latter is obliged to comply with its terms, thus recognizing the contract representation of the gestor, from which arises a contractual relation between the owner and a third party, and the name of the gestor disappears from the transaction. Said contract must be within the scope of the administration as a necessary consequence or as an incident thereof. Should the gestor go beyond this limitation, he would violate the old established rule that no one can

legally stipulate or promise for another (Art. 1259, C. C.). If the gestor contracts in his own name, the owner is obliged to indemnify the gestor for any that may be recovered in a personal action brought against him by a third party.

C. ACTION.—The action which the gestor has against the owner to enforce the rights given him, is called "negotiorum gestorum contraria." This right of action is transmitted to his heirs. The action which belongs to the owner against the gestor is termed "negotiorum gestorum directa." This action is also transmitted to the heirs of the owner. If there are two or more gestors on the same business, the action can be brought against them for a joint liability (Art. 1890, C. C.). But if the gestor assumed the administration in favor of more than one person, the action is not jointly against them, but severally. (Del Viso, *Derecho Civil*, III, p. 529; Morato's *Derecho Civil*, II, p. 484). According to the old law, these rights of action can be brought within 30 years from the termination of the administration (Cas. Napoles, June 3, 1892). This prescriptive period must be considered as having been changed now by the Code of Civil Procedure, either to 4 years for the recovery of personal property (Sec. 43, 3) or to 10 years (Sec. 44) for other relief which cannot be brought within the provision of Sec. 43 of the Code.

CHAPTER III
SOLUTIO INDEBITI

1. DEFINITION; ESSENTIAL REQUISITES.—Payment made without cause or by mere mistake is an improper payment, and it gives the payor the right to reclaim what he has paid. The relation which arises between the payor and the acceptor is known under the Roman law as *solutio indebiti*. This is the second class of quasi contracts of which the Civil Code treats, and is based upon the principle of equity that no one should enrich himself at the expense of others. Manresa defines this quasi contract as a tie or juridical relation, which, by virtue of a payment not due, made through mistake, is created between the person who paid and the person who received the payment, compelling the latter in consequence thereof to return what he has received. (12 Manresa 558.) Marco Tulio gives a more synthetical definition, saying that it is a quasi contract by virtue of which he, who by mistake of fact, pays another what is not naturally due him, obliges the latter to return the thing with its fruits. (Marco Tulio, *Derecho Civil*, p. 559.) The Civil Code gives the nature and consequences of this juridical relation in article 1895. If a thing is received when there was no right to claim it and which, through error, has been unduly delivered, there arises an obligation to return the same. The nature of this quasi contract is comprised in these definitions. But the Supreme Court of Spain added something more to its nature by holding that the person who makes such payment by mistake acquires thereby the right of a creditor with the consequent right to demand the return of the thing with all its fruits and accessories, according to the good or bad faith of the person who received the same. (S. November 23, 1903.)

Many debtors undoubtedly observe due punctuality in the payment of their debts, but it not infrequently happens that they are in a difficulty to ascertain the person to whom they are to make such payment. It is perhaps largely due to the common errors of the solvent debtor, or to the ignorance of the administrator or gestor or of the heirs who were not informed well, or sometimes to the strictness of the law that these undue payments are made for want of cause. The law rightly recognizes the remedy for these errors by an action to recover what has been paid by such mistake.

There are four essential requisites for the existence of this juridical relation: (1) Payment; (2) want of cause; (3) error of the solvent; (4) want of moral obligation which authorizes the retention of the thing delivered. Each one of these will be discussed separately.

A. PAYMENT.—There are two essential requisites to constitute payment: the material act and the intention to pay. The act (*prestatio*) comprises that of giving or doing; such as, the transfer of real as well as personal property, fulfillment of services, acquirement of obligations, constitution of easements, delivery of receipts, cancellation of bonds, and, generally, all those which have been given or done for the benefit of another, so long as they are ascertainable in money. (Giorgi, *re Obligaciones*, V, p. 119.) The other requisite should be the extinguishment of an obligation on the part of the one who believes himself to be a debtor of the recipient, that what he has done or given has been done or given with *solvendi animo* (Gaius, III, 91), and that his will to transfer the value to the patrimony of the recipient is moved solely by his desire to extinguish the obligation which constituted the cause of such act. The payment must be done legally, that is, made and received by persons having juridical capacity. The absence of the juridical capacity of the person giving and of the person receiving makes the payment invalid. The authorities base this rule upon the principle that those who are incapacitated to make a contract are also incapacitated from entering into a quasi contract, and that the receipt of payment of what is not due by an incapacitated person does not offer any subject-matter for the recovery of what is unduly given, but only obliges the incapacitated person to repair the damage if he acted in bad faith or the restitution of those things with which he enriched himself at the expense of the other. Such is the theory held by Laurent and Demolombe. Giorgi advances a more liberal view. He says that if the capacity of the *solvens* is in question (said capacity being necessary because payment requires consent and meeting of the minds), and said payment is found null and void for want of said capacity, the action should not merely be *solutio indebiti*, but the more speedy one for the restitution of what has been paid (*actio de in rem verso.*) But when the capacity of the recipient is in question, his obligation is to restore what he has received, if he acted in good faith, and with indemnity if he acted in bad faith. The latter view is in accord with our law. (Arts. 1896, 1897, C. C.)

B. WANT OF CAUSE.—This subject may be considered under three headings:—

(*a*) Because the obligation does not exist in fact, or because it has been extinguished before payment;

(*b*) Because the debtor has paid more than what is due, or has given in payment a thing different from what constitutes the true object of the obligation;

(*c*) Because the *solvens* is not the real debtor, or the recipient was not the real creditor so long as there exists a debt in favor of the *accipiens* in the first case or a debt from the *solvens* in the second case.

a. *Non-Existence of Obligation.*—The absolute absence of obligation to the extinction of which payment has been destined constitutes one of the necessary instances where *solutio indebiti* is applied. This absence of cause may take place when the foundation of the obligation does not really exist, as if the document upon which payment is made was false or non-existing (Cas. Perrugia, June, 1873.) The question in this case is whether the parties contracted as to an existing thing or whether the plaintiff took his chances as to the existence or non-existence thereof. In the former, there is recovery; in the latter, there is none. (McGovern *v.* Avary et al., 37 Mich. 120; Moore *v.* Des Arts, 1 N. Y. 359.)

In certain cases, the obligation may be extinguished by payment previously made, by novation or by compensation. In each of these cases a new juridical relation may arise between the parties.

1. If a payment is made twice, it is necessary that the first payment be valid and to the extinguishment of the same obligation in order that recovery may be claimed on the second payment, because if it is not valid, it does not extinguish the obligation and hence there can be no recovery. But supposing that two payments were validly made by two joint debtors who, being both ignorant of the action of the other, paid the complete sum of (say) 100 pesos which is due, how could the action of assumpsit be brought? The last one who paid is undoubtedly entitled to bring this action, because the first payment being intended to extinguish the debt, the second one is necessarily made on a non-subsisting debt. And if the payments were made on the same day, each one of them is entitled to recover one-half. (Giorgi, *re Obligaciones*, V., p. 125.)

2. By novation, the obligation may be extinguished when the intention to substitute a pure obligation by a conditional one, or *vice-versa*, is shown, the preceding obligation being considered extinguished by novation, so long as neither of them is contrary to moral and justice. (Art. 1143, C. C.)

3. Compensation is also a mode of extinguishing obligations. So that action may be brought to recover a sum paid to extinguish an obligation which was already extinguished by novation or compensation. (Art. 1156, C. C.)

A question of great interest may arise where the debtor is required to make a new payment by virtue of a judgment of court based on the erroneous fact that a debt has not been paid yet. This case may arise when a person, upon being sued

to pay a certain debt, answers that he has already paid the same. Unfortunately, however, he fails to produce the receipt or other evidence to prove his defense, and the court renders judgment against him whereby he is compelled to make a second payment. Later on, the receipt appears and also other proofs of the previous payment as was alleged in the pleading. Assuming that he cannot bring any action to impeach the judgment, what right then is left to him? Can such injustice be tolerated without applying the equitable doctrine of quasi contract on double payment? Jurists have different opinions with regard to this question. Some hold in favor of the right to recover. (Cas. Turin, January 30, 1899, Cas. Florencia, December 9, 1890; Cas. Napoles, June 17, 1871.) Others hold just the contrary. (Cas. Casale, May 4, 1892; Cas. Geneva, August 4, 1865.) We should take the second view that there is no right of recovery as coming within the provision of our law, because the action of *Conditio Indebiti* lies only against payment made by mistake or without cause whatsoever, whereas in the case at bar payment is made by virtue of a final judgment. This opinion is also in accordance with the principles of the Roman law as well as with the decisions of some of the American courts. (Holtz *v.* Schinidth, 57 N. Y. 253; Mayor *v.* New York, 63 N. Y. 455.)

b. *Payment in Excess.*—Under this heading it may not be amiss to say that recovery can be maintained if the payment was made at a place other than that where the debtor could have duly paid, if through this mistake a certain damage resulted to the debtor. But where the payment was made prematurely by mistake, can there be a right of recovery in favor of the debtor who paid it before it was due? We think not, because although it appears that the denial of the right to recover is inequitable, yet in reality the creditor in good faith has the right to receive the payment offered to him, and it would be unjust to compel him to return what he has received, while his opportunity to enjoy his right to the payment remains uncertain and unfairly insecured. The creditor can rightly answer the debtor that he received only what is due him.

Pothier advanced his theory that if payment was made in excess of the amount really due there arises in favor of the payor the right to demand what was given in excess. The same rule holds true if in paying he failed to make certain deductions which he was entitled to do. To the same effect is the law established in certain cases decided by the American courts. (Holtz *v.* Schinidth, cited *supra;* Mayor *v.* New York, cited *supra;* Talbot *v.* National Bank, 129 Mass. 67.) But a more stringent view is found in the case of Windbiel *v.* Carroll, 16 Hun. (N. Y.) 101, where the action was based upon a recovery of money paid on a mortgage on the ground that it was an overpayment. Justice Learned, speaking for the court, said: "Ignorance of the fact is one thing, and ignorance of means of proving a fact is another. When money voluntarily paid is recovered back it is because there is mistake as to some facts. The subsequent discovery of evidence to prove a fact known to the party when he makes payment cannot authorize a recovery back of the money." Such principle would be most dangerous in the hands of every debtor. (Holtz *v.* Thomas, 105 Cal. 273; Mowatt *v.* Wright, 19 Am. Dec. 508.)

When the debtor pays one thing for another knowingly with the consent of the creditor, then there is no right of action to recover what has been so paid. But if the debtor did it by mistake, there lies an action of recovery based upon the fact of offering at the same time the thing which was really due. This is the general opinion maintained by the authorities. The same rule may with propriety be applied to a case where a person owes two things alternatively and both of them were delivered by mistake. (Del Viso, III, p. 531-532; Law 39, Title XII, *Partida* V.)

c. *When the Solvens and the Recipien. Are Not the True Debtor and Creditor Respectively to the Same Obligation.*—Payment made to a person who is not the real creditor of the solvens is, as a general rule, recoverable by an action of *Conditio Indebiti*. (S. February 28, 1896.) But if the money was paid to an agent it was in legal contemplation made to his principal, and hence there is no right of recovery.

If the payment is made by a person who is not the real debtor under a mistaken impression that he owed said obligation, there lies an action to recover what has been paid, although the person to whom the payment was made was a creditor to an equal amount with regard to another debtor. The solvens not having paid in the name of the true debtor must be considered to have made such payment in the only belief that he is extinguishing a debt of his own, which in this case does not exist. It will be unjust to have the creditor enjoy the fruit of an error, and it cannot be reasonable to force the solvens to satisfy himself by a recourse against the real debtor, because the latter may be insolvent. So that to have an action it is necessary that the payment was made in the name of the solvens who made a mistake and not in the name of the real debtor. If the payment was made in the name of the real debtor, there lies no action of recovery, because it is a principle of law that although the obligation does not exist except as between the creditor and debtor of the same and one obligation, anyone can extinguish the obligation of the latter and discharge him if payment was made to this end. It can either be done with the consent of the debtor *constituting the payor or the agent*, or without knowledge of the debtor, in which case the solvens becomes a gestor. (Toulier, XI, 83.)

But suppose that the creditor, in receiving what has been paid him through the mistake of the solvens, acted in good faith, and upon the acceptance of what he honestly believed to be due him was subsequently deprived of his title or right to the credit as a consequence of said payment, will an action for recovery by the solvens lie against him? The question is answered in the negative (S. November 30, 1880). He should not be exposed to the injurious consequences derived from the error of the solvens, especially when he can not be placed in *statu quo inter errantem et patientem nulla est Dubitatio remo ex facto alterius praegravari debet*, as the Roman maxim puts it.

Laromgiere points out that it is essential that the damage suffered by the creditor be the consequence of a certain fault of the solvens, and that this fault be not present when the creditor received the thing in bad faith; that is, with knowledge that the

solvens was not his debtor. So it was decided by the court that if the creditor by imprudence induced the debtor in good faith to believe that he was the real creditor, there lies an action against him, for the damage can be attributed to his own act. (Cas. Roma, May 22, 1902.) The rule also applies to those who are debtors in part and paid the whole of the debt. (Toulier, XI, 85.)

This same question has been brought up before the common law courts, and the weight of authority follows the same principle of the Roman law with certain modifications which each particular case warrants. This doctrine is known in the American courts as the "Change of Position."

If the defendant, because of the receipt of the benefit and before learning of the plaintiff's mistake, gives up the property, surrenders a right against a third person, so that restitution will not place him where he would have been if the mistake had not been made, but will subject him to positive loss, will the plaintiff recover? The answer must be qualified:

1. If the mistake is attributable solely or chiefly to some negligent act or omission of the defendant, it is just that the defendant rather than the plaintiff should suffer the loss (Union Bank *v.* U. S. Bank, 3 Mass. 74).

2. But if the responsibility for the mistake cannot be fairly laid at the defendant's door, or if his fault is no greater than the plaintiff's, the retention of the benefit by the defendant is not against conscience. This would subject the plaintiff to a loss, but justice would not be served by shifting the loss to the defendant, who is less at fault than the plaintiff. (German Security Bank *v.* Columbia Trust Co., 27 Ky. 581; Palletier *v.* State Nat. Bank, 117 La. 335; Walker *v.* Conant, 65 Mich. 194.)

3. If neither one is at fault or negligent or if both are equally negligent, restitution is favored in few cases. (Durrant *v.* Ecclesiastical Com., 62 B. D. 234.) Other authorities hold the country (Prof. Keener on Quasi Contracts, p. 67-70; Croker Bank *v.* Nevada Bank, 139 Cal. 564).

4. If the identical money or thing received by defendant be lost by accident or theft, does it constitute a defense against the claim of the plaintiff? Professor Costigan says that loss by accident or theft constitutes a defense. ("Change of Position as Defense," 20 Havard Law Review, 211.) It is contended that the loss by accident or theft being defendant's own calamity, to deny the plaintiff's relief is to shift the defendant's misfortune to the plaintiff's shoulders, hence it is unjust The loss in this case does not depend on the defendant's mistake in the change of position over the property; it is exclusively due to the plaintiff's mistake that the defendant comes to possess the money or goods; it, therefore, may be conceded that the remoteness of the plaintiff's connection with the defendant's loss is so offset by his blamefulness for the mistake as to justify the denial of the relief. (Woodward, on Quasi Contracts, p. 45.)

C. ERROR OF THE SOLVENS.—All discussion on this class of quasi contracts hinges only on this one word, "error," which created the juridical relation of *solutio indebiti*. Under the Roman law, the mistake on the part of the solvens is an indispensable requisite for *conditio indebiti*. Modern writers introduced new theories that error is not in all cases necessary in an action for *conditio indebiti*, because this action may also take place not only in case of erroneous cause, but also in case of a cause not realized or of illegitimate or false one. Our Civil Code treats only of erroneous cause under *solutio indebiti*, and leaves the illicit or false cause under separate title. Thus it sticks to old precedents.

If the solvens, knowing that he owes no duty, nor is obliged for anything to the creditor, pays him or gives him anything just because he so desires, and later on, he repents and brings the action for restitution of what he has delivered to the creditor, will such action prosper? Some authors maintain that an action for recovery lies from the fact that the action of the plaintiff cannot be considered an act of liberality or donation, because there were no express words to donate the thing given. Others, however, are of the opinion that there can be no recovery, because, notwithstanding the fact that there were no express words to constitute the delivery a donation, yet over these mere words, the fact of donating is done which admits no contradiction. The modern view in this regard is to the effect that generally donations, coming from the conduct of the donor, are valid, although they lack the essential requisites and formalities of donations. (See Giorgi, *re Obligaciones*, V, p. 151.) The intention to give is a necessary logical inference from his manner and conduct. Giving something with knowledge that it is not owed can only be explained by an intention to donate although donation cannot be presumed. (Toulier XI, 60; Laurent XX, 352.) This is also the view taken by the Spanish commentators. As Manresa says, "if the ownership of a thing is transferred and delivered with knowledge that it was not due, it tacitly reveals the intention to realize an act of liberality, which cannot in any way obliged the person who received, because no civil obligation can be imposed upon anyone without his consent." (12 Manresa 590; see also Law 30, Title XIV, *Partida V.*)

The old legislation requires that the error must be one of fact. This mistake of fact by the solvens was the basis of this quasi contractual obligation, because if the payment was made by the mistake of law, recovery cannot be obtained (Law 30, Title XIV; *Part. V.*) It was also recited in the project of 1851 and was later on interpreted by Goyena that mistake of law does not excuse anyone nor does it benefit him. The Code, however, does not distinguish whether, it should be an error of fact, or an error of law, but simply says, "payment through an error." The commentators alleged that inasmuch as there is no distinction made in contracts, much less should there be any distinction in quasi contracts; and as in contracts the errors of law might be excusable or inexcusable, so also in quasi contracts the errors might be excusable or inexcusable whether they be error of law or of fact. (Toulier V, 75; Laurent XX, 354; Cas. Florencia, December 30, 1899.) Amandi, following this

view, believed that the word "error" comprises both errors of law and of fact. Although he pointed out that not all errors of law are within this provision. (Amandi, 4, p. 426.) Manresa, Falcon, Sánchez Román and others still maintain that mistake can only be one of fact, in order to bring the case under *solutio indebiti*. The reason is based upon the old legislation of Roman law and the Partidas wherein it is clearly specified. (Law 30, cited.)

A question might be asked, What is a mistake of fact or of law and when does it take place? The answer may be treated under two separate headings: (a) mistake of fact, (b) mistake of law.

a. *Mistake of Fact.*—Misreliance on a right or duty may be said to result from either a mistake of fact or a mistake of law. If a person pays taxes to A under the belief that the payee is B, the person authorized by law to receive taxes, there is a mistake of fact.

1. *Mixed Motives.*—If the payment be not solely in reliance upon a falsely assumed state of facts but from mixed motives, so that the payor while not believing the assumed state of facts, voluntarily waives all investigation or inquiry, influenced by other motives to the payment, he has not paid on the faith of a false state of facts, but upon other considerations. (National Life Ins. Co. *v.* Jones, 59 N. Y. 649.)

2. *Knowledge or Belief Present in Mind.*—Knowledge or belief must be present in the mind in order to destroy the mistake of fact. One who has forgotten a fact once known to him or believed by him, and consequently falls into the erroneous conception of his right or duty, is just as much entitled to relief as if he had never known the fact before, for "a man's right should not be made to depend upon the strength of his memory." (Norman *v.* Will, 1 Ohio, Dec. 261.) But the mere presence of knowledge at the time of payment is immaterial. If the plaintiff can establish that the fact was not present to his mind when he made the payment, he can still recover (Kelly *v.* Solori, 9 M. W. 54).

3. *Failure to Ascertain Facts.*—The means of ascertaining the real facts of the case can not be considered to be tantamount to actual knowledge. As it was said in the case of Kelly *v.* Solori, already cited, "no matter how close at hand the means of knowledge may be, no matter how stupid or careless the failure to ascertain the truth may be, if one confers a benefit under an honest mistake, i e., in unconscious ignorance of the truth, the retention of the benefit is ordinarily inequitable. Hence, restitution may be enforced." (Rutherford *v.* McIvor, 21 Ala. 750.)

4. *When There Is Doubt.*—In our statutes (Civil Code) in case payment is not made by mistake of fact or of law, but from a doubt as to whether what was paid was due or not, and it turned out that it was not due, a recovery of what has been paid is allowed. (12 Manresa 591; S. May 21, 1874; Law 30, Title XIV, *Part. V.*) The American law has a different view on this point. Under this law when one entertains a doubt as to the existence of a certain fact, but assumed it to be true,

and if said fact doubted was essential to the existence of a duty or the availability of a right or duty, it was an assumption of risk. Court should not assist one to recover what he has consciously risked or lost (Woodward, on Quasi Contract, p. 19).

5. *Compromise or Settlement.*—If there is a difference of opinion as to the existence of a fact essential to an obligation and a compromise is effected between the parties, neither of them can recover from the other the money paid upon learning that his belief in the non-existence of a fact was well founded. (Troy *v.* Bland, 58 Ala. 197.) A contrary view was expressed in Stuart *v.* Sears, 119 Mass. 143, where a recovery was allowed on a compromise based on mistake. Thus payment made to a supposed pregnant by way of compromise was recovered upon the discovery that the supposed pregnant was not in fact pregnant (Rheel *v.* Hicks, 25 N. Y. 289). The former view seems to be more accepted by the authorities. Chief Justice Marston said:

> "In the settlement of disputed questions where both parties have equal opportunity and facilities for ascertaining the facts, it becomes incumbent on each of them to make his investigation and not carelessly settle trusting to future investigation to show a mistake of fact and enable him to recover the amount paid. The settlement and payment should be considered final. If not, it is very difficult to say when such disputed questions could be considered as finally settled. One course encourages carelessness and breeds litigation, the other encourages the parties in ascertaining what the facts and circumstances actually are while the transaction is fresh in the minds of all and a final and peaceful settlement thereof. (Marston, C. J., in McArthur *v.* Luce, 43 Mich. 435; Carlisle *v.* Barber, 57 Ala. 267; Wheeler *v.* Hatchway, 58 Mich. 77.)"

6. *The Mistake of Fact Material.*—In order to entitle a person to recover back money paid under mistake of fact, the mistake must be as to a fact which if true would make the person paying liable to pay the money. Hence, the fact mistaken by the bestower of benefit must be one essential to the existence of his legal duty. It is needless to observe that courts do not relieve against every mistake a party may make in his business transactions. A mistake of a material nature and not merely of collateral fact can be the ground of action for recovery. (Aiken *v.* Short, 1 Hurl & Nov. 210; Buffallo *v.* O'Malley, 61 Wis. 255.)

b. *Mistake of Law.*—A mistake is to be considered as a mistake of law whenever in a given case, a lawyer or judge, solely because of his knowledge of law, can give an opinion as to the result that should be reached. A fact is in its nature transient, existing at one time but not at another. But the theory of law is that for any given state of facts there is a principle of law applicable, although owing to the novelty of facts the principle of law may assume a new form. (Keener on Quasi Contracts, p. 96.)

By the principle that "every man must be taken to be cognizant of the law," the rule was generally recognized that money paid by mistake of law, even under the circumstances which make it inequitable for the defendant to retain it, is not recoverable: *Ignorantia juris non excusat.*

1. *Does the Rule Extend to Errors of Public Officers?*—The rule cannot be carried so far as to extend to payments by mistake committed by public officers with money

belonging to the State. The reason for this limitation is the importance of protecting the public funds and the interests of the community in general. (Wisconsin R. R. Co. *v.* U. S., 164 U. S. 190; State *v.* Young, 134 Ia. 505; Douglas County *v.* Sommer, 120 Wis. 424; Frederich *v.* County & Douglas, 96 Wis. 435, Woodruf's Cases, p. 435.)

2. *Rule Criticized.*—The rule that no one should recover what has been given by mistake of law has been criticized by modern writers. In some cases it has been decided that the rule that "ignorance of the law excuses no one" applies only to criminal cases and not to civil cases. (Landsdown *v.* Landsdown King Ld. Ch. 365; Culbreath *v.* Culbreath, 50 Am. Dec. 375.) The idea of excuse implies delinquency. So that no man can be excused upon the plea of ignorance of the law for disobeying its injunctions, violating its provisions or avoiding his just contracts. But in civil case a person has not done any wrong, he simply seeks a remedy not to inflict a loss upon another but to save himself from a loss. Should the rule be stretched out it would be a harsh imposition upon everybody. Lord Mansfield once said: "as to the certainty of the law it would be very hard upon the profession, if the law was so certain, that everybody knew it." Chief Justice Abbot is also said to have once exclaimed, "God forbid that it should be imagined that an attorney or counsel or even a judge is bound to know all the law." The modern tendency of the law is to limit the rule to criminal cases but not to excuse the parties entirely because the danger of abuse of the right would be a grave one. Should this limitation of the rule to criminal cases only be recognized by our courts, notwithstanding the express provision in article 2 of the Civil Code that ignorance of the law excuses no one, payment under mistake of law can be invoked as the basis of actions in civil cases as it has been advanced by Amandi in his Commentaries on the Civil Law. (Amandi, cited *supra.*)

3. *Established Rules.*—There are certain rules which have been established and recognized by courts and text writers in which a mistake of law can be the ground of relief in civil cases:

a. That relief should be granted from the mistake of one's private rights but not from mistake of general law. (From American and English cases, Woodward's, p. 55.)

b. That the relief should be granted for mistake of law common to all parties, to wit, where they all act under the same misapprehension. (Pomeroy, Equity Jurisprudence, par. 846; Cal. Civil Code, sec. 1578.)

c. That relief should be granted from mistake of law made in reducing to writing a contract already agreed upon by the parties, the result being that the language of the writing has a meaning or effect in law different from the intention, as distinguished from a mistake with regard to the legal meaning or effect of written instrument agreed upon as representing the contract between the parties. (Pomeroy, cited *supra*, par. 843; Story, Equity Jurisprudence, par. 110; see Sec. 285, Code of Civil Procedure.)

d. That relief should be granted from mistake as to a clear and established rule of law, as distinguished from mistake as to a doubtful and unsettled rule. (Story cited *supra*, par. 121.)

e. That relief should be granted unless at the time of the act there was present to the mind of the actor a doubt as to the law. (Washington, J. in Hunt *v.* Rousmanier, 1 Peter 17; Mr. Bingelow's, 1 Law Quarterly Review 303.)

How far any of these rules can be enforced in our jurisprudence can only be answered by the future decisions of our courts.

D. WANT OF MORAL OBLIGATION WHICH AUTHORIZES RETENTION.—The absence of a moral obligation which makes payment irrevocable constitutes a ground for an action of restitution. But moral obligation admits no right of action to recover what has been paid in view of the presence of such an obligation, although made in the erroneous belief that a duty exists. (De la Serna, *Derecho Romano*, Vol. 2, p. 358.) Such instances happen when one pays or gives another something from the simple desire to satisfy an act of benevolence, of good conscience, of delivery or of honor, which makes in all a sufficient cause of an irrevocable payment, though made through mistake. (Pothier, *re Obligaciones*, 156: Cas. Turin, Dec. 9, 1904: Cas. Florencia, September 7, 1904; Toulier XI, 89.) Instances of this kind also find expression in the American courts.

a. *When Plaintiff Is Guilty of Serious Misconduct Towards the Defendant.*—Under the principle of equity that "he who comes into equity must come with clean hands," restitution should not be enforced in favor of one who, in the course of the transaction giving rise to his claim, was guilty of serious misconduct towards the defendant.

b. *When Plaintiff Was Under a Moral Obligation to Confer a Benefit.*—One who, while under a moral obligation to confer a certain benefit upon another, confers it because he mistakenly supposed that he is under a legal obligation so to do, or because he mistakenly supposed that he will acquire a legal right by so doing, is not entitled to restitution, for there is nothing inequitable in the retention of a benefit to which the recipient is morally entitled even though it is conferred by mistake; so "money due in point of honor or conscience, though a man is not compellable to pay it, yet if paid, shall not be recovered back: as a bona fide debt which is barred by the statute of limitations (Farmer *v.* Armdle, 2 Wm. Bl. 824).

c. *Where the Plaintiff Received Something of Value from Defendant.*—If in exchange for the benefit conferred upon the defendant, the defendant gives something of value to the plaintiff, which the plaintiff, when he discovers his mistake, is able to return in specie, it is not against conscience for the defendant to retain the benefit received by him until such restitution is made. But if what the plaintiff received of the defendant is of no value or cannot be returned in specie, restitution is unnecessary (Levy *v.* Terwlliger, 10 Duly (N. Y. S. C.) 194).

d. *When Plaintiff Reaped Benefit Equivalent in Value to that Conferred on Defendant.*—If the plaintiff, not by way of exchange, yet in consequence of the mistake and at the defendant's expense, reaps a benefit equivalent in value to that conferred upon the defendant, restitution should not be enforced. But if the benefit received by the plaintiff as a result of his mistake is less in value than that conferred upon the defendant, restitution should be enforced to the extent of the difference (Kingston Bank *v.* Eltinga, 66 N. Y. 625).

II. OBLIGATION TO RETURN.—The main object of *solutio indebiti* is the restitution of things unduly paid. When this cannot be done, then the return of its equivalent in money. The obligation to return arises from the moment these things are delivered by mistake (S. June 12, 1885.) It is an absolute and unlimited obligation on the part of the recipient to return what he received because upon principles of equity he cannot be permitted to enrich himself with the property of others, nor shield himself by the mistake of the owner (Bonel 4, p. 887). Should the recipient not make the restitution, it would be an act of *estafa* or an acquisition without title (Manresa 12, p. 591) or what Del Viso qualifies as a theft, for having received something which he knew was not due (Del Viso, *Derecho Civil*, III, p. 531).

A. EFFECT ON THE PERSON WHO RECEIVED IN GOOD FAITH.—The object of the action for restitution is the return of what the plaintiff delivered to the defendant by mistake. The plaintiff has the right to sue for what he has actually given and nothing more, and the defendant is obliged to return that which has been added to his patrimony without any consideration. If the things delivered bear fruits, the recipient cannot be obliged to return them, but he must return them in case of civil fruits (Giorgi, *re Obligaciones*, V., p. 174.) He shall also answer for the impairment or loss of the property as well as for its accessions, plantations, constructions, and alluvion when they exist at the time of the action (Laurent XX, 376). Risks and dangers belong to the owner. Should the thing be alienated, he shall return the price or assign the action to recover it (Art. 1897, C. C.).

But before this return is made the recipient in good faith has a right of counterclaim to be reimbursed of all necessary and useful expenses which he made, and with the right to retain the things until he is refunded for his claim. (Arts. 453, 454, C. C.)

B. EFFECT ON THE PERSON WHO RECEIVED IN BAD FAITH.—When the recipient acted in bad faith from the beginning, he committed a larceny from the beginning, so that his obligation arises from an illicit act, and he therefore has to indemnify the plaintiff for all the damage that may result. He is not qualified a thief in the sense this term is used in the Penal Code (Art. 517), but he is guilty of a wrong purely civil in nature, to wit: a debtor from the beginning.

A recipient in bad faith is liable for all the damages that may result from injuries to the thing while in his possession, besides paying the legal interest where money is involved, the fruits which he has collected or ought to have collected if the thing received should produce them, and the return of the thing itself. And, although

liable for the risks and dangers which the thing may run, he is not, however, answerable for damages brought about by any fortuitous event which would affect the thing in the same manner were it in the possession of the person who delivered it. If he received in good faith and bad faith only comes subsequently after he has knowledge of the mistake, is the recipient still charged with the serious obligation imposed upon one who accepted in bad faith from the beginning? A negative answer is maintained by Giorgi, who said that when he received in good faith, his subsequent act of bad faith should not be taken into consideration.

III. EFFECT AS TO THIRD PERSONS.—It has been said that payment by mistake, except in certain cases, cannot be made the foundation of an action against third persons who received the thing with good title from the recipient. Laurent and others hold the opposite view, and base their reasons upon the fact that the recipient who unduly received the thing cannot in any way transfer title to it. Because he himself did not acquire any title to the thing, he cannot transfer that which he did not own, hence the third person in whose possession the thing is found will be subject to an action of restitution. The supporters of the first theory rest their argument upon the nature of the juridical relation. They maintain that since the action is merely derived from quasi contracts, it is, therefore, a personal action and it cannot reach third persons. There are others who modified the rule and assert that if the thing be still in existence an action *in rem* lies. It is interesting to observe that the main part of the discussion centers on the theory of false cause. The dissenters from the rule allege that there being a false cause, the transfer cannot produce any effect (Art. 1275, C. C.), and since payment by mistake is based on false cause it cannot produce any effect, much less create any title at all. But the supporters of the rule properly pointed out that false cause refers only to obligations arising from contracts and does not extend to other species of juridical relations. And since cause is the requisite of contractual obligations, its rules are exclusively applicable to contracts. Therefore, a payment though made with false cause transfers title because, if to the actual tradition intention is added by both parties to transfer title, what more is lacking in transferring what they wish to transfer? Although the intention was erroneously inferred, it does not destroy the existing intention of the parties at the time of the transfer. The only recourse of the solvens is the personal action against the recipient. An exception is made when the third person acquired the title in bad faith, that is, knowing that the person who transferred him the thing had no legal title thereto. The weight of authority seems to uphold the rule thus enunciated that no action on quasi contracts lies against the third person who received the thing in good faith.

IV. ACTION.—The term of the action under the old legislation is *Conditio Indebiti,* while under the American law the action is termed *Indebitus Assumpsit.* Although in the Code of Civil Procedure there are only two forms of action recognized, ordinary and special, nevertheless, we may consider that this old form of action

still subsists as it existed under the old legislation as it may be inferred from the decision of our Supreme Court in the cases of Bishop of Cebú *v.* Mangaron,6 Phil. 286, and Rodriguez *v.* Taiño, 16 Phil. 301.

A. By Whom.—The action of *Conditio Indebiti* should be brought by the person who actually made the payment or by some other in whose behalf the payment was made under the latter's authority, or if this is wanting upon the subsequent ratification. So that if the agent made the payment in the name of the principal, the proper person to bring the action is the principal who in legal contemplation was really the one who paid. But if there is no ratification or authority, payment made in excess should be recovered by the agent. In this case the agent is not entitled to recover for what he pa : beyond the limits of his authority, as to which the transaction is purely his own. (Pothier, *re Obligaciones*, 163-166.)

There are certain cases in which the action may be brought by the person who actually made the payment and by the person in whose name payment was made:—

1. If payment was unduly made without authority in the name of another by giving something belonging to the latter who does not ratify the act. (S. December 22, 1903.)

2. If the payment by mistake was made by an agent within the scope of his authority but in the form which made himself liable to his principal, or if it was made with his own money or with things belonging to him. In such cases both the principal and the agent have interests upon which to base their respective claims.

B. Against Whom Action Should Be Brought.—We have already seen above that third persons cannot be reached by an action of *Conditio Indebiti*. Naturally the action will turn against the person who received personally the payment or his heirs even if it was received by his agent who was directly responsible to him.

C. Under What Conditions Will the Action Prosper?

a. *Factum Probandum.*—It is necessary for the plaintiff to prove the payment by the existing receipts or by oral evidence allowed by the rules of procedure, as well as the want of cause and the mistake. Upon him rests the burden of proving all these facts (S. December 30, 1909) in order to obtain his demands: *Actore Non Probante Reus Est Absolvendus*. But if the defendant denies that any payment was ever made, the plaintiff is relieved from proving the error because of the bad faith which must have actuated the defendant in denying the payment (Art. 1900, C. C.). There is however, a presumption that there was a mistake in payment running in favor of the plaintiff when the thing delivered or money paid was never owed by him or it has been already paid or delivered as the case may be. Art. 1901, C. C.) But being matters of procedure this manner of establishing the claim must now be governed by the present Code of Civil Procedure, which, in its section 297, provides that each party must prove his own affirmative allegations, and, in section 334 (6, 7), establishes a *juris tantum* presumption that money paid by one to another was due to the latter and a thing delivered by one to another belonged to the latter.

b. *When Does the Right of Action Accrue?*—The Supreme Court of Spain said that by the mere fact of payment made by mistake the right of action accrues to the plaintiff. (S. June 12, 1885.) Such right of action prescribes after 30 years according to the Laws of the Partidas, but was lowered to 10 years by Law 63 of Toro, which period was preserved by *La Novísima Recopilación*. The Civil Code however does not expressly provide for any prescriptive period for this action. But in article 1964 it establishes a general rule that personal actions which have no fixed period of prescription can only be brought within 15 years. The present Code of Civil Procedure dispels all these doubts in providing that action for recovery of personal property prescribes after four years and that for recovery of real property after 10 years, and all actions for relief not expressly provided for can be brought within 10 years (Secs. 40 and 43 of Act 190).

The American Jurisprudence holds that the cause of action should be considered to arise when the recipient of the benefit is notified or learns that a mistake has been made, as a consequence of which he ought to make restitution. For to hold one responsible for a failure to restore a benefit received and retained without knowledge of any mistake or without notice of any claim for restitution would be manifestly inequitable. So that if the recipient knows at the time of receiving the payment that there was a mistake and the retention was unjust, he is under immediate obligation to make restitution (Sharkey *v.* Lang, 122 Ga. 607). Some cases, however, hold that the action arises from the time of the receipt of the money and that demand is unnecessary (Leather Manufacturing Bank *v.* Merchant Bank, 128 U. S. 26; Rutherford *v.* McIvor, 21 Ala. 750; Johnson *v.* Johnson, 123 Ia. 145). The weight of authority seems to rely upon the latter view that the right of action accrues from the time of the receipt of the payment made through error, so we must also adopt this view as it has been enunciated by the Supreme Court of Spain in a decision cited above.

CONCLUSION

Now that we have gone into the history of quasi contracts and inquired into the nature and character of the same; now that we have touched on the general principles governing quasi contracts and discussed the cases to which they may be applied in our ordinary transactions, it behooves us next to give our last words for a proper and reasonable conclusion as to the PLACE OF QUASI CONTRACTS IN OUR JURISPRUDENCE.

In those countries where the laws are well developed, where the people are conversant with the letters of the laws to which they subject themselves in the ordinary routine of life, the courts are much sought for to settle disputed questions upon the technicalities of the law. Whereas in those countries where the people are not so burdened with the complexities of multiplied legislations, where the people feel they are all born equal, high and low, governors and governed alike, in subjec-

tion to the great immutable pre-existing laws by which they are all knit and connected in the eternal frame of brotherhood out of which they cannot stir, the courts are not much disturbed to settle questions upon the letters of the law, but rather to decide the substantial claims for which the law stands. To be more specific, let us for a moment turn our attention to the threshold of our discussion of the principles of quasi contracts. We found that in the courts of Spain and Italy to which we have occasion to refer several times in this work, the question of quasi contracts had been very often brought up and settled. Likewise, the common law courts have been surged with this same question which first found its answer in the beautiful language of Lord Mansfield that reason and justice dictate contracts upon the parties. In one or the other of these countries it was found that looking into the technicalities of the law, quasi contractual obligations cannot be predicated to exist, because consent, the primordial source of all civil obligations, is absent in this juridical relation. But escaping beyond the jurisdiction of these technicalities, the interpreters were confronted with another law,—that eternal law of moral obligations operative upon our finite will from which we cannot escape, hence the recognition of the quasi contractual obligation.

But in our courts no such question has ever been raised for a final solution. Our people do not seem to be stirred so much by the technicalities of the law in claiming their rights. Thus we find no such discussion on quasi contracts going side by side with other questions based upon other sources of civil obligations on its way to the courts for settlement. But does the absence of this question before our courts mean that quasi contracts are less important than the other juridical relations which abound before them for discussion and settlement? Does this mere absence force us to conclude that quasi contracts have no place at all in our jurisprudence? No, we cannot answer the questions in the affirmative. For we must always adhere to the clear conception of the principles of justice which created this juridical institution. We must look above all to that law of right and reason which is conformable to nature, unchangeable and eternal, whose commands urge us to duty, whose prohibition restrains us from enriching ourselves at the expense of our neighbors. The place of quasi contracts in our jurisprudence should always stand high like any other juridical relation which may be the source of civil obligations within our laws. We must ever remember the words that the best thought of a people is to be found in its legislation, its daily life is best mirrored in its usages and customs which constitute the law of its ordinary transactions. The true principle of quasi contracts needs no better expositor and interpreter than our conscience. It is a law above all human enactments. It is the exposition of true justice and equity "written by the finger of God upon the heart of man."