

A COMPARATIVE STUDY OF JOINT (MANCOMUNADA) AND JOINT AND SEVERAL (SOLIDARIA) OBLIGATIONS UNDER THE SPANISH LAW AND AMERICAN LAW

BY VALENTIN REYES Y TANCHANCO, B. A., LL.B.

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(Continued from September Number)

CHAPTER IV

I. PASSIVE SOLIDARITY

A. *Definition*

"Is a tie (vínculo) between various debtors, by virtue of which each one of the debtors becomes reciprocally obliged to the payment, for the greater security of the credit and to facilitate the creditor to recover". (I Giorgi, *Teoría de las Obligaciones*, page 115.)

B. *Requisites*

In any case of passive solidarity the following elements are generally present: 1. Plurality of debtors; 2. Unity of prestation; 3. Will of man or legal disposition, direct to constitute the solidarity. Now with respect to the first element it is clear, because in order to have a passive solidarity two or more debtors are indispensable. Regarding the second element it is the same as in the plurality of creditors because if each debtor would make different and distinct prestations, then we shall not have one and single obligation but various or numerous which will then be contrary to the word passive solidarity. The third element or requisite may be shown by means of testament or by contract. Solidarity by testament takes place when a testator imposes a joint and several (solidaria) obligation to various heirs to pay a legatee. If it is true that there is no article which confers expressly to the testator such power or faculty, yet there is neither an article or precept which explicitly or implicitly denies him such authority. (I Giorgi, *Teoría de las Obligaciones*, pages 155-116.) The

solidarity between the debtors may be also contractual, but it requires the explicit consent of all the contracting parties. The solidarity or joint and several obligation according to the provision of article 1137 of the Civil Code can not be presumed but it must be expressly stipulated. (I Giorgi, *Teoría de las Obligaciones*, page 117.)

C. Similarities and Distinctions Between Passive Solidarity and Suretyship

1. *Similarities*.—In passive solidarity, although there can be perceived a sort of mutual agency, nevertheless, in so far as payment is concerned, guaranty is a characteristic which looms larger than mere mandatam. Therefore from such similarities we can deduce the following: (a) A joint and several debtor, like a surety, stands for some other person; (b) Both debtor and surety, after payment, may require that they be reimbursed. (8 Manresa, page 212.)

2. *Distinctions*.—(a) A joint and several debtor is liable not only for his co-debtor's obligation, but also for his own. He is at once a principal and a surety; (b) A joint and several debtor's responsibility for his co-debtor is primary, not secondary.

As a consequence of all this a joint and several debtor does not have the benefit of liquidating first the estate of his co-debtor for paying his debts, nor has he the right to divide the debts proportionately when there are three or more of them as in the case of sureties, before the debt may be demanded against him. (8 Manresa, pages 212-213.)

D. Right of a Solidary Debtor to Pay any one of the Solidary Creditor

Article 1142 of the Civil Code provides: "A debtor may pay the debt to any one of the joint and several creditors, but when it has been judicially demanded by any one of them, he must pay to this particular one." (See also Bishop on Contracts, Sec. 875.)

1. *Stipulations to Contrary are Void*.—This precept has a certain prohibitive sense as far as it refers to joint and several (solidaria) obligations, in that the obligation will not have such character, with respect to all the subjects if there is an agreement to the contrary by virtue of which the right of the debtor will be limited. In reducing the election of payment to some of the solidary creditors, and denying to either of the creditors the right to perceive or claim the total payment, there will be missing the two essential characteristics of the joint and several (solidaria) obligation with respect to the excluded creditor. His direct relation with the debtor or debtors, and the authority to demand and ask does not pertain to him exclusively but also to his co-creditors. (8 Manresa, page 204.)

II. EXCEPTIONS

(a) *Judicial Demand*.—Article 1142, Civil Code is clear in providing that the debtor can pay the debt to any one of the joint and several creditors but if it has been judicially demanded by any one of them, to him must be paid. (IV Sánchez Román, page 52; See also Art. 1142, Civil Code.)

(b) *Extrajudicial Demand*.—According to the provision of the article 1143 of the Civil Code the demand may be made judicially or extrajudicially, and this is in accordance with the famous doctrine denominated with the word *poursuites* used in article 1198 of the Napoleon Code, which gives also effect to the extrajudicial demand. (I Giorgi, *Teoría de las Obligaciones*, page 100.) But according to the terms of this article, the extrajudicial demand made by one creditor is not enough to oblige the debtor to pay him, since the debtor preserves his right of election while it is not judicially demanded. (8 Manresa, page 203.)

1. *Effect of Non Payment*.—If it is true that the extrajudicial demand of the debt by one of the creditors is not enough to deprive the debtor of his right to elect, it nevertheless determines the constitution in default (*mora*) for the benefit of all the creditors, consisting of the interests due and indemnities to any damage caused by such default. In such case then though the payment of principal obligation is licit, the obligation to indemnify from the time of the demand until payment is made arises; the effect of which can be asked as a joint and several obligation after the demand of the creditor to whom it was not paid. (8 Manresa, page 203; Read also Arts. 1110 and 1141 of the Civil Code in connection with Art. 1142.) Default or *mora* is incurred by those obliged to deliver certain thing from the moment the creditor demands judicially or extrajudicially the fulfillment of the obligation. However the demand of the creditor is not necessary in order to constitute default in the following cases; 1. When the obligation or the law so expressly declares; 2. When by its nature and circumstances it appears that the designation of the time in which the debtor has to deliver the thing or service to be made was determinate cause in establishing the obligation. (Marco Tulio, page 387.) An application of the second exception in the writer's opinion is when A contracted to deliver B one dozen bags of confetti for the coming carnival. If A does not deliver and the carnival has terminated, he is in default though no demand was made it being obvious that the object of B in contracting for such confetti was for use in the carnival.

Indemnification must be governed by the following; (a) The indemnification of damages and injuries comprises not only the amount of the loss suffered, but also the profit which ought to have been obtained by the creditor. The expression amount (*valor*) of the loss suffered and of the profit not obtained correspond to the words damages and injuries; damage being the amount of the loss and the injury the amount or portion of the profit; (b) The damages and injuries from which the debtor in good faith answers, are those foreseen or might have been foreseen at the time of constitution of the obligation and being the necessary consequence of his failure to comply with. In case of fault the debtor will answer for all the damages and injuries caused by his fault in fulfilling the obligation; (c) If the payment consists of cer-

tain amount of money and the debtor is in *mora*, the indemnification of damages and injuries in the absence of the agreement to the contrary will be the legal interest which is six (6) per cent; (d) Those interests due will earn legal interest from the moment they are demanded judicially even though the obligation is silent on this point. In commercial contracts they must be governed by the provision of the Code of Commerce and those of pawn-shop by special laws or rules. (Marco Tulio, page 390; See also Arts. 1106, paragraphs 1 and 2; 1108 and 1109.)

2. *Payment Made to a Third Person.*—The doctrine of validity of circumstantial payment made to a third person provided for in article 1163, par. 2, has certain special application with regard to joint and several (*solidaria*) obligation. Not that the payment made to one of the creditors can be considered with respect to the others as payment to a third person, but there is the possibility of verifying a payment which though made to a person entirely foreign to the obligation, may nevertheless redound to the benefit of one of the joint and several (*solidaria*) creditors, in which case and in so far as it has produced such effect, such payment will be valid and effective with respect to all the creditors. (8 Manresa, pages 204-205.) The following is the proper application. Suppose A, B and C are solidary creditors of D for ₱500.00. If X living in the same town as D has a credit against B for ₱700.00. Then if D paid to X the ₱500.00 it is as good as paid to any one or all of the joint and several creditors.

3. *Rule as to Mixed Solidarity.*—But in case of mixed solidarity, it is beyond doubt that a judicial demand made to a debtor prevents the latter from paying to another creditor different from the demanding one. This prohibition does not extend in the case where a personal demand is made to any one of the other debtors, who can licitly pay to other not demanding creditor even after the demand against his co-debtor has been made. In case two or more conjointly demand, they can not prosecute distinct actions simultaneously, and in that case the payment shall be made to the creditor who first made the demand. (8 Manresa, page 204.)

III. PAYMENT MADE BY ONE OF THE JOINT AND SEVERAL DEBTORS

A. Effect

1. *Extinguish the Obligation.*—A payment made by any one of the solidary debtors extinguishes the obligation.

A person who has made the payment can only claim from his co-debtors shares pertaining to each one with the interest on the amount advanced.

The failure to comply with the obligation, on account of the insolvency of a solidary debtor, shall be made good by his co-debtors in proportion to the debt of each of them. (Art. 1145, Civil Code.)

(a) *On Partial Payment.*—In speaking about the extinction of the obligation, it is clear that the law refers to total payment. But partial payment may take place either because the demand is limited to that amount or because the debtor has no sufficient means. In this case the only question is as to the imputation of payment as indicated in article 1143; a problem which has its consequences for the subsequent demand for reimbursement of the person who paid from the co-debtors for it is not determined whether such payment is applied to his share of the debt alone or against the whole debt so that each debtor has an equal or unequal proportion, according to the division of the obligations. There being no imputation neither in the reclamation nor at the time of making the payment, it must be governed by the general rules of the Code, in the sense that each debtor can pay the obligation as a whole and in the term which any one could comply with, but those which are strictly personal, the creditor according to article 1161 of the Civil Code can not be compelled to consider as satisfied the execution of the act by a person distinct from that especially obliged. And in such cases the obligation of the other debtors with respect to prestations strictly personal is that of the surety as it is provided expressly by the French Code in its article 1216. But with respect to our Code the responsibility of the other debtors in the hypothesis of non-compliance of such obligation, shall be regulated by the provision of article 1147 of the Civil Code. (8 Manresa, pages 214-215.) So if A, B and C jointly and severally owe ₱3,000.00 to D, and A paid ₱1,200.00 a question may arise as to whether he paid ₱400.00 for each, so that the liability of each solidary debtor will be reduced by that sum. The more practical solution however seems to be that A paid ₱1,000.00 for his share, for their liability is presumed to be equal, and ₱200.000 for B and C.

2. *Payor Becomes Creditor of his Former Co-Debtors.*—The second part of article 1145 may offer some doubt as to whether the interest will run in favor or for the benefit of the paying debtor, from the time it was made, without the necessity of previous declaration in the obligation or special intimation to the co-debtors or if on the contrary the payment of such interests (which will be of course those agreed upon and in its absence the legal interest) is governed by the rules and exceptions of the article 1100, Civil Code. It is believed that the application of the precept, "intereses correspondientes al anticipo" is to the sum paid and not to the time elapsed. (8 Manresa, page 216; See also Art. 1145-2, Civil Code.)

(a) *Action of the Debtor Paying.*—Is based upon mutual agency implied in any joint and several obligation. This is reasonable because if one of the solidary debtors pays not only his share but the whole amount, it is but just he be reimbursed by his co-debtors as to the shares pertaining to them, and that the debtor is subrogated to rights of the creditor in order to demand reimbursement from his co-debtors. (I Giorgi, Teoría de las Obligaciones, pages 175-176.)

3. *If One of the Debtors is Insolvent, Other Debtors will be Proportionately Liable to the One Paying.*—The failure to comply with the obligation on account of the insolvency of a solidary debtor, shall be made good by the co-debtors in proportion to the debt of each one of them. (Article 1145-3, Civil Code.) This last part of the article means that even after the debt is paid by any one of the obligors, and he be reimbursed by the others, but not by all his co-debtors, there exists between them and the former an obligation, as last consequence of the joint and several guaranty to answer for the others who appear to be insolvent.

4. *Novation, Etc.*—Article 1143 of the Civil Code provides that “Novation, compensation, confusion, or remission of the debt, made by any of the solidary creditors, or with any of the debtors of the same class, extinguishes the obligation without prejudice to the provisions of Article 1146.

A creditor who may have executed any of these acts, as well as the person who collects the debt, shall be liable to the others for the part pertaining to them in the obligation.”

The compensation and confusion as declared in article 1143 produce the effect analogous to payment, since the extinction of the solidary obligation is not verified in such cases by grace and liberality of the creditor, and without sacrifice to the debtor by loss to the latter of credits. This is in its essence identical with the delivery of the amounts which presupposes payment, even though the former is distinct and different, there being then equal right in the debtor to demand from the others. But by opposite reasons this right is lacking in all and each one of the debtors regarding prescription, since this is not affected by the act of any one but only by the abandonment of the creditors. In case of novation even though it consists in putting another person in his place the debtor who causes the novation must answer for the substitution and the substitute. (S Manresa, page 216.)

IV. PARTIAL WAIVER DOES NOT RELEASE A DEBTOR'S LIABILITY TO CO-DEBTORS IF DEBT FULLY PAID

The liberation or remission made by the creditor to the part affecting one of the joint and several debtors, does not release this one of his liability as to the co-debtors, in case the debt has been fully paid by any one of them. (Article 1146, Civil Code.)

1. *Relation of Article 1143 with 1146.—(a) Payment must have Taken Place Before Waiver.*—The purpose of the article 1146 is to avoid fraud in that once the debt is paid and a subsequent waiver is made no injury is caused to the paying debtor. But the words employed require the limitation that payment must be made before the remission. The tacit remission requires that the debtor oppose to his co-debtors a justification otherwise some forms of tacit remission as the delivery of the document will be instrumental for deceit. Remission in general does not produce rights in

favor of the person who obtains such waiver to demand against his co-debtors for reimbursement, even when it refers to the obligations of all, since the remission is a lucrative act which must not be made two times. By the hypothesis of article 1188 the debtor who alleging payment, demands the reimbursement of his co-debtors must justify that was verified since the presumption of the law is in favor of the remission rather than payment. (8 Manresa, pages 219-220.)

2. *Payment made by a Joint and Several Debtor of the Debt Pertaining to an Insolvent.*—The right of the creditors though it is great can not extend to the right of the debtors, to the prejudice of a solidary debtor who paid for the insolvent. It is but logical to impose the obligation upon the debtor for whom payment is made and not to a creditor who may have made a subsequent waiver. (8 Manresa, page 219.)

3. *No Legal Personality is Required between the Creditor and the Debtor whose Share is Renounced.*—There might be a partial remission which is not limited to the amount of any one of the determined debts and in that case the amount which exceeds to the special responsibility to whom the remission is obtained shall be applied to all a pro rata unless it is intended to be applied by certain motive to another special debt. The partial remission in favor of one debtor will not exempt him from the solidary relation, for the rest of his own debt is enough to make him continue in such character of responsibilities before the creditors and co-debtors. But when the remission is extended to all that pertain specially to him, then the creditors lack the cause to demand a foreign responsibility from him unless the subsistence of solidarity is expressly made in which case that debtor will have the character of surety of the others, from the time of remission. (8 Manresa, pages 218-219.)

4. *Remission Opposed by the Heirs of Creditor Remitting.*—If the conceded remission (partial or total) by one joint and several creditor, be afterward impugned or opposed to by his heirs for being inofficious, it is clear that the reclamation should be directed, not against the creditors who had been indemnified by the remitting creditor, (since that indemnification is not an act of grace but the compliance of a duty) but against the debtor or debtors favored, and in proportion to the benefit which each debtor derived. (8 Manresa, page 220.)

V. EFFECT OF DESTRUCTION OF THING OR IMPOSSIBILITY OF PERFORMANCE

A. Under Spanish Law

1. *Without Fault of Debtors.*—If the thing should have perished, or the prestation should have become impossible, without any fault of the solidary debtors, the obligation shall be extinguished. (Art. 1147, par. 1, Civil Code; IV Sanchez Román, page 52.) Therefore there is no right to damage, unless one of the debtors is guilty of mora. (8 Manresa, page 221.)

(a) EXCEPTION

1. *In Case of Mora.*—There may be a case in which although the things has perished by fortuitous event the law nevertheless provides indemnization. This case is when some of the debtors has been constituted in mora by reclamation of any creditor even though the fortuitous event did not produce the default in relation to that debtor, since it is joint and several, the constitution of one in mora is extended to the others. This is in conformity with the provision of the article 710 of the Argentina Code. (8 Manresa, page 221.) In our Code we have the articles 1141, par. 2 and 1096 par 3. Article 1141, par. 2 provides that "Actions enforced against any one of the solidary debtors, shall be to the injury of all of them." Article 1096, par. 3 reads thus: "When the person obliged is in default or has engaged himself to deliver the same thing to two or more different persons, until the delivery is made, the debtor shall be liable therefor in respect to unforeseen events."

2. *Thru the Fault of any Debtor.*—If there has been any fault on the part of any of them, all shall be liable to the creditor, for the value and the indemnity for damages and payment of interest, without injury to the action of the other co-debtors against the culpable or negligent. (Art. 1147-2, Civil Code.) It is clear then that the power to demand indemnization can be made by any creditor, in the same way that it is the duty of all the debtors in continuing in the tie of solidarity for the payment of indemnity. Even though the thing has perished thru fortuitous event all the solidary debtors are responsible to the payment of the price of the same, or the indemnity for damages whenever it perishes after the constitution of mora. (IV Sanchez Román page 52.) And in such cases the creditor or joint and several creditor can not be made, responsible for damages and interests but the debtor who incurred the mora or culpa. (IV Sanchez Román, page 52.)

(a) *Action Against the Guilty Debtor.*—The debtors possess the right to demand against the culpable or negligent debtor and in this reclamation it will be necessary to distinguish on one hand the damages satisfied to the creditors, and also those suffered by the debtors which will not favor the guilty party being exclusively responsible; and on the other hand the price satisfied as equivalent of the non-compliance of the obligation, whose payment will redound upon the culpable debtor in accordance to his participation in the joint and several (solidaria) debt without increase by reason of the fault, which consequences are limited to the indemnization. (8 Manresa, page 222; IV Sanchez Román, page 52.)

B. Under American Law

In all contracts in which the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility arising from the perishing of the person or thing shall excuse the performance. In none of the cases

is the promise in words other than positive, nor is there any express stipulation that the destruction of the person or thing shall excuse the performance, but that excuse is by law implied, because from the nature of the contract it is apparent that the parties contracted on the basis of the continued existence of the particular person or chattel. (*Yermington vs. Greene*, 84 Am. Dec. 578; *Cook vs. McCabe*, 40 Am. Rep. 765; See also notes on 38 Am. Rep. 208 et seq.)

VI. DEFENSES AVAILABLE TO ANY SOLIDARY DEBTOR

A solidary debtor may utilize against the claims of the creditor, all the exceptions arising from the nature of the obligation and those which are personal to him. Those personally pertaining to the others may be employed by him only with regard to the share of the debt for which the latter may be liable." (Art. 1148, Civil Code.) The Supreme Court of these Islands in the case of *Chinese Chamber of Commerce vs. Pua Te Ching*, 16 Phil. 406, laid down the following doctrine: "The surety may use against the creditor all the defenses to which the principal debtor is entitled and that are inherent to the debt, but not those purely personal to the debtor,—to wit, those which may contribute to weaken or destroy the judicial bond existing between the creditor and the principal debtor, nor any means of defense which may invalidate the original contract from which the right or the action of the creditor against the surety arises; in this class of action is not included the means of defense as to how the trial may be continued and the writ of execution issued in case of the death of the principal debtor, which can not affect the original contract nor destroy the bond existing between the creditor and the principal debtor; it being therefore, an exception or means of defense not inherent in the debt, but at the most, a purely personal one of the debtor or of the successors—in interest of the debtor."

A. Common Defense

Defenses which are common to all solidary debtors are for example nullity of contract thru illicit cause, uncertain or illicit object being in contravention to law and moral, and in general all those ways of extinguishing the obligation as pardon, or remission of the debt, payment, novation, confusion (when some of the debtors become heir of the creditor or viceversa, the confusion takes place which do not extinguish the credit but only as to the part corresponding to the debtor or creditor respectively) and prescription, etc. (IV Sanchez Román, pages, 52-53.) The common defenses or exceptions may be alleged by any one of the debtors who are obliged in the compliance of the obligation and failure to do so will make him personally responsible for this omission to his creditors. (IV Sanchez Román, page 53; See also *Chinese Chamber of Commerce vs. Pua Te Ching*, 16 Phil. 406.)

B. Personal Defense

The personal defenses of a debtor refer not only to his capacity and consent but to everything that pertains to his own debt. (8 Manresa, page 223.) These defenses

refer only to those exceptions which have personal application to some of the debtors such as force, error, fraud, fear caused in obtaining the consent producing the nullity of the obligation with respect to him in whom concur some of these causes or others as nonage or minority, defect or lack of marital consent or anything which produce effect or rescission. These defenses or exceptions can be set up by the debtor affected but not by his co-debtors who can only invoke these means when the cause was not known which occasioned the vice or others which produces the personal exception or defense of their co-debtor and for the sole effect of annulling or extinguishing the obligation in the part of the debt corresponding to the said debtor. But if the cause or vice which produces the exception or defense is known from the beginning it can not be utilized. (IV Sanchez Román, pages 52-53.) In speaking of personal exception it is understood to mean the peculiarities of each obligation which is partial and solidary. This exception may be extended to a portion of the debt to the person. Suppose A, B and C owe ₱800.00, ₱700.00 and ₱300.00, respectively, and concurring on the second an exception of ₱250.00. This not being enough to cover the whole debt it may be used by B only, while the other two debtors only can allege it in so much as the amount claimed exceeds ₱1,500.00 which is the amount of their own debts. (8 Manresa, page 223.) The Supreme Court in the case of Inchausti & Co., vs. Gregorio Yulo, 16 Off. Gaz. 1343 held: "The solidary debtor unconditionally obligated (or whose period for payment has expired) may not, with respect to the part of the debt for which he is liable, plead the defense of premature of the action which is personal to his co-debtors." (See also Chinese Chamber of Commerce vs. Pua Te Ching, 16 Phil. 406.)

C. Relation between Articles 1148 and 1144

Article 1148 is related to article 1144 in the hypothesis that when a personal exception is alleged in the second or subsequent suit, it will be overruled when it was formerly alleged with respect to the amount which could be properly opposed but was denied. But if it was not alleged before; or having been set up with respect to an improper or foreign amount was overruled for this reason, its allegation in the subsequent action may be permissible, since it has not been yet decided. (8 Manresa, page 224; Read also Arts. 1144 and 1148, Civil Code.)

VII. Action Against any Debtor Operates Against All

Actions enforced against any one of the solidary debtors, shall be to the injury of all of them. (Art. 1141-2, Civil Code.) This second part of article 1144 is provided for the passive solidarity, but being related with the first part with respect to useful acts is extended to the passive and mixed solidarity, according to this form in the joint and several obligations the exercise of actions by or against any one favor all the creditors and prejudice all the debtors. (8 Manresa, page 202.)

VIII. DEATH OF ONE OF THE SOLIDARY DEBTORS

A. *Spanish Law*

The writer believes that death of one of the joint debtor does not extinguish the obligation but the other co-debtors will still be responsible for the whole debt without prejudice of course to reimbursement against the property of the deceased before the same be distributed to his heirs. (See Arts. 1082, 1084, 1085, Civil Code.)

B. *American Law*

If two or more persons are bound jointly to pay a sum of money, and one of them dies, at common law his death not only severs the joinder, but terminates the liability which belonged to him, so that it cannot be enforced against his representatives either alone or jointly with the survivors. But if they were bound jointly and severally the death of one has not this effect. If bound jointly, the whole debt becomes the debt of the survivors alone, and if they pay the whole, they can have at law no contribution against the representatives of the deceased, because this would be an indirect revival of a liability which death has wholly terminated. If the last survivor, however, dies leaving the debt unpaid, his representatives alone are chargeable, and have no contribution against the representative of the other deceased obligor. (*Osborne vs. Crossbern*, 1 Sid. 238; *Foster vs. Hooper*, 2 Mass. 572; *Moore vs. Roger*, 19 Ill. 347; *Ballorce vs. Samuel*, 4 Ill. 380; *Brown vs. Benight*, 23 Am. Dec. 373.) But in most of the United States these rules are changed by statute (equity remedy). The representatives of the deceased continue to be bound by this obligation. If the debtors were jointly bound, the creditor could bring but one action when all were alive, and that against all; and then obtaining judgment and taking out execution against all, he might levy it on all or either as he chooses, leaving them to adjust their proportion by contribution. After the death of a joint debtor, the creditor can not joint the survivors and the representatives of the deceased in one action, even if the statute gives the creditor where one of many joint debtors dies, the same remedy by action as if the contract were joint and several, inasmuch as an executor can not be joined with the survivors in an action upon a contract which was originally joint and several because one would be charged *de bonis testatoris* and the other *de bonis propriis*, which can not be, but the creditor may elect which to sue. (*Enys vs. Donmithorne*, 2 Bur. 1190.) He may sue either or both in distinct actions and may levy his executions upon either or both. But he can get in the whole, only the amount of his debt; and the survivors and the representatives of the deceased, or the representatives of all the debtors if all are deceased have against each other a claim for contribution if either pay more than a due proportion. (*Batchelder vs. Fiske*, 17 Mass. 464; *Williams vs. Bradley*, 5 Ohio Cir. Co., 114; *Voorhis vs. Childs*, 17 N. Y. 354; *Pope vs. Cole*, 14 Am. Rep. 198; See also *Parsons on Contracts*, Vol. 3, page 28; 6 *Ruling Case Law*, page 880; *Elliot on Contracts*, Vol. 2, Sec. 1487.)

IX. CAUSES OF EXTINGUISHMENT OF OBLIGATION

In general the causes for extinguishing the obligation are those provided for in article 1156 of the Civil Code which provides that obligations are extinguished:

1. By their payment or compliance with them;
2. By the loss of the thing due;
3. By remission of the debt;
4. By the merging of the rights of the creditor and debtor;
5. By compensation;
6. By novation.

CHAPTER V.

CONCLUSION

In the preceding pages the reader might have noticed some points of instability of some enunciated principles. Since our law is yet in its formation it is but natural to meet such apparent anomalies. In fact the writer has often doubted in the preparation of his thesis as to which law governs in some especial cases.

The Philippines seem to be favored by circumstances in being the meeting place of the two systems of law, the Anglo Saxon Common Law and Civil Law. Between the rigorism of the stoic Civil Law and the equitable principles of the English Law, the Philippine Law is being evolved out of the best elements of the two.

The writer can not help but notice the struggle which originated in England between Lord Coke and "the greatest, wisest, meanest of mankind" who championed the cause of Roman Civil Law—Francis Bacon known as Lord Bacon. However, much, the champions of Common Law may pride themselves in its elasticity and equity yet it may not be amiss to remind them that their law is but a modification of the Roman Civil Law. Many of the Norman prelates versed in Civil Law of Rome went with William the Conqueror to England and it was they who infused the Roman law into the imperfect Common Law under the name of equity. (See Morris History of the Development of the Law, page 277.)

That infusion, or rather the dispute between Lord Coke and Lord Bacon is not yet settled. It has reached our shores though not with the former cynicism of the original antagonists. The contest is carried out peaceably which in time to come will no doubt form the body of the Philippine Law.