

## Recent Legislation

# Effect Of R. A. 529 On The New Civil Code And Philippine Cases

Prior to the passage of Republic Act No. 529 on June 16, 1950 not a few business firms and businessmen stipulated in their contracts that payment of the obligations stated therein was to be made only in U.S. dollars. Those stipulations sprung from the fear that, following the devaluation of the pound, the peso would, in turn, be devalued, the assurances of the Central Bank notwithstanding. Businessmen feared that even if the Central Bank did not devalue the peso, its purchasing power would be diminished. Creditors were especially concerned for if the feared event should take place the money loaned out by them would buy far less at the time of payment than they could have at the time of the loan.

These fears were not entirely unfounded. With the imposition of the Import Control Regulations, and the restrictions on dollar remittances through the Exchange Controls, prices did go up. The Korean war gave an opportunity for hoarders to withdraw merchandise from the market. The peso's purchasing power certainly had diminished. Real estate transactions reached a new high, evidencing a tendency not to keep cash in banks; creditors began to loan out money only on condition that payment be made in United States dollars. Blackmarketting in dollars became more widespread.

To meet this exigency, the Congress enacted R. A. 529. It was obviously intended to counter-act the fear of many that the Philippine peso was so unstable that it might become worthless in the future. The Act frankly states that the "policy of the law is to maintain the stable power of every peso coined or issued by the Philippines, in the markets and in the payment of debts."<sup>1</sup>

Under R. A. 529 every stipulation which gives the obligee the right to require payment in gold or in a foreign currency, or in an amount of Philippine currency measured thereby is declared contrary to public policy and, therefore, null and void. All obligations to pay money, whether or not they contain such stipulations, are to be paid in the legal tender current at the time of payment.<sup>2</sup>

The Act does not restrict its provisions to contracts which may be executed subsequent to its passage. The provisions are made retroactive and affect contracts for the payment of money executed prior to June 16, 1950. Thus, if the obligation was in-

<sup>1</sup> See preamble.

<sup>2</sup> Section 1, R. A. 529.

curred prior to the date of enactment, and required payment in a particular kind of coin or currency other than Philippine currency, it is to be discharged in Philippine currency measured at the prevailing rate of exchange at the time the obligation was incurred.<sup>3</sup>

All coin and currency, including Central Bank notes issued and declared by the Government of the Philippines are regarded as legal tender for all debts, public and private.

#### EFFECT ON ART. 1249 of the NEW CIVIL CODE:

Art. 1249 of the New Civil Code, which is substantially the same as Art. 1170 of the old Civil Code provides: "The payment of debts in money shall be made in the currency stipulated and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines."

Under this article, monetary obligations must be paid in the specie stipulated.<sup>4</sup> It is the agreement of the parties that is sought to be enforced. Only in the absence of an agreement as to the kind of currency in which payment is to be made, or when it is not possible to deliver the currency stipulated, may legal tender be used.

R. A. 529, it is believed, amends the above article. Parties may no longer stipulate that the payment of an obligation must be made in a foreign currency. Under this Act, the so-called "gold clauses" in contracts would be invalid and the debtor cannot be compelled to pay in dollars, but he may discharge the debt in legal currency at the time of payment.

Article 1250 of the new Civil Code provides for a case of inflation or deflation of the "currency stipulated." The quoted words must now be understood only in a very restrictive sense. They may be deemed to apply only if the currency stipulated is Philippine currency, for whatever the stipulation of the parties may have been, the debtor, under R. A. 529 may now pay Philippine currency.

#### EFFECT ON PHILIPPINE CASES:

The case of *Villanueva vs. Santos*<sup>5</sup> in so far as it holds that monetary obligations must be paid in the specie stipulated may be considered as no longer expressive of the true rule. The doctrine in the above case may be applied only in cases where Philippine currency is demanded as payment.

The case of *Legarda v. Carrascoso*<sup>6</sup> holding that where the contract calls for payment in British currency or its equivalent, it is doubtful whether the debtor can compel acceptance of its equivalent in Japanese money may no longer be regarded as control-

<sup>3</sup> Sec. 1.

<sup>4</sup> *Villanueva v. Santos*, 39 O. G. 681, 682.

<sup>5</sup> 39 O. G. 681, 682.

<sup>6</sup> 46 O. G. S. (1) 232, 234.

ling. It must be remembered that under R. A. 529 if the parties stipulated that payment was to be made in British pounds, the debt may be discharged by payment in Philippine currency equivalent to the pounds at the rate of exchange when the obligation was incurred. If, however, the creditor actually had delivered British pounds, then instead of paying the equivalent at the rate of exchange when the obligation was incurred, the rate of exchange at the time of payment is to be followed by the debtor.

The case of *Haw Pia v. China Banking Corporation*<sup>7</sup> and similar cases<sup>8</sup> may be considered modified. The doctrine in these cases is that in the absence of stipulation as to the kind of currency in which payment is to be made, payment in Japanese currency is valid.<sup>9</sup> Under R. A. 529 parties cannot require payment in foreign currency. The present rule may be stated thus: the stipulations of the parties notwithstanding, obligations may be discharged by payment in the legal tender current at the time.

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<sup>7</sup> GRL No. 554, April 9, 1948.

<sup>8</sup> *Cunanan v. Amparo*, G.R.L.-1313, Feb. 16, 1948.

<sup>9</sup> *Hongkong and Shanghai Bank*, G.R.L.-1345, Nov. 10, 1948; *Del Rosario v. Sandico* G.R.L.-867 Dec. 29, 1949; *Belarmino v. de Mesa*, Jan. 28, 1950.