

1952 SURVEY OF CIVIL LAW IN THE PHILIPPINES

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That the individual shall have full protection in person and property is a principle as old as law, but it has been found necessary from time to time to define anew the exact nature and extent of such protection. The political, social, and economic changes entail the recognition of new rights, and the civil law, it is to be observed, grows to meet the demands of Philippine society.

This article seeks to inquire into the second year of the operation of the New Civil Code which became effective last July 1950.¹ The relevant decisions of the Supreme Court for the year 1952 are discussed with the object of furnishing in brief and compact form the application and authoritative interpretation of the provisions of the Code. The treatment herein is expository, and no attempt has been made to subject each case to detailed critical examination. Nonetheless the survey of the cases decided the last year in civil law will, the author hopes, aid students of law in the understanding of the codal provisions as understood by the Supreme Court.

PERSONS AND FAMILY RELATIONS

Exclusive Property of Each Spouse.

Article 1396 of the Spanish Civil Code enumerates the exclusive property of each spouse.² This kind of property may take the character either of direct acquisition, or acquisition by substitution. Paragraph 1 and 2 of said Article relate to direct acquisition of properties, namely, those brought to the marriage as the exclusive property of each spouse,³ and those acquired by each spouse gratuitously during the marriage.⁴ Paragraphs 3 and 4 namely, those

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¹ Rep. Act 386 shall take effect one year after publication in the Official Gazette. (See Section 2 of the new Civil Code). It was published in the June 1949 issue of the Official Gazette. Hence it took effect one year after June 1949. See 1 PADILLA, CIVIL CODE ANNOTATED (1951 Ed.), 6.

² Reproduced in Article 148 of Rep. Act 386.

³ *Tabo-tabo vs. Molero*, 22 Phil. 418; *Hartske vs. Frankee and Phil. Trust Co.*, 54 Phil. 156. But see: *Rivera vs. Battallones*, 40 O. G. 2090, where it was held that when property bought by one of the spouses before the marriage, is paid for during the marriage with conjugal funds, it is ganancial property. Only the origin or the ownership of the money invested or of the property given in exchange for that which is acquired by onerous title, may be inquired into to determine whether the thing acquired is separate or ganancial property.

⁴ *Alvaran vs. Marquez*, 11 Phil. 263; *Osorio vs. Posadas*, 56 Phil. 748; *Veloso vs. Avila*, 60 Phil. 208.

acquired by redemption⁵ or by exchange with other separate property,⁶ and those purchased with exclusive money of either spouse,⁷ are exclusive property by substitution.

It would appear that the law, Article 1396⁸ and the numerous cases adjudicated under it, cover pretty well all the various situations which may give rise to the question whether certain property belongs exclusively to one of the spouses, or to the conjugal partnership. But there will always be cases with slightly different sets of facts or involving new circumstances, which are not on all fours with any of the provisions of Article 1396, or with any previous case concerning the question of property belonging exclusively to one spouse. One of such cases is the case of *Testate Estate of the Late Baldomero Lesaca*.⁹

In this case, Garcia sold a parcel of land for ₱2,500.00 to the deceased Lesaca before the latter's marriage to Juana Felix, and repurchased it for the same amount after said marriage. After the death of Lesaca, the widow, claiming that the sum was conjugal property, petitioned the court to order the co-executrices to give her one-half thereof. The co-executrices opposed the petition, claiming that the money paid to Ramon Garcia for the land in question came from the products of the property left by their mother (the first wife of the deceased).

See also: Article 150 of Rep. Act No. 386 (Reproduced from Article 1398 of the Spanish Civil Code) which provides that "Property donated or left by will to the spouses, jointly and with designation of determinate shares, shall pertain to the wife as paraphernal property, and to the husband as capital, in the proportion specified by the donor or testator, and in the absence of designation, share and share alike, without prejudice to what is provided in Article 753."

Article 151 (Reproduced from Article 1399, Spanish Civil Code) provides that "If the donations are onerous, the amount of the charges shall be deducted from the paraphernal property or from the husband's capital, whenever they have been borne by the conjugal partnership."

⁵ *Santos vs. Bartolome*, 44 Phil. 76; *Guinto vs. Lim Bonfing and Abendan*, 48 Phil. 884.

⁶ *Lim vs. Garcia*, 7 Phil. 320; *Bismorte vs. Aldecoa & Co.*, 17 Phil. 480.

But see: *Abella vs. Erlanger and Erlanger*, 59 Phil. 326, where a slight deviation from this rule was enunciated in view of the particular circumstances of the case. It was held in this case (p. 328) that where the wife brought an automobile as paraphernal property to the marriage and during the marriage the conjugal partnership bought automobiles giving the wife's automobile as part of the purchase price, the mere fact that each successive car was turned in as part of the purchase price of a new car, did not make every automobile in the future paraphernal, but on the contrary it became ganancial property.

⁷ *Gefes vs. Salvio*, 36 Phil. 221; *Hartske vs. Frankel and Phil. Trust Co.*, 54 Phil. 158; *Gonzalez vs. Miller*, 40 O. G. 6th Supp., September 6, 1941, p. 41.

⁸ See footnote No. 2, *supra*.

⁹ G. R. No. L-3605, promulgated April 21, 1952.

The question presented to the court was: "Whether money received after marriage as repurchase price of a land sold a retrovendo before such marriage to one of the consorts, constitute conjugal property or not."

The Supreme Court reversed the decision of the lower court and held that the sum received as repurchase price after the marriage is not conjugal property but the exclusive property of the deceased husband, and therefore the co-executrices, who are also the heirs are entitled to all the said sum. It said:

"If the money paid by Lesaca was his own exclusively, surely the mere fact that it was returned or repaid after marriage cannot convert it into conjugal property. It is true that under Article 1401 of the Civil Code of 1889 property obtained by the industry, wages, or work of the spouses or of either of them belongs to the conjugal partnership. But the Article refers to property obtained during the marriage, and while counsel for the widow cites the case of *Marata vs. Dionio*¹⁰ wherein the court held that though there is no technical marital partnership between persons living maritally without being lawfully married, nevertheless there is between them an informal civil partnership which would entitle the parties to an equal interest in property acquired by their joint efforts. In the present case there is no showing that the sum paid to Garcia was earned by the joint efforts of the deceased and his widow. In the absence of such proof the sum must be deemed to have been the property of the deceased to whom the land for which it was given in payment was sold by Garcia."

The doctrine that property purchased by wife in her own name for her exclusive benefit prior to the marriage is paraphernal, was reaffirmed in the case of *Lorenzo et al vs. Nicolas et al.*¹¹ There, Magdalena Clemente, the surviving widow of Gregorio Nicolas married Lorenzo, a widower. Both had children by their first marriages. The plaintiffs, heir of Lorenzo claim that the property left by Mag-

¹⁰ G. R. No. 2449 (An unpublished decision of the Supreme Court, promulgated December 31, 1925). In this case where the plaintiff and defendant lived jointly for a period of 20 years as husband and wife during which period they acquired properties, the Supreme Court held that even if there was no technical conjugal partnership, nevertheless, there was an informal civil partnership, and as a consequence both of the pair are equally interested in their earnings, and considered as a fact that the properties acquired by the defendant during the time that they were living together is the product of their joint efforts and that plaintiff, by equity, has a right to participate from the fruits of their joint efforts.

It is interesting to note that Rep. Act No. 386 has a new codal provision embodying the principle enunciated in this case—Article 144—which provides that "When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership."

¹¹ G. R. No. L-4085 prom. July 30, 1952.

dalena is conjugal, while the defendants, heirs of Magdalena claim that the property is paraphernal. The court held that the property was paraphernal taking into consideration the fact that the land in question was purchased in her own name by Magdalena Clemente, for her own exclusive benefit on October 1908, prior to her marriage with Lorenzo; that she paid part of the purchase price before her marriage with Lorenzo and the balance, payable in installments, during the marriage; that the receipts evidencing the payments of these installments, demonstrate that they were paid in her own name; that the deed of final conveyance was executed in the sole favor of Magdalena Clemente notwithstanding the fact that Manuel Lorenzo was then alive; that this parcel was registered under the Torrens system in the exclusive name of Magdalena Clemente; that the real estate tax receipts, covering this particular parcel, are under the exclusive name of Magdalena Clemente. To support its view that the property is paraphernal, it said further that the presumption of continuity of condition is also in favor of Magdalena Clemente. The status of the land from the time she acquired it and before her marriage to Lorenzo, continued until it is otherwise changed, for it is presumed that a thing once proved to exist continues as long as is usual with things of that nature. Moreover, all the acts just mentioned above are also acts of ownership. And again it is to be presumed that a person is the owner of a property from exercising acts of ownership over it.¹² These presumptions the plaintiff failed to rebut.

Conjugal Property

Conjugal property may likewise be acquired by direct acquisition and substitution. The fruits,¹³ rents, or interests received or due during the marriage, coming from the common property or from the exclusive property of each spouse form part of the conjugal partnership property.¹⁴ In the same case of *Testate Estate of the Late Baldomero Lesaca*,¹⁵ the deceased leased his land and received a certain percentage of crop every year by way of rent. The 1040 cavanos of palay there in dispute was the rent of the decedent's share of harvest from the palay planted in the months of June and July 1946, that is, after his marriage to Juana Felix and which must have already matured or been near maturity when the conjugal partnership was dissolved by the death of the deceased in November 1946. Under Article 1380 of the old Civil Code, "after the marriage has been

¹² Sec. 69(J), (dd) Rule 123; *Heirs of Junero vs. Lizares*, 17 Phil. 112.

¹³ *Javier vs. Osmeña*, 34 Phil. 336; *Quintos de Ansaldo and Ansaldo vs. Sheriff of Manila*, 64 Phil. 115.

¹⁴ Article 153, par. 3, Civil Code of the Philippines.

¹⁵ See Note 11, *supra*.

dissolved, the uncollected fruits or rents shall be divided pro rata between the surviving spouse and the heirs of the deceased in accordance with the rules which govern in cases of termination of usufruct," the conjugal partnership being considered usufructuary of the private property of each spouse. As rents are civil fruits¹⁶ they must be deemed to accrue from day to day and belong to the usufructuary (in this case the conjugal partnership) in proportion to the time the usufruct may last.¹⁷ The Supreme Court said further that it is immaterial that the rest was actually received after the dissolution of the marriage through the death of one of the spouses. It is the date of accrual that is important.¹⁸

In the case of *Vitug vs. Montemayor, et als*¹⁹ it was held that lands converted into fishponds during the marital life, there being no proof as to the source of the money used in making the improvements is conjugal property and registration of the same in the exclusive name of one of the spouses does not destroy their nature as

¹⁶ Article, 442, Civil Code of the Philippines.

¹⁷ Article 569, Civil Code of the Philippines.

¹⁸ As Manresa says: "Los frutos civiles se entienden devengados dia por dia: la regla en ellos no pueden ser mas sencilla. Importa poco la epoca en que se realice el pago. Si se percivieron adelantados, el conyuge propietario debe a la sociedad cuanto a esta corresponda, o sea, los devengados desde el dia de la celebracion del matrimonio. Si las rentas, intereses, productos u utilidades se perciben o cobran despues, la sociedad debe al propietario la parte proporcional correspondiente hasta el dia de la union." (9 Manresa, 5th ed., 508.)

"* * * En lo relativo al usufructo, esa regla se contiene en el art. 474: los frutos civiles se entienden percibidos dia por dia y pertenecen al usufructuario en proporcion al tiempo que dure el usufructuo." (4 Manresa, 5th ed., 346-347.)

To the same effect is the following comment on the corresponding provision of the French Civil Code:

"3.o. El modo de adquisicion de los frutos por la comunidad difiere segun se trate de frutos naturales o civiles; los primeros se adquieren por su percepcion, los segundos dia a dia. La distribucion de los frutos civiles por tanto debera hacerse sin tomar en consideracion el momento en que hayan sido efectivamente percibidos ni aun, si se trata de alquileres de fincas rusticas o urbanas el momento en que han vencido: solo hay que atenerse a la epoca a que corresponde."

"Asi, frecuentemente ocurre que los alquileres solamente son pagaderos el año siguiente al de la cosecha y a veces en varios plazos. Es indudable que, si la comunidad queda disuelta antes del vencimiento, tendra derecho a la totalidad o parte del alquiler de la finca, en proporcion al tiempo que aquella existo en el año de la cosecha. Asimismo, si los alquileres han sido percibidos por anticipado, antes del matrimonio, la comunidad tiene derecho a una compensacion si esos alquileres son correspondientes a una epoca posterior al matrimonio: infra, titulo III, comunidad de gananciales). Contra Req., mayo 27, 1879, D. I. 297, s. 80, 1, 393." (PLANIOL AND RIPERT, TRATADO PRACTICO DE DERECHO CIVIL FRANCES, vol. 8, p. 306 (Spanish translation by Diaz Cruz).

¹⁹ G. R. No. L-4156, prom. May 12, 1952.

conjugal property.²⁰ There, thirty parcels of land which Donata Montemayor inherited from her parents were improved and converted into fishponds during her marital life. The lower court considered this increase reimbursable to the conjugal partnership because there being no evidence adduced as to the source of the money used in the conversion of the properties into fishponds, the legal presumption that arises, according to the court is that the same had come from the conjugal fund or from the income earned by the labor or industry of each spouse.²¹ The Supreme Court agreed to this consideration because under Article 1401 of the old Civil Code,²² property acquired for a valuable consideration during the marriage at the expense of the common fund, or property obtained by the industry, wages or work of the spouses, or of either of them, belongs to the conjugal partnership. In the same way, may useful expenditure made for the benefit of the separate property of either one of the spouses by means of advances made by the partnership, or by the industry of the husband or wife, is partnership property.²³ This being the legal presumption with regard to property acquired during the marriage, in the absence of clear evidence proving that the money paid for its acquisition pertains exclusively either to the husband or to the wife, it follows by the same token that all monies spent during the marriage and paid for said property are presumed conjugal in the absence of clear evidence proving that the said monies pertain exclusively either to the husband or the wife. Manresa, commenting on Article 1401 of the old Civil Code, says that all expenses incurred by the spouses during the marriage are presumed to have come from the common fund.²⁴

There it does not clearly appear how much was actually spent by the spouses in converting the properties into fishponds because the parties have not presented any evidence on the matter. There is, therefore, no way by which we can accurately determine the money actually spent by the spouses in the conversion. But such failure is no impediment to the determination of the amount that should be actually reimbursed to the conjugal partnership, for in such case the only way available is to estimate and determine the increase in

²⁰ See *Guinguing vs. Abuton and Abuton*, 48 Phil. 144; *Flores and Flores vs. Flores*, 48 Phil. 288; *Romero de Pratts vs. Menzi & Co. and Sheriff of Rizal*, 53 Phil. 51; *Usong vs. Dimapilis*, 38 O. G. No. 6, 103; *Commonwealth vs. Sandiko*, 40 O. G. No. 4, 722.

²¹ Article 160, Civil Code of the Philippines.

²² Now Article 153, New Civil Code of the Philippines.

²³ Article 158, Civil Code of the Philippines.

²⁴ 9 Manresa 633-635.

value of the improved properties,²⁵ and that increase in value is the amount refundable to the partnership.

The fact that said properties are registered in the exclusive name of Donata Montemayor does not destroy their nature as conjugal because they were acquired during coverture and the presumption of law created in favor of the conjugal partnership has not been overcome by clear proof to the contrary.²⁶

*Lorenzo et al vs. Nicolas et al*²⁷ is authority for the view that installments paid during the coverture for property purchased by one of the spouses before the marriage in her own name and for her exclusive benefit is conjugal property. The evidence in this case is not clear as to the source of the money with which the payment of installments was made. The court considered the amount spent for the payment of installments due during the marriage, or obligations affecting the separate property of Magdalena Clemente as a useful expenditure (because it preserves her right to the ownership of the land) and is, therefore, a credit which belongs to the conjugal partnership, and must be reimbursed to it by her.²⁸ In other words, while the ownership of the land remains with Magdalena Clemente the conjugal partnership is entitled to the reimbursement of paid installments.²⁹

Liability of the Wife for Debts Contracted by the Husband

The husband cannot by his contract bind the paraphernal property unless its administration has been transferred to him. Neither can the paraphernal property be made to answer for debts incurred by the husband.³⁰ In this jurisdiction the ownership by the wife of her own property is recognized.³¹ The wife's equitable separate estate is not liable for the debts of her husband, or to process in the enforcement of such debts.³² These doctrines recognized likewise in common-law jurisdiction were reiterated in the case of *Laperal vs. Katigbak*.³³ There the spouses, Ramon and Evelina Katigbak were sued by the plaintiff's for the recovery of a certain sum based on

²⁵ 9 Manresa 623-624.

²⁶ *Guinguing vs. Abuton*, 48 Phil. 144.

²⁷ See Note No. 11, *supra*.

²⁸ 9 Manresa, 606; 5 Sanchez Roman, 840.

²⁹ *Ona vs. De Gala*, 58 Phil. 881.

³⁰ *Alvaran vs. Martinez*, 11 Phil. 263; *Vargas vs. Egamino*, 12 Phil. 56; *Vcloso vs. Martinez*, 28 Phil. 255.

³¹ Art. 1382, Spanish Civil Code—"The wife retains the ownership of the paraphernal property." Art. 136 of the Civil Code of the Philippines provides likewise.

³² *Huntington vs. Saunders*, 120 U. S. 78; *Botts vs. Gooch*, 11 SW 42.

³³ G. R. No. L-4299, prom. Jan. 31, 1952.

two causes of action. Evelina moved for and obtained a dismissal of the complaint against her on the ground that there was no sufficient cause of action as regards her,³⁴ hence plaintiffs appealed.

The first cause of action relates to four promissory notes which had been signed by Ramon Katigbak in favor of the plaintiffs. The second relates to jewelry received by Ramon for sale on commission basis and evidenced by a receipt signed by Ramon alone. The notes as well as the value of the jewelry not having been paid, the herein action was brought against the defendant spouses.

For the repayment of the sums borrowed by him, the court said that Ramon Katigbak was personally responsible with his own private funds, and at most the assets of the conjugal partnership. To reach both kinds of property it is unnecessary for plaintiffs to implead the wife, Evelina K. Katigbak. "Where the husband is alone liable, no action lies against the wife, and she is not a necessary party defendant."³⁵

Of course, there are in the Civil Code³⁶ provisions that although the fruits of the paraphernal property form part of the assets of the conjugal partnership, they may not be subjected to the payment of personal obligations of the husband, unless it be proved that such obligations redounded to the benefit of the family.³⁷ No proof to this effect having been offered, the paraphernal property is not liable.

With respect to the second cause of action, the attachment of the receipts for jewelry as an integral part of the complaint (signed by Ramon Katigbak alone) negatives the allegation that the wife was also an agent of defendant. Such allegation, according to the court, must be considered as a mere legal inference from the marital relation and not based on the actual contract.

*Unacknowledged Natural Child Not Entitled to Successional Rights Under the Civil Code of 1889;*³⁸ *Recognition.*

Under the Civil Code of 1889 there were two kinds of illegiti-

³⁴ Rule 8, Sec. 1 (f), Rules of Court.

³⁵ 41 C. J. S., p. 907.

³⁶ The New Civil Code does not apply because the transactions occurred before June, 1950.

³⁷ Arts. 1385, 1386.

³⁸ Under the new Civil Code, illegitimate children are now entitled to certain rights. Article 287 new Civil Code, "Illegitimate children other than natural in accordance with article 269 and other than natural children by legal fiction are entitled to support and such successional rights as are granted in this Code."

Article 282, id. "A recognized natural child has the right:

- (1) To bear the surname of the parent recognizing him;
- (2) To receive support from such parent, in conformity with article 291;

mate children, namely, the natural and the spurious.³⁹ Natural children are those born out of wedlock of parents who, at the time of the conception of such children, could have married with or without dispensation⁴⁰ while spurious children are those who can not be properly considered as natural.⁴¹ Among illegitimate children, only the acknowledged natural were entitled to succeed as compulsory heirs, and the others were given support only.⁴²

In a line of decisions⁴³ culminating in the recent cases of *Canales vs. Arrogante, et al.*⁴⁴ and *Vidaurrezaga vs. Court of Appeals and Francisco Ruiz*,⁴⁵ the Supreme Court consistently held that a "natural child not recognized has no rights whatsoever." It is only after the recognition takes place that the child is entitled to the rights accorded by Article 134 to "an acknowledged natural child."

In the *Canales vs. Arrogante et al* case⁴⁶ there was no evidence to show that the plaintiff has been recognized by her presumptive mother through either one of the modes recognized by law,⁴⁷ the church record of her baptism in which she is described as a daughter of Bernardina Canales, but in the preparation of which the latter does not appear to have had any intervention, cannot be held to be a voluntary recognition of parentage.⁴⁸

(3) To receive, in a proper case, the hereditary portion which is determined in this Code."

Article 89, id. Natural children by legal fiction "shall have the same status, rights and obligations as acknowledged natural children."

Article 291, id. "The following are obliged to support each other to the whole extent set forth in the preceding article:

* * * *

(5) Parents and illegitimate children who are not natural.

³⁹ Report of the Code Commission, p. 112.

⁴⁰ Article 119, Civil Code of 1889; See also article 269, new Civil Code of the Philippines (Rep. Act No. 386).

⁴¹ I PADILLA, CIVIL CODE ANNOTATED, 347.

⁴² Report of the Code Commission, *op. cit.*

⁴³ *Mijares vs. Neri*, 3 Phil. 195; *Mendoza vs. Ibañez*, 4 Phil. 666; *Infante vs. Figueras*, 4 Phil. 738; *Buenaventura vs. Urbano*, 5 Phil. 1; *Cosio vs. Pili*, 10 Phil. 72, "The certainty and reality of the natural filiation as the fundamental basis for the rights of a child born out of wedlock requires the recognition of his parents." *Tiamson vs. Tiamson*, 32 Phil. 62; *Concepcion vs. Untaran*, 38 Phil. 736; *Malonda vs. Infante Vda. de Malonda*, 45 O. G. No. 12, p. 5468.

⁴⁴ G. R. No. L-3821, prom. March 17, 1952.

⁴⁵ G. R. No. L-3943, prom. June 24, 1952.

⁴⁶ See note No. 44, *supra*.

⁴⁷ This recognition, in the first case, may be voluntary, in accordance with the provisions of article 131, or it may be, in a sense, obligatory, under articles 135 and 136 (now articles 278, 284, 289, of the new Civil Code).

⁴⁸ *Adriano vs. De Jesus*, 23 Phil. 350; *Samson vs. Corrales Tan*, 48 Phil. 401; *Madridejo vs. De Leon*, 55 Phil. 1; *Malonda vs. Infante Vda. de Malonda*, *supra*.

Not having been voluntarily acknowledged as a natural child, what plaintiff should have done was to bring an action to compel recognition, for, as this Court said in the case of *Madridejo vs. De Leon et al*⁴⁹ "the compulsory acknowledgment by the father established in article 135 of the Civil Code, and the mother according to article 136, required that the natural child take judicial action against the father or mother or against the persons setting themselves up as the heirs of both, for the purpose of compelling them to acknowledge him as a natural son through a judgment of the court."

Pursuant to Article 137 of the Civil Code 1889⁵⁰ plaintiffs action for recognition should have been brought during the lifetime of either parent. That action can not be brought if the plaintiff was already more than fifty when the parent against whom the action should be brought died and no document unknown before has been discovered in which she is expressly acknowledged.

In another case⁵¹ the action for recognition has likewise prescribed—the plaintiff being already 33 years old when her putative father died and no document was subsequently discovered in which she has been acknowledged in accordance with Article 137 of the Old Civil Code.

Evidence of the Father's Conduct Tending to Establish Status of Natural Child

The *Testate Estate of Juan Vidaurrazaga*⁵² involves a petition for voluntary acknowledgment or recognition of a natural child under Article 131 of the Old Civil Code,⁵³ wherein the petitioner presented evidence of the conduct and acts of the father tending to establish the petitioner's status as an acknowledged natural child, such as supporting the petitioner, financing her education, representing himself as petitioner's father, giving his consent as such to her mar-

⁴⁹ 55 Phil. 1.

⁵⁰ Article 137 of the Civil Code of 1889 provides:

"Actions for the acknowledgment of natural children may be commenced only during the lifetime of the putative parents except in the following cases:

"1. If the father or mother died during the minority of the child, in which case the latter may commence the action within the four years next following the attainment of its majority.

"2. If after the death of the father or mother, some document, before unknown, should be discovered in which the child is expressly acknowledged.

"In this case the action must be commenced within the six months next following the discovery of such document."

⁵¹ *Vidaurrazaga vs. Court of Appeals and Francisca Ming*, G. R. No. L-3943, prom. June 24, 1952.

⁵² See note 51, *supra*.

⁵³ Now Article 278, new Civil Code of the Philippines.

riage, and making it appear in petitioner's marriage certificate that he was the father of the petitioner. The Court held that this evidence is material only in case of compulsory recognition under Article 135 of the old Civil Code,⁵⁴ and when this action has already prescribed, and what is involved is voluntary recognition or acknowledgment under Article 131, said evidence is irrelevant and immaterial.

Baptismal Certificate Is Not Record of Birth for the Purpose of Proving Voluntary Acknowledgment of a Natural Child

It is a settled doctrine in this jurisdiction that a baptismal certificate or a certificate of birth issued by a local civil registrar are not considered record of birth for the purpose of Article 131 of the Civil Code, which record of birth refers to the one provided for in Article 326 of the same Code that was never enforced in the Islands, "and therefore any acknowledgment appearing in said certificate is of no value."⁵⁵

Parental Authority

*In re Guardianship of the Minor Isabel Dolojan*⁵⁶ reiterates the ruling⁵⁷ that the refusal to grant consent to marriage is not a legal ground to deprive parents of parental authority over the minor child. Here the father's fundamental objection to the marriage of his minor daughter was due to the fact that the same man she wanted to marry had previously seduced and lived together with another daughter without the benefit of clergy. The deprivation of parental authority was clearly unwarranted.

PROPERTY

Donation: Its Character, Not its Name Decisive.

The rule that the body of the document of donation and statements contained therein and not the title⁵⁸ that should be considered in ascertaining the intention of the donor was applied and followed in *Concepcion et al., vs. Concepcion*.⁵⁹ There the donation was en-

⁵⁴ Now Articles 283, 284 of the new Civil Code of the Philippines.

⁵⁵ See note 5, *supra*; also note 48.

⁵⁶ G. R. No. L-4631, prom. February 26, 1952.

⁵⁷ Neither the fact that the parents of a minor daughter sought to compel her to marry against her will where it does not appear that such purpose has continued, nor their refusal to consent to her marriage to another young man by whom she is pregnant is legal ground for depriving said parents of their parental authority and the custody of their daughter. (*Salvana and Saliendra vs. Gacla*, 55 Phil. 680.)

⁵⁸ *Guzman et al. vs. Ibea et al.*, 67 Phil. 663; *Laureta vs. Mata et al.*, 44 Phil. 668; *Bautista et al. vs. Sabineano et al.*, G. R. No. L-4236, prom. November 18, 1952.

⁵⁹ G. R. No. L-4225, prom. August 25, 1952.

titled and called "donacion onerosa mortis causa." From the body of the instrument, however, it was found that the donation was made "en consideracion a los buenos servicios prestados a mi por mi sobrina antes y durante estos dias, y teniendo ademas, especial predileccion por sus buenas cualidades y el carino que tengo de ella." It was held, from all the preceding considerations, that when the donor calls the donation mortis causa instead of inter vivos, even if he says that it is to take effect after his death, when from the body of the instrument of donation it is gathered that the main consideration of the donation is not the death of the donor but rather the services to him by the donee or his affection for the latter, then the donation should be considered as inter vivos, and when duly accepted, it transfers it immediately to the donee, and the condition that the donation is to take effect after death of the donor should be interpreted as meaning that the possession and enjoyment of the fruits of the property donated should only take place after the donor's death.⁶⁰

Another case which illustrates a disregard by the court of the title of the donation and its consideration of the body of the donation to arrive at the intention of the donor was the case of *Bautista et al vs. Sabiniano et al.*⁶¹ The deed of donation involved therein was entitled "Conditional Donation." It was held that it was not an *inter vivos* but a *mortis causa* donation⁶² because the disposition or conveyance takes effect upon the donor's death and becomes irrevocable only upon his death.⁶³

WILLS AND SUCCESSION

Language in which the Will Must be Executed; Role of Expert Witness in Handwriting.

Every will must be in writing and executed in a language or

⁶⁰ *Balaqui vs. Dongso*, 53 Phil. 673; *Samban vs. Villanueva*, 71 Phil. 303; *Joya vs. Tiongco*, 71 Phil. 379.

⁶¹ G. R. No. L-4236, prom. November 18, 1952.

⁶² The distinction is important because donations inter-vivos shall be governed by the general provision on contracts and obligations in all that is not determined in the title on Donation (See Article 732, Civil Code) while donations *mortis causa* shall be governed by the rules established in the Title on Succession.

⁶³ Except in the instances expressly provided by law, such as the subsequent birth of children of the donor (Article 760, Civil Code), failure by the donee to comply with the conditions imposed (Article 764, Civil Code), ingratitude of the donee (Article 765, Civil Code), and reduction of the donation in the event of inofficiousness thereof (Article 771, Civil Code), a donation is irrevocable. If the donor reserves the right to revoke it or if he reserves the right to dispose of all the properties purportedly donated, there is no donation. If the disposition or conveyance or transfer

dialect known to the testator,⁶⁴ otherwise it will be disallowed by the court when it is presented for probate.⁶⁵ However, it is not required that the testator's understanding of the language used in the will be expressed therein. It is a matter that may be established⁶⁶ by proof aliunde.⁶⁷

Thus, in the case of *Reyes vs. Zuñiga Vda. de Vidal*,⁶⁸ the contention by the oppositor to the probate of the will of the deceased that the latter did not know Spanish, the language in which the will was written, and that therefore, the will must be disallowed, was rebutted by evidence showing that the deceased was a mestiza española, married to a Spaniard, Ricaredo Pando; that she had made several trips to Spain, that she had written in Spanish in her own handwriting these letters having been submitted also as part of the evidence. These pieces of evidence taken together, have been held sufficient to prove that the deceased knew and possessed the Spanish language and consequently, the will must be probated.

The Supreme Court in arriving at its conclusion, relied on the precedents laid down; first, in the case of *Abangan vs. Abangan*,⁶⁹ where it was held that the fact that the will was executed in the City of Cebu and in the dialect of the locality where the testatrix was a resident is enough in the absence of any proof to the contrary, to raise the presumption that she knew the dialect in which her will was written; and second, in the case of *Gonzales vs. Laurel*,⁷⁰ where it was shown that the deceased Maria Tapia was a resident of the Province of Batangas, a Tagalog region, that she requested Modesto Castillo to draw her will in Tagalog, and that therefore, presumption arose that the testatrix knew the Tagalog dialect, which

takes effect upon the donor's death and becomes irrevocable only upon his death, it is not *inter vivos* but a *mortis causa* donation.

⁶⁴ Article 804, Civil Code of the Philippines.

⁶⁵ Article 839, Civil Code of the Philippines—"The will shall be disallowed in any of the following cases: (1) If the formalities required by law have not been complied with."

This is interpreted in the case of *Acop vs. Peraso* (52 Phil. 660, 662), where a will was executed in the English language when the testator was proved to have known only Igorote with a smattering of Ilocano. The court held that the will cannot be probated because it is prohibited by law.

⁶⁶ *Lopez vs. Liboro*, G. R. No. L-1787, prom. August 17, 1948.

⁶⁷ BALLENTINE LAW DICTIONARY with Pronunciations: Proof aliunde is evidence of matters not contained in a writing offered to affect the writing itself as evidence.

⁶⁸ G. R. No. L-2862, prom. April 21, 1952.

⁶⁹ 40 Phil. 476, 479.

⁷⁰ 46 Phil. 750.

presumption became conclusive, not having been overthrown nor rebutted.⁷¹

It is likewise not necessary to state in the attestation clause that the testator knew the language in which the will was executed.⁷² However, if the attestation clause states that fact, its inclusion can only mean that the instrumental witnesses wanted to make of record that the deceased knew the language in which the will was written.⁷³

Another essential requisite to the making of a will is that the testator be of sound mind at the time of its execution.⁷⁴ The term 'sound mind' should not be construed strictly,⁷⁵ hence, the fact that a testator affixed his signature in a will in somewhat different and varied forms does not necessarily mean that he was of unsound mind when he signed the will.

The instant case of *Reyes vs. Zuñiga Vda. de Vidal*,⁷⁶ showed that the deceased signed the will first, with 'Ma. Zuñiga Vda. de Pando' in the left margin of the first page, and second, with 'Maria Zuñiga Vda. de Pando' at the bottom of the text, when the proper name is 'Maria Zuñiga Vda. de Pando'. The Supreme Court held that the differences are attributable only to her age and state of health rather than to a defective mental condition. These differences do not reveal a condition of forgery nor indicate lack of genuineness. These irregularities are common in writings of old people and far from showing lack of genuineness, are indicative of age, sickness or the weak condition of the writer.

In fact it is a first principle in handwriting that exact coincidence between two (2) signatures is absolute proof that one or the

⁷¹ "Puesto que esto es el cuisa ordinario de los habetos de la vida, cuya presuncion es conclusiva por no haberse destruido por contra prueba." (MORAN, DERECHO DE PRUEBAS EN FILIPINAS, edicion castellana de 1931, p. 48).

⁷² Article 805, Civil Code of the Philippines. "The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or causes some other person to write his name under his express direction, in the presence of the testator and of one another."

⁷³ *Reyes vs. Zuñiga Vda. de Vidal*, see note 5, *supra*.

⁷⁴ Article 789, Civil Code of the Philippines.

⁷⁵ Article 799, Civil Code of the Philippines, "To be of sound mind it is not necessary that the testator be in full possession of all his reasoning faculties or that his mind be wholly unbroken, unimpaired or unshattered by disease, injury or other cause." This provision was again interpreted by the Supreme Court in several cases, namely: *Bugnao vs. Ubag*, 14 Phil. 163; *Bagtas vs. Paguio*, 22 Phil. 227; *Jocson vs. Jocson*, 46 Phil. 701; *Torres vs. Lopez de Bueno*, 48 Phil. 772.

It shall nevertheless, be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act."

⁷⁶ See note 5, *supra*.

other is a forgery. There must be some difference which naturally result from the infinite variety of conditions controlling the muscles of the writer at each separate effort in forming his signature.⁷⁷ Thus, the fact that the testatrix was a paralytic and wrote with her left hand,⁷⁸ or that she was extremely feeble⁷⁹ at the time she signed the will resulting to natural variations in the form and appearance of the signature does not prove that she was of unsound mind at that time.⁸⁰ This is specially true, if the signature is complicated, containing many flourishes such that it could not have been signed by one who is not of sound mind.⁸¹

When the genuineness of a signature in a document is raised, the fact of the person having signed the document could be proved by the testimony of credible witnesses who declare that they saw him sign the document⁸² or by the instrumental witnesses and the notary public who notarized the will, which stands unimpeached.⁸³ In the absence of such witnesses, or in order to provide for a better understanding of the evidence offered, or if in the solution of a question a certain skill and experience is required, opinion of experts is admissible.⁸⁴

⁷⁷ *People vs. Bustos*, 45 Phil. 30.

⁷⁸ *Gabriel vs. Mateo*, 51 Phil. 216, 219.

⁷⁹ *Dionisio vs. Dionisio*, 45 Phil. 609, 611.

⁸⁰ QUESTIONED DOCUMENTS BY OSBORNE, 2nd Edition, 1927, p. 365.

Abbreviated, distorted, and illegible forms, which are sufficiently free and rapid, often actually indicate genuineness rather than forgery even though they are very unusual and not exactly like those in the standard writing. Those who write with difficulty through some physical infirmity may sometimes produce broken and unfinished signatures and these results, which in themselves are distinctly divergent as compared with signatures produced under conditions of health and strength may forcefully indicate genuineness. Under conditions of weakness due to age or disease, parts of a genuine signature may be clumsily written over a second time, not at just the same place, and in a way which clearly show that the writer either could not see or was so weak and inattentive as not to care what the result might be. This careless perfectly evident repetition unlike the painstaking and delicate retouching of the forger often indicates genuineness."

⁸¹ *Menciano vs. San Jose*, G. R. No. L-1967, May 28, 1951.

In this connection it is important to note the excerpt from OSBORNE (see note 17, *supra*) which was cited in the case of *Go Fay vs. Bank of the Philippine Islands*, 46 Phil. 968, 995.

"Usually there is about genuine writing that which proclaims it as genuine, and one of the things that may be recognized by any examiner is that careless abandon and indifference that shows that the writing was the result of a habit and not the conscious following of a copy. Freedom, carelessness, speed and illegibility are always earmarks of genuineness."

⁸² *People vs. Bustos*, 45 Phil. 31.

⁸³ *Enrile and Villaverde vs. Roberto and de los Santos*, 61 Phil. 599, 603-604.

⁸⁴ Section 18, Rule 123 of the Rules of Court of the Philippines: "The opinion

When the subject of inquiry falls within the general knowledge of men, as the question of whether or not a given document is genuine, the courts are not bound by the conclusion of real experts along the line.⁸⁵ The greater the experience and knowledge of the expert, however, the greater is the value of his opinion.⁸⁶ His opinion is entitled to greater respect when he can offer assistance in pointing out distinguishing marks, characteristics and discrepancies between the genuine and the false specimen which would escape the notice or the detection of an unpracticed observer, specially when he observes the following points:

1. "If possible not less than five or six signatures should always be examined and preferably double that number."⁸⁷
2. "The standards should, if possible, have been made at the same time as the suspected document. It is preferable that the standards embrace the time of the origin of the document, so that one part comes from the time before the origin and one part from the time after the origin."⁸⁸

The Supreme Court in the case at bar,⁸⁹ contented itself with specimens of the signature of the deceased made nearest to the date of the questioned signature stating that such specimens could serve as satisfactory basis for accurate analysis and conclusion. It considered that the state of health, the passing of time and increase of age of the author of the suspected signature as having decisive influence in his writing characteristic, so that his signature today may be different from his signature tomorrow.⁹⁰

The Attestation Clause.

The attestation clause must contain a statement of the sheets or pages comprising the will and if this is missing⁹¹ or is omitted, it will have the effect of invalidating the will if the deficiency can-

of a witness, regarding a question of science, art or trade when he is skilled therein may be received in evidence."

⁸⁵ *Raymundo vs. Legaspi*, 47 O. G. p. 868; *Paras vs. Narciso*, 35 Phil. 244; *Dolor vs. Adiansia*, 55 Phil. 479.

⁸⁶ *Raymundo vs. Legaspi*, see note 22, *supra*; *Welles vs. Leek*, 25 Atlantic Reporter 101, 103; *Hanley vs. West Virginia Cent and P. Ry. Co.*, 53 Southeastern Reporter 625, 628.

⁸⁷ FORENSIC CHEMISTRY AND SCIENTIFIC CRIMINAL INVESTIGATION by LUCAL, 1935, p. 139, Edward Arnold and Co., London.

⁸⁸ MODERN CRIMINAL INVESTIGATION by SODERMAN AND O'CONNELL, 1936, Funk and Wagnalls and Co., New York and London.

⁸⁹ *Reyes vs. Zuñiga vda. de Vidal*, see note 5, *supra*.

⁹⁰ *People vs. Bustos*, see note 19, *supra*; *Gabriel vs. Mateo*, see note 15, *supra*; *Dionisio vs. Dionisio*, see note 16, *supra*.

⁹¹ *Mendoza vs. Pilapil*, 40 Official Gazette No. 9 (June 27, 1941), 1855.

not be supplied, not by evidence aliunde, but by a consideration or examination of the will itself.^{91a}

While the attestation clause in *In Re Petition for the Probate of the Will of the Deceased Da. Leona Singson*⁹² does not state the number of sheets or page upon which the will is written, the last part of the body of the will contains a statement that it is composed of nine pages. This circumstance, according to the court, takes the case out of the rigid rule of construction and places it within the realm of similar cases⁹³ where a broad and more liberal view has been adapted to prevent the will of the testator from being defeated by purely technical considerations.

Another question presented by the case of *In Re Petition for the Probate of the Will of the Deceased Da. Leona Singson*^{93a} was whether or not the attestation clause states that the testatrix signed

^{91a} *In re will of Andrada*, 42 Phil. 180; *Uy Coque vs. Navas L. Sioca*, 43 Phil. 405; *Gumban vs. Gorecho*, 50 Phil. 30; *Quinto vs. Morata*, 54 Phil. 481; *In re Will of Maximo Sarmiento vs. Roman Sarmiento, et al.*, 38 Off. Gaz. 2632.

⁹² G. R. No. L-4603, prom. October 25, 1952.

⁹³ One of such cases is *De Gala vs. Gonzales and Ona*, 53 Phil. 104. Here one of the objections raised was that the attestation clause does not state that the will had been signed in the presence of the witnesses although this fact appears in the last paragraph of the body of the will, and the Court, in overruling the objection, said that "it may be conceded that the attestation clause is not artistically drawn and that, standing alone, it does not quite meet the requirements of the statute, but taken in connection with the last clause of the body of the will, it is fairly clear and sufficiently carries out the legislative intent; it leaves no possible doubt as to the authenticity of the document."

Another case that may be cited is *Mendoza vs. Pilapil*, 40 Off. Gaz., No. 9, p. 1855. In this case, the objection was that the attestation clause does not state the number of pages upon which the will was written, and yet the court held that the law has been substantially complied with inasmuch as in the body of the will and on the same page wherein the attestation clause appears written it is expressly stated that the will contains three pages each of which was numbered in letters and in figures. Said the court:

"El proposito de la ley al establecer las formalidades que se requieren en un testamento, es indudablemente asegurar y garantizar su autenticidad contra la mala fe y el fraude, para evitar que aquellos que no tienen derecho a suceder al testador, le suceden y salgan beneficiados con la legalizacion del mismo. Se ha cumplido dicho proposito en el caso de que se viene hablando porque, en el mismo cuerpo del testamento y en la misma pagina donde aparece la clausula de atestiguamiento, o sea la tercera, se expresa que el testamento consta de tres pagina y porque cada una de las dos primeras lleva en parte la nota en letras, y en parte la nota en guarismos, de que son respectivamente la primera y segunda paginas del mismo. Estos hechos excluyen evidentemente todo temor, toda sospecha, o todo asomo de duda de que se haya sustituido alguna de sus pagina con otra." (*Mendoza vs. Pilapil, et al.*, 40 Off. Gaz., No. 9, pp. 1855, 1862).

^{93a} See note No. 92, *supra*.

each and every page of the will in the presence of the three instrumental witnesses as required by law?

The disputed attestation clause reads as follows:

"Nosotros los testigos, conforme al ruego de Da. Leona Singson, en este testamento, despues de anunciarnos que este es su testamento donde hizo sus ordenes sobre su verdadera y ultima voluntad, firmo e imprimio su marca digital en presencia de todos nosotros; y nosotros firmamos tambien en presencia de ella y delante de cada uno de nosotros al pie del citado testamento y en el margen izquierdo de sus otras paginas. Y hemos observado que Da. Leona Singson estaba en su sano juicio, pensamiento y uso de sus sentidos.

A perusal of the above attestation clause would at first glance give the impression that the testatrix merely signed or stamped her thumbmark on the will in the presence of the witnesses, without stating the place where her signature or thumbmark had been affixed, which impression is caused by the fact that right after the sentence *firno e imprimio su marca digital en presencia de todos nosotros*, there appears a semicolon; but if this semicolon is disregarded, we would at once see that the testatrix signed or affixed her thumbmark not only at the bottom of the will but also on the left margin of each and every page thereon, considering the concluding part of the sentence concerning the signing of the will. That semicolon undoubtedly has been placed there by mistake or through inadvertence, as may be deduced from the use of the word *tambien* made by the witnesses in the sentence immediately following, which conveys the idea of oneness in action both on the part of the testatrix and the witnesses. Thus considered and interpreted, the attestation clause complies substantially with the law.

"The appellants earnestly contend that the attestation clause fails to show that the witnesses signed the will and each and every page thereof because it simply says 'que nosotros los testigos hemos tambien firmado en presencia de la testadora y en la presencia del uno al otro' (that we the witnesses also signed in the presence of the testatrix and of each other).

In answer to this contention it may be said that this portion of the attestation clause must be read in connection with the portion preceding it, which states that the testatrix signed the will and on all the margins thereof in the presence of the witnesses; especially, because the word *also* used therein establishes a very close connection between said two portions of the attestation clause. This word *also* should, therefore, be given its full meaning which, in the instant case, is that the witnesses signed the will in the same manner as the testatrix did. The language of the whole attestation clause,

taken together clearly shows that the witnesses signed the will and on all the margins thereof in the presence of the testatrix and of each other.⁹⁴

Right of Representation

There is right of representation only where the relatives of the deceased person try to succeed him in his rights which he could have if still living.⁹⁵ The right takes place in the collateral line only in favor of the children of brothers or sisters, whether they be of the full or half-blood.⁹⁶

In the case of *In the Matter of the Estate of the Late Leodegaria Villanueva*⁹⁷ the legitimate brothers and sisters of the instituted heir who died 2 months after the death of the testatrix sought to intervene in the proceedings for the probate of the will. The lower court held that since the right of representation exist only in favor of children of brothers or sisters,⁹⁸ which the petitioners are not, they have no interest in the will or the property affected thereby⁹⁹ and denied the petition for relief. On appeal, the Supreme Court said the petitioners seek to inherit the legacy of their brother provided in the will of their aunt in their own right and not in representation of their deceased brother, for when the will was presented for probate, the deceased had already succeeded his aunt, and had acquired the right to the legacy given by her to him, upon her death, for the reason that the rights to the succession of a person are transmitted from the moment of his death and an heir succeeds to all rights and obligations of the decedent by the mere fact of the latter's death.¹⁰⁰

Collation

Article 1430 of the Civil Code provides that "the surviving spouse and his or her children shall be given an allowance for their support out of the general estate, pending the liquidation of the inventoried estate, and until their share has been delivered to them, but it shall be deducted from their portion in so far as it exceeds what they may have been entitled to as fruits or income."

⁹⁴ *Rey vs. Cantagena*, 56 Phil. 282, 284.

⁹⁵ Article 970, Civil Code of the Philippines.

⁹⁶ Article 972 (second paragraph), Civil Code of the Philippines.

⁹⁷ G. R. No. L-3932, prom. February 29, 1952.

⁹⁸ Article 972, Civil Code of the Philippines.

⁹⁹ *Paras vs. Narciso*, 35 Phil. 244.

¹⁰⁰ Article 657, Civil Code of the Philippines.

The counsel for the appellant minors in the case of *Testate Estate of the Late Baldomero Lesaca*¹⁰¹ contends that Article 1430 should be harmonized with Article 1041,¹⁰² which provides that "allowances for support, education, attendance in illness, even though unusually expensive, apprenticeship, ordinary equipment, or customary presents are not subject to collation," because the allowances mentioned in the latter article refer to no other than the allowances for support given to the children of a deceased person. This contention is without merit. Article 1041 is found under the section on "Collation," which refers only to property or rights received by donation or gratuitous title "during the lifetime of the decedent,"¹⁰³ and is based on the philosophy that such donations in no way impoverish the donor or enrich the donee since ordinarily they are not taken from the capital but rather from the fruits thereof which would anyway have been consumed or spent during the life of the donor and therefore would form no part of his inheritance.¹⁰⁴ But allowances given to the heirs pending the liquidation of the estate of the decedent stand on a different footing. As Manresa observes:

"Despues de la muerte del causante todo varia: los frutos del capital se agregarian a éste, formando parte del mismo, y por esto se deben a la herencia, ya provengan de las cosas donadas sujetas a colacion, o de derechos de disfrute, ya constituyensen el objeto mismo de la liberalidad, como en case de renta o pension, cesion de productos o frutos perdon de intereses, etc." ¹⁰⁵

OBLIGATIONS

Conditional Obligations

The case of *Ernest Berg vs. Magdalena Estate Inc.*¹⁰⁶ furnishes us with an illustration of a conditional obligation.¹⁰⁷ The facts of the case are as follows: The plaintiff and defendant were co-owners pro indiviso of the property known as the Crystal Arcade. In the deed of sale executed by the parties, they stipulated that should either of them decide to sell his or its undivided share, the other party will have an irrevocable option to purchase it at seller's price.

¹⁰¹ G. R. No. L-3605, prom. April 21, 1952.

¹⁰² Now Article 1067, new Civil Code of the Philippines.

¹⁰³ I PADILLA, CIVIL LAW, p. 1125.

¹⁰⁴ 7 MANRESA, 5th ed., p. 625.

¹⁰⁵ 7 MANRESA, 5th ed., p. 576.

¹⁰⁶ G. R. No. L-3784 prom. October 17, 1952.

¹⁰⁷ Article 1181, Civil Code of the Philippines.

In conditional obligations, the acquisition of rights as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

The court found that there was an agreement to sell and the question was whether the defendant has complied with the terms of the agreement so as to entitle him to ask for specific performance. The defendant relies for the enforcement of its right to buy the property on an alternative clause in the agreement which states that the defendant shall purchase the property "until he has obtained a loan from the National Bank of New York or after it has obtained funds from other sources."

The court reached the conclusion that there is no legal way by which the plaintiff could be compelled to carry out the terms of his agreement to sell considering the circumstance surrounding the transaction.

It said:

"Considering the first alternative, that is, until defendant shall have obtained a loan from the National City Bank of New York, it is clear that the granting of such loan is not definite and can not be held to come within the terms "day certain"¹⁰⁸ provided for in the Civil Code, for it may or may not happen. As a matter of fact, the loan did not materialize. And if we consider that the period given was until such time as defendant could raise money from other sources, we also find it to be indefinite and contingent, and so it is also a condition and not a term within the meaning of the law. In any event, it is apparent that the fulfillment of the condition contained in this second alternative is made to depend upon defendant's exclusive will, and viewed in this light, we are of the opinion that plaintiffs obligation to sell did not arise, for under article 1115 of the Old Civil Code,¹⁰⁹ "when the fulfillment of the condition depends upon the exclusive will of the debtor the conditional obligation shall be void."

Impossible Conditions.

The *George Lilton vs. Luzon Surety Co. Inc.* case¹¹⁰ comes squarely under article 1116¹¹¹ which provides that "impossible conditions shall annul any obligations dependent upon them." The plaintiff there wanted to buy the property involved in the litigation free from any lien or encumbrance. The defendants agreed to sell the property also free from any encumbrance. Both however knew from the very beginning that the property was encumbered in favor of the Gibbs for a substantial amount and the only problem was how

¹⁰⁸ Under Article 1125 of the old Civil Code, obligations for the fulfillment of which a *day certain* has been fixed, shall be demandable only when the day arrives. A *day certain* is understood to be that which must necessarily arrive, even though it is not known when. In order that an obligation may be with a term, it is, therefore, necessary that it should arrive, sooner or later, otherwise, if its arrival is uncertain, the obligation is conditional. To constitute a term the period must end on a *day certain*.

¹⁰⁹ Now Article 1182, new Civil Code of the Philippines.

¹¹⁰ G. R. No. L-2603, prom. February 11, 1952.

¹¹¹ Now Article 1183, new Civil Code of the Philippines.

to free the property from that encumbrance without either party assuming further liability therefor. The Japanese Military Administration required that the mortgage credit of the Gibbs be paid in full to that office.

The question which confronted the parties was: Should the defendants pay the mortgage credit of the Gibbs to the Japanese Military Administration, which they did in obedience to its bidding, who is to assume the consequent liability in case that Gibbs should later demand the payment of their mortgage credit? It is true that after the payment was made to the Japanese Military Administration the latter cancelled the mortgage and the cancellation was annotated on the title of the property, but this is not the cancellation which was contemplated by the parties in the contract. Evidently, the parties contemplated the cancellation of the encumbrance as coming from the Gibbs who were the real creditors, either judicially or otherwise, and as this was not feasible for obvious reasons, the defendants did not want to assume the risk. As both parties had foreseen this contingency, and the warranty assumed by the defendants to give to the plaintiffs a clean title has become legally impossible, the court is of the opinion and so hold that the defendants had thereby become relieved of their obligation to sell the property in question to the plaintiffs.

Obligations With a Penal Clause.

In *Gregorio Araneta, Inc. vs. Paz Tuason de Paterno and Jose Vidal*,¹¹² there was a stipulation that "should the debtor wish to pay the debt before the expiration of two years such debtor would have to pay, in addition to interest due, the penalty of P30,000—this in addition to the penalty clause of 10% of the total amount due inserted in the document of mortgage." This penalty was designed to take the place of the interest which the creditor would be entitled to collect if the duration of the mortgage had not been cut short and from which interest the debtor has been relieved.¹¹³

Extinguishment of obligations.

1. Payment or Performance.

One of the various modes of extinguishment of obligations is by payment or performance.¹¹⁴ Payment means not only the delivery of money but also the performance in any other manner of

¹¹² G. R. No. L-2886, prom. August 22, 1952.

¹¹³ Article 1152, Civil Code of Spain, now Article 1226, new Civil Code of the Philippines.

¹¹⁴ Article 1231, Civil Code of the Philippines.

an obligation.¹¹⁵ Payment shall be made to the person in whose favor the obligation has been constituted or his successor in interest or any person authorized to receive it.¹¹⁶ Deposit, therefore, of the unpaid balance of the purchase price of a parcel of land with the PNB to the credit of the creditor, there being no proof that the latter instructed such deposit will not relieve the debtor from his obligation.¹¹⁷ Such deposit, however, though not binding on the creditor is a valid excuse for not holding the debtor in default.¹¹⁸

In the *Arcache case*,¹¹⁹ Lizares Co. sold 2 parcels of land for ₱621,500.00 to Arcache who gave ₱15,000 as initial payment of the purchase price and executed 2 promisory notes for the balance. On January 1945, because Lizares was in Baguio, Arache deposited with the Philippine National Bank the unpaid balance to the credit of Lizares. The court considered the sum as still outstanding although the appellees cannot be considered as having defaulted in their obligation under the contract of sale as to entitle the corporation to rescind it.

2. Tender of Payment and Consignation.

It is fundamental in civil law that offer of payment to be valid and effective must be made in legal tender.¹²⁰ Offer of a check in payment of a debt is not a valid tender of payment. This is true even if the check may be good.¹²¹

In the latest case on the point, *Court of First Instance of Tarlac and Samaniego vs. Court of Appeals and Vicente*¹²² the court held that the tender of payment of a Philippine National Bank check in payment of the canons for land leased does not carry a declaration that the amount had actually been paid or that the check amounts to payment.

Under the Civil Code a tender of payment to be valid, must be likewise unconditional.¹²³ When the defendant therefore, in the case

¹¹⁵ Article 1232, Civil Code of the Philippines.

¹¹⁶ Article 1240, Civil Code of the Philippines.

¹¹⁷ *Mary Hayden Arcache vs. Nicolas Lizares and Co., Inc. et al.*, G. R. No. L-4333, prom. May 23, 1952.

¹¹⁸ *Ibid.*, See 62 CORPUS JURIS, p. 682.

¹¹⁹ See note 4, *supra*.

¹²⁰ Article 1249, Civil Code of the Philippines.

¹²¹ *Belisario vs. Natividad*, 60 Phil. 156; *Villanueva vs. Santos*, 39 Off. Gaz., March 1941, 681; *CFI of Tarlac and Samaniego vs. Court of Appeals and Vicente*, G. R. No. L-4191, prom. April 30, 1952; *Philippine National Bank vs. Relativo, et al.*, G. R. No. L-5298, prom. October 29, 1952.

¹²² G. R. No. L-4191, prom. April 30, 1952.

¹²³ Dec., Sup. Ct. of Spain, cited in footnote CASTAN TABENAS, DERECHO CIVIL (1943), vol. 2, p. 522.

of *Philippine National Bank vs. Relativo*¹²⁴ tendered payment of a ₱600 loan out of a check for ₱5000 issued by the U. S. Treasury in favor of a third person who accompanied the defendant and demanded that the check be cashed and a part applied to the payment of the debt and the remainder delivered to such third person, the offer is conditional and does not satisfy the above requirement.

Tender of payment even if valid, if refused, does not by itself produce legal payment unless it is completed by consignation.¹²⁵

In the case of *Ignacio Arzaga v. Emilio Rumbaoa, et al.*,¹²⁶ it was held that where the judgment of the Court required the payment of certain sums of money by plaintiff to defendant and the former deposited said sums with the Court and afterwards expressly petitioned the Court that the defendant be notified to receive the tender of payment, this amounted to a full and complete offer of payment made directly to defendant. Such deposit need not be made in accordance with the requisites of consignation as provided in Articles 1176¹²⁷ and 1177 of the Spanish Civil Code because "tender of payment of judgment is not the same as tender of payment of a contractual debt and consignation of the money due from a debtor to a creditor." In case of a refusal of a tender of the amount due on a judgment; the Court may direct the money to be paid into the Court and when this is done, order satisfaction of the judgment to be entered.

A. Effect of Valid Consignation.

Under the earlier case of *Haw Pia vs. San Jose*¹²⁸ it was held

¹²⁴ G. R. No. L-5298, October 29, 1952.

¹²⁵ Tender of payment alone is not a mode of extinguishing obligations. Tender of payment in the Civil Code is treated as subtitle in the section on *Payment as a mode of extinguishing obligations*. But the subtitle is "Tender of payment and consignation." And article 1176 provides that after a valid tender of payment "the debtor shall be released from responsibility by the consignation of the thing or sum due." As a complement, article 1180 says that "after the consignation has been duly made, the debtor may petition the judge to order the cancellation of the obligation." All of which patently indicate that consignation must follow, supplement or complete the tender of payment if discharge of the obligation is to be obtained. See *Llamas vs. Abaya*, 60 Phil. 502; *Asturias Sugar Central vs. Pure Cane*, 60 Phil. 255.

"B. Ofrecimiento de pago y consignacion.—Consiste el primero en una declaracion de voluntad dirigida al acreedor, por la que el deudor manifiesta su firme decision de cumplir inmediatamente la obligacion y la segunda en el deposito que en forma legal hace el deudor de la no cosa objeto de la obligacion, cuando el acreedor no quiere o no puede recibirla. Solo la consignacion es forma de pago. La oferta unicamente nos interesa aqui en cuanto es un acto preparatorio de la consignacion." (CASTAN, DERECHO CIVIL, Vol. 2, p. 521).

¹²⁶ G. R. No. L-3839, prom. June 26, 1952.

¹²⁷ Now Articles 1256, 1257, new Civil Code of the Philippines.

¹²⁸ 44 Off. Gaz. 2704.

that the loss of the thing consigned, without the fault of the debtor is for the account of the creditor. Under the ruling in *China Insurance and Surety Co. Inc. vs. Berkenkotter*,¹²⁹ and *Padua vs. Rizal Surety and Insurance Co.*,¹³⁰ in order that the debtor may be released from the obligation, there must first be approval of the consignment by the Court. The apparent conflict between the decisions in the cases above-mentioned was reconciled by the court in the case of *Laureano Sia vs. Court of Appeals and Valencia*¹³¹ where the debtor, upon refusal by the creditor to accept the mortgage debt, deposited the amount with the court and duly notified the creditor therefore. The creditor never withdrew the amount and was subsequently lost during the war for the liberation of the Philippines. It was here held that where all the requisites for a valid consignment have been complied with, and there can be no reason for disapproving said consignment, the loss of the thing or the amount consigned occurring without the fault of the debtor before the acceptance of the consignment by the creditor or its approval by the court should be for the account of the creditor.

3. Loss of the Thing Due.

A good example of a generic obligation which is not extinguished by the loss of the thing belonging to a particular genus was presented by the facts in the case of *Bunge Corporation and Universal Commercial Agencies vs. Elena Camenforte and Co.*¹³² There the contract was for the delivery of 500 long tons of Philippine copra. The sale is to be made by weight. It does not refer to any particular or specific lot of copra, nor does it mention the place where the copra is to be acquired. No portion of the copra has been segregated. That the obligations of the appellants cannot be deemed extinguished by the destruction or disappearance of the copra stored in San Ramon, Samar is in consonance with the previous rulings of the court on the same question.^{132a}

¹²⁹ G. R. No. 322, prom. April 29, 1949.

¹³⁰ 47 Off. Gaz. supp. No. 12, 308.

¹³¹ G. R. No. L-3742, prom. December 23, 1952.

¹³² G. R. No. L-4440.

^{132a} Except as to quality and quantity, the first of which is itself generic, the contract sets no bounds or limits to the palay to be paid, nor was there even any stipulation that the cereal was to be the produce of any particular land. Any palay of the quality stipulated regardless of origin or however acquired (lawfully) would be obligatory on the part of the obligee to receive and would discharge the obligation. It seems therefore plain that the alleged failure of crops through alleged fortuitous cause did not excuse performance." *Jose de Leon et al. vs. Asuncion Soriano*, 47 Off. Gaz., Supplement, No. 12, pp. 377, 379-380).

"In binding himself to deliver centrifugal sugar, the defendant promised a generic

4. *Insolvency of the Debtor*

In *Visayan Distributors, Inc. vs. Mariano Flores, et al*¹³³ the appellants contend that they were excused from delivering copra because the appellee was insolvent, in that part of the purchase price of the copra delivered to the appellee remained unpaid, reliance being placed on articles 1466 and 1467 of the old Civil Code.¹³⁴ This contention according to the court is untenable, it appearing that there is no conclusive proof showing that the appellants had in definite terms warned the appellee that they would not deliver the copra called for in their contract until they were sure of being paid in accordance with said contract. Moreover, it said further, even assuming that the appellee still owed something upon the account of the 159,834 kilos of copra delivered before November 18, 1946, said fact is not a positive evidence of insolvency.¹³⁵

CONTRACTS

Mental Capacity.

In the execution of contracts, in the absence of a statute to the contrary, the presumption of insanity and mental incapacity is only *prima facie* and may be rebutted by evidence; and that a person under guardianship for insanity may still enter into a valid contract and even convey property, provided it is proven that at the time of entering into said contract, he was not insane or that his mental defect, if mentally deranged, did not interfere with or affect his capacity to appreciate the meaning and significance of the transaction entered into by him.¹³⁶

thing. It could be any centrifugal sugar without regard to origin or how he secured it. Hence, his inability to produce sugar, irrespective of the cause, did not relieve him from his commitment; war, like floods and other catastrophies, was a contingency, a collateral incident, which he could have provided for by proper stipulation." (*Reyes vs. Caltex*, G. R. No. L-1802, Sept. 30, 1949; *Rosario S. Vda. de Lacson et al. vs. Abelardo G. Diaz*, G. R. No. L-2837, August 4, 1950).

¹³³ G. R. No. L-3751, prom. October 25, 1952.

¹³⁴ Now Article 1536, new Civil Code of the Philippines.

¹³⁵ The insolvency referred to by the law may be before or after the sale, provided it is discovered after the perfection of the contract. It must be a judicially declared insolvency, or one inferred from such acts as petitioning for suspension of payments, or as a result of all his properties having been attached in a civil or criminal proceeding. Anything short of this will not be sufficient to exempt the vendor from making the delivery of the things. (TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE, 1947, Vol. II, p. 862, citing Manresa, pp. 140-142).

¹³⁶ *Paulino Dumaguin vs. Reynolds, Harrison and Big Wedge Mining Co.*, G. R. No. L-3572, prom. September 30, 1952.

"Sec. 66. Generally of course, not every standard mentality or even every mental infirmity has the effect of rendering the afflicted person disabled for the purpose of

Cause of Contracts.

In *Paulino Dumaguin vs. A. I. Reynolds, E. J. Harrison and Big Wedge Mining Co.*¹³⁷ the appellant executed deeds of transfer of certain mining claims in favor of the Big Wedge Mining Co. The two deeds mention ₱1.00 and other valuable consideration. This consideration was held to be sufficient¹³⁸ and the deed of transfer may not be annulled.

Fraud.

Fraud in the transaction should be proven clearly; it should not solely be predicted upon a mere presumption arising from the relationship of the vendor and the vendee.¹³⁹ In an action for the annulment of sale of real property based on fraud, the basis to be taken for the accrual of the action should be not the date of the execution of the contract but the date of the discovery of the fraud.¹⁴⁰

Letter to Collect Unpaid Rents Does Not Constitute Novation of the Lease Contract.

Lease, like any other bilateral contract,¹⁴¹ imposes duties and

entering into contract and making conveyances. * * * A reasonable test, suggested by several courts for the purpose of determining whether an infirmity operates to render a person incapable of binding himself absolutely by contract, is whether his mind has been so affected as to render him incapable of understanding the nature and consequences of his acts, or, more exactly, whether his mental powers have become so far affected as to make him unable to understand the character of the transaction in question. * * * Some authorities take the view that a grantor may be competent to execute a deed notwithstanding his disability to transact business generally, provided he understands the nature of what he is doing and recollects the property of which he is making a disposition and to whom he is conveying it. Other authorities, however, take the position that to sustain a deed, the grantor must have the ability to transact ordinary business. In any event, if it appears that the grantor in a deed was incapable of comprehending that the effect of the instrument, when made, executed, and delivered, would be to divest him of title to the land covered by the instrument, it is not binding upon him. * * *” (28 Am. Jur. Insane, etc., Sec. 66, pp. 701-702).

“* * * Even partial insanity will not render a contract voidable unless it exists in connection with or is referable to the subject matter of the contract. Similarly, a delusion if unconnected with the transaction in question, is not sufficient to affect the validity of a contract consummated by the person thus affected. Monomania or a mental fixation or abnormality respecting a matter disconnected with the act of conveying property will not affect the validity of the conveyance. * * *” (*Ibid.*, p. 703).

¹³⁷ G. R. No. L-3572, prom. September 30, 1952.

¹³⁸ Article 1354 of the Civil Code provides: “Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor prove the contrary.”

¹³⁹ *Lorenzo et al. vs. Nicolas et al.*, G. R. L-4085, prom. July 30, 1952.

¹⁴⁰ *Virgilio Villanueva vs. Fidel Villanueva*, G. R. No. L-4594, March 26, 1952. See Article 1391, Civil Code of the Philippines.

¹⁴¹ “A bilateral contract is one in which both the contracting parties are bound to

obligations, both upon the lessor¹⁴² and the lessee.¹⁴³ These duties may be imposed by law¹⁴⁴ or contained specifically in the contract of lease.¹⁴⁵ A violation of these duties imposed upon either party entitles the aggrieved person to demand for the rescission of the contract or for the fulfillment thereof with damages in either case.¹⁴⁶ In addition to these remedies, the lessor may also file an action for ejectment¹⁴⁷ of the lessee for a breach of the contract, provided a demand therefor is made.¹⁴⁸

fulfill obligations reciprocally towards each other." BOUVIER'S LAW DICTIONARY, Vol. I, p. 344.

¹⁴² Art. 1654, R. A. No. 386—"The lessor is obliged: (1) to deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended;

(2) To make on the same, during the lease all the necessary repairs in order to keep it suitable for the use intended;

(3) To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract."

¹⁴³ Article 1657, R. A. No. 386—"The lessee is obliged:

(1) To pay the price of the lease according to the terms stipulated;

(2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place;

(3) To pay the expenses for the deed of lease."

¹⁴⁴ See Arts. 1654 and 1657, R. A. No. 386, *supra*.

¹⁴⁵ "Contract is the law between the contracting parties. This applies not only with reference to the extent of the contractual obligation but also to the conditions, under which the obligation is extinguished." *Hanlon vs. Alinea*, 8 Phil. 11.

¹⁴⁶ Art. 1659, R. A. No. 386—"If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force." *Avila vs. Veloso et al.*, 40 O. G. (6th S), No. 10, p. 58.

¹⁴⁷ Art. 1673, R. A. No. 386—"The lessor may judicially eject the lessee for any of the following causes:

(1) When the period agreed upon, or that which is fixed for the duration of leases under articles 1682 and 1687 has expired;

(2) Lack of payment of the price stipulated;

(3) Violation of any of the conditions agreed upon in the contract;

(4) When the lessee devotes the thing leased to any use or service not stipulated which causes the deterioration thereof; or if he does not observe the requirement in No. 2 of Article 1657, as regards the use thereof . . ."

¹⁴⁸ Sec. 2, Rule 72, Rules of Court—"Landlord to Proceed Against Tenant Only After Demand—No landlord, or his legal representative or assign shall bring such action against a tenant for failure to pay rent due or to comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of 14 days, or 5 days in the case of building, after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notices of the premises if no persons be found therein."

The case of *Chua Gui Seng vs. General Sales Supply Co. Inc.*¹⁴⁹ is an action for ejectment for non-payment of rents.¹⁵⁰ The contract stipulated that the rent was payable within the first five days of each month and that a deposit be made to be applied to the rent for the latter part of the term, which deposit shall be forfeited in the event of failure to complete the one-year term. Upon failure to pay two months rent, the lessor's attorney sent a letter for collection of the rents in arrears. Therein, he informed the lessees of his client's desire to terminate the lease, giving them a 15-day period of grace and to have the deposit forfeited in accordance with the contract.¹⁵¹ The letter further stated that if the lessee pay the rentals in arrears, the lessor would desist from filing a complaint for ejectment and the idea of forfeiture would be abandoned.

The trial court dismissed the complaint on the theory that the letter amended the lease contract,¹⁵² such that the surrender of the leased premises within the 15-day period released the lessee from paying the back rentals to which the deposit should be applied.

In reversing the decision of the lower court, the Supreme Court held that the letter merely called for an enforcement of the contract and forfeiture. The offer contained in the attorney's letter, merely gave the lessees the right to continue the lease provided the rentals in arrears be paid.¹⁵³ The original contract was never novated by the offer.¹⁵⁴ It did not authorize the lessees to violate the contract by vacating the premises and refusing to pay the rent¹⁵⁵ and still get away with the forfeiture of the deposit.

¹⁴⁹ G. R. L-3974, prom. April 28, 1952.

¹⁵⁰ See footnote 7, *supra*.

¹⁵¹ "A landlord does not, by electing to terminate the lease because of a default in payment of rent, waive his right to retain a deposit made by the tenant as liquidated damages for any loss or damage which the landlord may sustain by reason of any violation of the contract by the tenant."

¹⁵² Article 1291. "Obligations may be modified by:

(1) Changing their object or principal conditions;

¹⁵³ The lessor has the option in case of breach to demand rescission or fulfillment of the contract. See footnote 146, *supra*.

¹⁵⁴ Art. 1292, R. A. No. 386—"In order that an obligation may be extinguished by another which substituted the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other." *Tui Suico vs. Habana*, 45 Phil. 707; *Zapanta vs. De Rotaeche*, 21 Phil. 154; *Aboitiz vs. De Silva*, 45 Phil. 883.

¹⁵⁵ "Any act performed by the lessee which is in violation of the terms of the contract is a wrong against the lessor. Being a wrong, the wrongdoer can take no advantage therefrom. If a person could rescind an obligation by the simple act of refusing to fulfill it, then contracts would be worthless things and if one may take advantage of his own wrong, then there is no inducement to do right." *Fernandez Hermanos vs. Pitt*, 34 Phil. 549.

The court, however, mitigated the amount to be forfeited to the extent of one-half of the deposit inasmuch as the lease had been partly performed.¹⁵⁶

In effect, therefore, the letter of an attorney transferring his client's right of option¹⁵⁷ to the party who committed the breach does not constitute a novation in law. At most, it merely constitute an offer to the lessee, who may choose termination of the contract plus forfeiture, or continuance of the contract, provided the rents in arrears be paid.

SALE

Future Goods.

The goods which may form the subject of sale may be either actually existing, owned or possessed by the seller or goods still to be manufactured, raised or acquired by the seller. In the latter case, they may be the object of a contract of sale provided they are determinate.¹⁵⁸ A sale of such kind of goods are necessarily under the implied warranty that such goods will be manufactured, raised or acquired, so that the buyer may treat such warranty as a condition to his performance.¹⁵⁹ A novel application of above provisions occurred in the case of *Canuto Martin vs. Maria Reyes and Pedro Revilla*.¹⁶⁰ The respondents obtained from the La Previsora Filipina a loan of ₱6,500 and with the money, they paid the price of a lot, with improvements, which they had purchased from the Archbishop of Manila. And they mortgaged the property to the La Previsora for the purpose of guaranteeing repayment of the debt in installments. It turned out later that Monte de Piedad y Caja de Ahorros had obtained a judgment against Revilla and had levied execution therefor upon the property. Appraised of this, the La Previsora

¹⁵⁶ In obligations with a penal clause, "The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor." Art. 1229, R. A. No. 386; *Icaza vs. Flores*, 7 Phil. 211; *Lambert vs. Fox*, 26 Phil. 588; *Insular Government vs. Punzalan*, 7 Phil. 546.

¹⁵⁷ Article 1659, R. A. No. 386—See footnote 146, *supra*; "A lease contract being bilateral imposing reciprocal obligations, the general rule in obligations apply—that the innocent party has the option of either demanding fulfillment of the obligation or its rescission with indemnity for damages in either case." PADILLA, CIVIL CODE ANNOTATED (1950 Ed.), p. 861.

"The injured party has the option of the alternative remedies of rescission or fulfillment." *Johnson Picket Rope Co. vs. Grey*, 40 O. G. (11 S), No. 15, p. 239; *Avila vs. Veloso et al.*, 40 O. G. (6 S), No. 10, p. 58.

¹⁵⁸ Article 1462, Civil Code of the Philippines.

¹⁵⁹ Article 1545, par. 2, Civil Code of the Philippines.

¹⁶⁰ G. R. No. L-4402, prom. July 28, 1952.

started foreclosure proceedings. The conflicting interests were later the object of amicable settlement, as a result of which the herein respondents made the deed Exh. E whereby in satisfaction of their obligations to the La Previsora they ceded the property to said institution, reserving the right to repurchase within 60 days. La Previsora then transferred the property to petitioner, who then executed the document Exh. D undertaking to allow respondents to repurchase the property within 60 days but at the price of ₱14,000.00 and not ₱8,204.60 as stipulated in Exh. E. This document Exh. D was signed by Maria Reyes. The Court of Appeals pronounced Exh. D invalid because at the time of its execution, Martin had no title over the property.

The Supreme Court reversed the ruling of the Court of Appeals and said:

"Property or goods which, at the time of the sale, are not owned by the seller, but which are thereafter to be acquired by him, cannot be the subject of an executed sale, *but may be the subject of a contract for the future sale and delivery thereof*, and it has been held that even though the contract is in the form of a present sale it will not pass the title, after the goods have been acquired, until the seller has done some act appropriating them to the contract. Such a contract for the future sale and delivery of goods, which the seller has not in possession but which he intends to acquire by producing, manufacturing, or purchasing before the day of delivery, is valid as an executory contract to be fulfilled by acquiring and delivering the goods specified in the contract, even though the acquisition of the goods by the seller depends upon a contingency which may or may not happen."¹⁶¹

"It is not unusual for persons to agree to convey by a certain time, notwithstanding they have no title to the land at the time of the contract, and the validity of such agreements *is upheld*. In such cases, the vendor assumes the risk of acquiring the title and making the conveyance, or responding in damages for the vendee's loss of his bargain. One having an option to purchase real estate has a legal right to enter into an executory contract to sell the property. *A fortiori, it is not necessary that the vendor be the absolute owner of the property* at the time he enters into the agreement of sale. An equitable estate in land, or a right to become the owner of the land, is as much the subject of sale as is the land itself, and whenever one is so situated with reference to a tract of land that he can acquire the title thereto, either by the voluntary act of the parties holding the title, or by proceedings at law or in equity, he is in a position to make a valid agreement for the sale thereof, without disclosing the nature of his title."¹⁶²

¹⁶¹ 55 Corpus Juris 65.

¹⁶² 55 American Jurisprudence 480.

Capacity to Buy or Sell.

The case of *Gregorio Araneta, Inc. vs. Paz Tuazon de Paterno and Jose Vidal*¹⁶³ gave a good discussion of the precise meaning of agency as employed in article 1459.¹⁶⁴ In the opinion of Manresa¹⁶⁵ agent in the sense there used is one who accepts another's representation to perform in his name certain acts of more or less transcendancy, while Scaevola¹⁶⁶ says that the agent's incapacity to buy his principal's property rests in the fact that the agent and the principal form a juridical person. In this connection Scaevola observes that the fear that greed might get the better of the sentiments of loyalty and disinterestedness which should animate an administrator or agent, is the reason underlying the various classes of incapacity enumerated in article 1459. And as American Courts commenting on similar prohibition at common law put it, the law does not trust human nature to resist the temptations likely to arise out of the antagonism between the interest of the seller and the buyer.

So the ban of paragraph 2 of Article 1459¹⁶⁷ connotes the idea of trust and confidence; and so where the relationship does not involve considerations of good faith and integrity the prohibition should not and does not apply. To come under the prohibition, the agent must be in fiduciary relation with his principal.

Tested by this standard, the court rules that Jose Araneta,¹⁶⁸ was not an agent within the meaning of Article 1459. By Exhibits "7" and "8" he was to be nothing more than a go-between or middleman between the defendant and the purchaser, bringing them together to make the contract themselves. There was no confidence to be betrayed. Jose Araneta was not authorized to make a binding contract for the defendant. He was not to sell and he did not sell the defendant's property. He was to look for a buyer and the owner herself was to make, and did make, the sale. He was not to fix the price of the sale because the price had been already fixed in his commission. He was not to make the terms of payment because these, too, were clearly specified in his commission. In fine, Jose

¹⁶³ G. R. No. L-2886, prom. August 22, 1952.

¹⁶⁴ See Article 1491, new Civil Code of the Philippines.

¹⁶⁵ 10 Manresa, 4th Ed. 100.

¹⁶⁶ Vol. 23, p. 403.

¹⁶⁷ Art. 1459. The following persons cannot take by purchase, even at a public or judicial auction, either in person or through the mediation of another:

* * * * *

2. An agent, any property of which the management or sale may have been entrusted to him;

¹⁶⁸ See note No. 1, *supra*.

Araneta was left no power or discretion whatsoever which he could abuse to his advantage and to the owner's prejudice.

With respect to paragraph 5 of Article 1459¹⁶⁹ attorneys are only prohibited from buying their client's property which is the subject of litigation. It may not be invoked when the questioned sale was effected before the subject thereof became involved in the present action.¹⁷⁰ According to the court, "there was already at the time of the sale a litigation over this property between the defendant and Vidal, but attorneys Salvador Araneta and J. Antonio Araneta were not her attorneys in that case."

Pacto de Retro Sale; Period Within Which to Redeem.

In pacto de retro sales, the vendor is granted the right to reacquire the thing sold under certain conditions.¹⁷¹ This right of redemption is a real right,¹⁷² and may be enforced even against third persons. However, the right to redeem is not created by operation of law but by virtue of an express agreement of the parties.¹⁷³ However, lack of clarity in the terms of such contracts should not be relied upon to support the theory that no period for redemption was fixed by the parties. The law is clear¹⁷⁴ that in the absence of an

¹⁶⁹ See Article 1491, par. 5, Civil Code of the Philippines.

¹⁷⁰ *Gregorio Araneta, Inc. vs. Paz Tuason de Paterno and Jose Vidal*, see note 163, *supra*.

¹⁷¹ Art. 1601 of the Civil Code provides: "Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of article 1616 and other stipulations which may have been agreed upon."

Article 1616 provides: "The vendor cannot avail himself of the right to repurchase without returning to the vendee the price of the sale and in addition:

(1) The expenses of the contract, and any other legitimate payments made by reason of the sale.

(2) The necessary and useful expenses made on the thing sold."

¹⁷² *Pandaquila vs. Gaz et al.*, 12 Phil. 663; *Mortera vs. Martinez*, 14 Phil. 541: "The seller has a right of action to enforce the redemption thereof against any other possessor who derived his right from the purchaser under *pacto de retro*, inasmuch as said action is in the nature of a real right."

¹⁷³ *Ordoñez vs. Villaroman*, 44 O. G. 2226.

¹⁷⁴ Art. 1606 provides: "The right referred to in article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

"Should there be an agreement, the period cannot exceed ten years.

"However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase."

Manresa, in interpreting this article stated that it contemplates two cases: "first where there is an agreement for redemption but the period for its exercise has not been stipulated. In the first case, the period shall endure four years, counted from the date of contract. In the second, it shall last during the period the parties may have stipu-

express agreement, the period of redemption shall last for four years from the date of the contract. Should there be an agreement, the period agreed upon by the parties cannot exceed ten years.¹⁷⁵ In the case that the period agreed upon is more than ten years, the stipulation is null and void as to the period beyond the ten years allowed by the Civil Code.¹⁷⁶ The nullity of such stipulation, however, does not affect the validity of the contract of sale.¹⁷⁷

The question in the instant case of *Tumaneng vs. Abad*^{177a} is whether the period within which to redeem should be expressed in clear and unequivocal language.

Julia Tumaneng, sold a parcel of land to Francisco Abad. By the terms of the contract, Tumaneng, the vendor, and his heirs, were granted the right to repurchase the land from the vendee and his heirs. Tumaneng did not redeem the land until after the lapse of eight years from the date of the contracts, thinking that by the terms of the agreement thereof, he was granted an unlimited period within which to redeem as the contract did not contain a period of redemption. The agreement therefore comes under paragraph 2 of Article 1508 of the Spanish Civil Code.¹⁷⁸ Abad, the vendee-defendant, on the other hand, refused to surrender the premises even after the redemption, on the ground that since the terms of the agreement did

lated provided it is within the limit of ten years fixed by the law. In both cases the period is to be counted from the date of the contract, notwithstanding the fact that the article says so only in regards to the first. For if that be not so as to the second, in case the parties stipulate that the period shall not commence to run until after the lapse of a certain time from the date of the contract, the ten-year limit fixed by law might be exceeded which may not be done as it would be contrary to the spirit of the prohibition. The expression "date of the contract" should not be understood literally. It should be taken to mean the date when the contract produces its natural effects. The contract for example may be subject to a suspensive condition, in which case it does not take effect until after the fulfillment of the condition." 10 Manresa, pp. 311-313.

¹⁷⁵ *Ibid.*, see note No. 6.

¹⁷⁶ *Montiero vs. Salgado*, 27 Phil. 641: "The stipulation with respect to the excess term of ten years fixed for the repurchase of the said parcels of land was null and void, inasmuch as pursuant to article 1508 of the Civil Code, in case of an express agreement the period shall not exceed ten years."

¹⁷⁷ *Alojado vs. Lim Siongco*, 51 Phil. 339: "The nullity of the stipulation to repurchase on account of the period fixed for its exercise exceeding that permitted by law, does not affect the validity of the sale, because said stipulation is accidental to the sale and may or may not be adopted by the parties."

^{177a} G. R. No. L-4592, prom. Sept. 17, 1952.

¹⁷⁸ Art. 1508 of the Spanish Civil Code is now Art. 1606 of the New Civil Code. It provides: "The right referred to in the next preceding article, in default of an express agreement, shall endure four years counted from the date of the contract.

"Should there be an agreement the period shall not exceed ten years." (See note 174, *supra*.)

not grant the vendor a period within which to redeem, whether unlimited or fixed, he should have exercised his right within four years in accordance with paragraph 1 of Article 1508.

The main question thus emerges: Under the terms of the contract, was the vendor and his heirs granted a period within which to redeem the parcel of land sold? The disputed portion of the deed is as follows:

"It is my agreement with Mr. Francisco Abad y Simon that a year after which he shall have received the fruits of the said land, I shall have the right to redeem the land with the same amount that I received from him without deduction. But if I will have yet no money with which to repurchase, I shall nevertheless together with my heirs have the freedom to repurchase the land, and that he or his heirs will not be able to refuse the repurchase provided that I could return the amount of one thousand pesos. It is also agreed with Sr. Francisco Abad y Simon that I will not exercise my right to repurchase at a time when the rice seedlings have already been prepared for the land but that I will wait until after the harvest."

It was interpreted thus by the Supreme Court, speaking through Justice Labrador: "There is no question that the terms of the contract are not clear on the period of redemption. But the intent of the parties thereto is the law between them, and it must be ascertained and enforced. The agreement in our opinion fixes an unlimited period although this is not clear and unequivocal, due perhaps to faulty expression. When the parties stipulated that the vendor and her heirs shall nevertheless have the right to make the repurchase, they meant that they shall have the right to do so at any time. We have here, therefore, not a case where no period at all has been agreed upon, but one with a period which shall start after the first year the vendee receives the fruits of the land, and which, shall, nevertheless, continue without limitation. In order to be applicable, the law ¹⁷⁹ requires the existence of an agreement, not a definite and clear agreement on the period. The mere fact that the agreement is obtained by inference does not argue in favor of its non-existence. Lack of clearness in the language of the agreement should not be confused with silence; in other words, not because the language fixing the period is not clear, positive and unequivocal, may we conclude that an express agreement is absent."

This decision of the Supreme Court lays down in plain, definite terms, that for a period to be considered as expressly agreed upon by the parties, it is not necessary that such intention be evidently clear on the face of the contract. It is sufficient for the agreement

¹⁷⁹ Article 1508, par. 2.

to exist if, from the terms of the contract, although expressed in vague and faulty terms, the intention of the parties to grant a period could be gleaned.

In *Ciriaco Cunaco vs. Mamerto Alano*^{179a} it was held that a vendee under pacto de retro is of course free to allow the redemption even after the period for it has expired; or he may even donate the property to the vendor or to anybody else. But where the property has been attached under a valid order of attachment such resale or other disposition of the attached property made by the vendee subsequent to the attachment cannot affect the lien created by the attachment.

PARTNERSHIP.

Liquidation.

A general or limited partnership is terminated only after its dissolution^{179b} for any of the causes specified by law¹⁸⁰ and after winding up its affairs.¹⁸¹ The right to "wind-up" if not expressly agreed upon, vests generally on the partners who have not wrongfully dissolved the partnership,¹⁸² or if all the partners should have died, then on the legal representative of the last surviving partner who is not insolvent.¹⁸³ However, "upon cause shown, any partner, his legal representative or his assignee may obtain winding-up by the court."¹⁸⁴ This proviso contemplates a situation where the partner who is obligated to liquidate the partnership affairs fails or refuses, or can not possibly do so, or dies before carrying out his duty to liquidate.

The case of *Lota vs. Tolentino*¹⁸⁵ may be a specific illustration of the latter situation. In the instant case, it appears that a gen-

^{179a} G. R. L-4046, prom. Jan. 23, 1952.

^{179b} Art. 1828, Civil Code: "The dissolution of partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on... of the business." According to CAPISTRANO, CIVIL CODE OF THE PHILIPPINES, Vol. IV, p. 296, "dissolution designates the point in time when the partners cease to carry on the business together."

¹⁸⁰ See Art. 1830, Civil Code.

¹⁸¹ Art. 1829, Civil Code: "On dissolution, the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

"The general law is clear, that a partnership, though dissolved, continues for the purpose of winding up its affairs." (*Butchart vs. Dresser*, 1854. Ct. of Appeals in Chancery, 4 De G. M. & G. 542, cited in CRANE & MAGRUDER, CASES ON PARTNERSHIP, p. 432).

¹⁸² Art. 1836, Civil Code.

¹⁸³ *Supra*.

¹⁸⁴ *Supra*.

¹⁸⁵ G. R. No. L-3518, prom. February 29, 1952.

eral partnership was formed by the plaintiff and the defendant, the latter acting as the managing partner. After sometime, the partnership was dissolved and according to the plaintiff the defendant refused to render an accounting and liquidation.

A year after the complaint was filed, the plaintiff died and was substituted by the administrator of his estate. Subsequently, defendant also died and the court ordered the plaintiff to amend the complaint by substituting for the deceased defendant the administrator of the latter's estate. A petition for the issuance of letters of administration in favor of the surviving spouse of the deceased defendant was filed by the plaintiff, but the special proceedings were dismissed for failure of the administratrix to file a bond and to take her oath.

No one was substituted for the defendant for a period of almost ten years from his death. It was only after this time when plaintiff filed a motion praying that the deceased's heirs be substituted as party defendants in this case. The motion was denied by the lower court, and plaintiff appealed.

The issue raised was whether or not after the defendant's death, plaintiff's action for accounting and liquidation of the partnership may be continued against the heirs of the deceased defendant.

The Supreme Court, affirming the lower court's decision followed the ruling down in *Po Yeng Cheo vs. Lim Ka Yam*,¹⁸⁶ that the plaintiff should liquidate the partnership and bring a subsequent action against the administrator of the manager's estate, not against the heirs, for the recovery of whatever the deceased defendant had misappropriated from the partnership fund. Furthermore, assuming that the heirs were the proper party, the action could still not prosper for lack of prosecution on the part of the plaintiff. If he were genuinely interested in the substitution of the proper party, he should not have remained inactive for almost ten years and should have adopted timely measures to have the administratrix qualify, or in the case of her failure or refusal to do so, should have procured the appointment of another administrator.¹⁸⁷

In passing, it becomes appropriate to comment on the proper procedure to be followed in the liquidation of a partnership after its dissolution. As a general rule, a partnership dissolved without violating in any way its articles of partnership may be wound-up by

¹⁸⁶ 44 Phil. 172.

¹⁸⁷ Sec. 6, Rule 80, Rules of Court provides that "letters of administration may be granted to any qualified applicant, though it appears that there are other competent persons having better right to the administration, if such persons fail to appear when notified and claim the issuance of letters to themselves."

any or all of the partners,¹⁸⁸ and in the absence of any agreement to the contrary, the surplus after the liabilities are paid shall be divided among the partners in cash.¹⁸⁹ However, when the association is dissolved in contravention of some partnership agreement, the innocent partners shall have the right to discharge the partnership liabilities and the surplus distributed among the partners,¹⁹⁰ and shall also possess some other rights as granted by law.¹⁹¹

Notwithstanding these general principles, the duty of the liquidator should be discharged by the managing partner.¹⁹² In case of refusal by the latter to act accordingly, the other members of the firm have a "clean legal right to compel him to fulfill" his duty.¹⁹³ The death of the managing partner, however, obligates the surviving partners to liquidate, and action may be brought against the manager's estate for assets in his hands.¹⁹⁴

The partners shall divide the surplus assets upon the liquidation having been properly accomplished and after the partnership property has been applied to discharge its liabilities.¹⁹⁵ Heirs of any of the partners shall be entitled only to the surplus after the firm's debts are paid and its affairs wound up.¹⁹⁶

¹⁸⁸ See Art. 1837, Civil Code.

¹⁸⁹ *Supra*. "The right given to each partner, where no agreement to the contrary has been made, to have his share of the surplus paid to him in cash makes certain an existing uncertainty. At present, it is not certain whether a partner may or may not insist on a physical partition of the property remaining after third persons have been paid." (CAPISTRANO, CIVIL CODE OF THE PHIL., Vol. IV, p. 308).

¹⁹⁰ See 2nd par., Art. 1837, Civil Code.

¹⁹¹ *Supra*.

¹⁹² *Lichauco vs. Lichauco*, 33 Phil. 35.

¹⁹³ "The association having been dissolved by the termination and abandonment of the enterprise for which it was organized, he (managing partner) owed this duty to liquidate and account to all and to each of his associates, and upon his failure to perform that duty, all or any of them had a clean legal right to compel him to fulfill it." *Lichauco vs. Lichauco*, 33 Phil. 350, 358.

¹⁹⁴ According to *Po Yeng vs. Lim Ka Yam*, 44 Phil. 172, when the manager of a partnership dies the duty of liquidating it devolves upon the surviving member, or members, of the firm and not upon the legal representative of the deceased member.

¹⁹⁵ Art. 1837, Civil Code, provides that "each partner... unless otherwise agreed, may have the partnership property applied to discharge its liabilities and the surplus applied to pay... the net amount owing to the respective partners."

¹⁹⁶ *Bearneza vs. Dequilla*, 43 Phil. 237, ruled that the partnership having been dissolved by the death of a partner, its subsequent legal status was that of a partnership in liquidation, and the only rights inherited by the testamentary heir were those resulting from the said liquidation in favor of the deceased partner, and nothing more. Before this liquidation is made which up to the present has not been effected, it is impossible to determine what rights or interests, if any the deceased had, the partnership bond having been dissolved.

Valentin vs. Wysor, 23 N. E. 1076, had the same ruling when it stated that the

In the light of the foregoing doctrines and having in mind the facts in the instant case of *Lota vs. Tolentino*, the plaintiff's counsel in the said case commenced properly when he brought the action for liquidation against the managing partner after the dissolution of partnership,¹⁹⁷ and asked the court upon the death of the plaintiff to substitute the administrator¹⁹⁸ who could "bring or defend, in the right of the deceased, actions for causes which survive."¹⁹⁹ But his prosecution of the case after the death of the defendant was inconsistent with the provisions of law²⁰⁰ and contrary to the policy established by the Supreme Court.²⁰¹

AGENCY

The well-settled and salutary principle that the person who undertakes to act for another shall not, in the same matter act for himself or be permitted to capitalize on his fiduciary position to mulct or take advantage of his principal or employer was illustrated in the case of *Paulino Dumaguin vs. A. I. Reynolds, E. J. Harrison and Big Wedge Mining Company*.²⁰² There the plaintiff claims ownership over the mining claims he located for his employers Reynolds and Harrison. According to Justice Carlos to permit the

rights of the heirs of a deceased partner in the firm property are subject to the adjustment of all claims between the partners, and attach only to the surplus which remains when the firm debts are all paid and its affairs wound up.

¹⁹⁷ See *Lichauco vs. Lichauco*, 33 Phil. 350.

¹⁹⁸ Sec. 17, Rule 3, Rules of Court: "After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of 30 days, or within such time as may be granted. . . ."

¹⁹⁹ Sec. 2, Rule 88, Rules of Court: "For the recovery or protection of the property or rights of the deceased, an executor or administrator may bring or defend, in the right of the deceased, actions for causes which survive." The words "for the recovery or protection of the property or rights of the deceased," as grounds for an action by or against an executor or administrator, are broad enough to comprehend not only an action to compel the performance of a contract executed by the deceased, but any other action which may affect his property or rights. Thus, it is the right of an administrator to sue upon any cause of action which accrued to the decedent during his lifetime. II MORAN, COMMENTS ON THE RULES OF COURT, 1st ed., p. 235.

²⁰⁰ See Sec. 3, Rule 88, Rules of Court. MORAN, *op. cit.*, p. 237, stated that if the deceased turns out to have debts, the creditor or the heirs themselves may initiate a special proceeding, and once an administrator or executor is appointed, any action concerning the rights or property of the deceased may be brought by or against the administrator and not by or against the heirs of said deceased.

²⁰¹ See *Po Yeng Cheo vs. Lim Ka Yam*, G. R. No. L-3518, prom. February 29, 1952, which in part said: "What plaintiff and his legal representative insisted on doing . . . is . . . a procedure which runs counter to that set out in *Po Yeng vs. Lim Ka Yam* case. But even in this, plaintiff, . . . proceeded half-heartedly . . ."

²⁰² G. R. No. L-3572, prom. Sept. 30, 1952.

plaintiff to assert his claim of ownership over the claims in question would be tantamount to allowing him to infringe all the sound and age-old rules which govern principal and agent.²⁰³

COMPROMISE

The scope of Article 1816 of the old Civil Code²⁰⁴ was defined by the Supreme Court in the case of *Dominga Salazar et al. vs. Fausto Jarabe*.²⁰⁵ A compromise agreement was there entered into between the attorney of the plaintiff and the defendant regarding the parcel of land which was the subject of the controversy. The compromise was confirmed by the Justice of the Peace of Mindoro. After a considerable period of time the plaintiff brought action to recover the same parcel of land from the defendant. The latter pleaded the compromise agreement. The plaintiffs impugned the validity of the compromise on the ground that attorneys cannot without special authority compromise their client's litigation.²⁰⁶

The Supreme Court speaking through Justice Tuason said that section 21 of Rule 127 notwithstanding, laches may operate to validate an agreement invalid at its inception, as when the client on becoming aware of the compromise fails to repudiate promptly the

²⁰³ MECHEM ON AGENCY, sec. 1224:

"The principle that person who undertakes to act for another shall not, be in the same matter, act for himself, results also in the other rule, that all profits made and advantage gained by the agent in the execution of the agency belong to the principal. And it matters not whether such profit or advantage be the result of the performance or of the violation of the duty of the agent if it be the fruit of the agency. If his duty be strictly performed, the resulting profit accrues to the principal as the legitimate consequence of the relation; if profit accrues from his violation of duty while executing the agency, that likewise belongs to the principal, not only because the principal has to assume the responsibility of the transaction, but also because the agent cannot be permitted to derive advantage from his own default.

"It is only by rigid adherence to this rule that all temptation can be removed from one acting in a fiduciary capacity, to abuse his trust or seek his own advantage in the position which it affords him."

²⁰⁴ Now Art. 2037, new Civil Code.

²⁰⁵ G. R. No. L-4659, prom. July 11, 1952.

²⁰⁶ Section 21 of Rule 127 provides:

"Authority of attorneys to bind clients.—Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash." See *Sons of de la Rama vs. Estate of Benedicto*, 5 Phil. 512; *Natividad vs. Natividad*, 51 Phil. 613; *Tan Lua vs. O'Brien*, 55 Phil. 53; *Rodriguez vs. Santos*, 55 Phil. 721; *Monte de Piedad vs. Fernando Rodrigo*, 56 Phil. 310; *Alviar vs. Court of First Instance of La Union*, 64 Phil. 301; and *Angeles Rodriguez et al. vs. The Honorable Court of First Instance of Rizal, et al.* G. R. No. L-3762.)

action of his attorney. The main ground relied on, however, was Article 1816 of the old Civil Code²⁰⁷ which provided that "a compromise shall have with respect to the parties, the same authority as *res adjudicata*; although only a compromise made in court may be enforced by execution."

A compromise agreement may have gone beyond the issues of the case; nevertheless, it is settled that it has with respect to the parties, the same authority as *res judicata*,²⁰⁸ because a compromise of any matter is not the settlement of a valid claim alone but of the controversy, including all its incidents and ramifications.²⁰⁹

Justice Feria, in his dissenting opinion, stated that the compromise entered into by the parties was a judicial compromise because the justice of the peace approved it. That said compromise was null and void because no amount of laches²¹⁰ not even express consent²¹¹ may offer jurisdiction upon the Justice of the Peace over the question of title to ownership.²¹²

SURETYSHIP

In a contract of suretyship, as in other contracts, the parties are free to stipulate and agree on such conditions as they may see fit; provided that such stipulations are not contrary to law, morals, or public policy. When the parties stipulate in the bond that "it will be cancelled ten days after its expiration unless the surety is notified of any existing obligations thereunder, or unless the surety renews or extends it in writing for another term," this stipulation is a condition precedent and failure to fulfill the condition discharges the surety.²¹³

Visayan Distributors, Inc., vs. Mariano R. Flores, et al.,²¹⁴ reiterated the ruling that advance payment could not adversely affect

²⁰⁷ Now Article 2037, new Civil Code of the Philippines.

²⁰⁸ *Castillo vs. De Gala*, 40 Off. Gaz., 2283.

²⁰⁹ *McCarthy vs. Barber Steamship Lines*, 45 Phil. 488.

²¹⁰ See *Tipton vs. Velasco*, 6 Phil. 67; *Salunga vs. Gutierrez*, 20 Phil. 270.

²¹¹ *Consent of Parties*. The agreement or consent of the parties cannot give the court the right to adjudicate upon any cause of action or subject matter which the law had withheld from its cognizance, and in such cases the judgment is void notwithstanding such consent. (33 C. J., pp. 1077).

²¹² (a) See section 88 of the Judiciary Act of 1948.

(b) Court must have jurisdiction.—A judgment, to be *res adjudicata*, must be valid. If it is void because of want of jurisdiction of the subject matter or of the parties, it cannot operate as an adjudication of the controversy. (*Gotamco vs. Chan Seng et al.*, 46 Phil. 532; *Smith vs. McMeal*, 109 U. S. 426, 27 L. ed. 986).

²¹³ *National Rice and Corn Corporation vs. Rivera et al.*, G. R. No. L-4023, prom. February 29, 1952.

²¹⁴ G. R. No. L-3751, prom. October 25, 1952.

the position of the surety or render the obligation more onerous, and therefore could not have the effect of releasing the bond.²¹⁵

TORTS

A distinction exists between civil liability arising from a crime and the responsibility for culpa-extra-contractual. The same negligent act causing damages may produce civil liability arising from a crime under article 100 of the Revised Penal Code, or create an action for cuasi-delitos or culpa-extra-contractual under Articles 1902-1910 of the Civil Code.²¹⁶ If the defendant instituted a criminal action, her failure to reserve the right to institute a separate civil action in the criminal case will not necessarily constitute a bar to the institution of the civil action based on contractual liability or culpa-aquiliana under Articles 1902-1910 of the Civil Code.²¹⁷

Defense

*O'Connell Bros. Co. vs. Francisco Aduna and Ex-Meralco Employees Transportation Co.*²¹⁸ reiterated the ruling that the defense of having exercised the diligence of a good father of the family is available only in cases covered by Articles 1902 and 1903 of the old Civil Code and not in cases covered by the Revised Penal Code.²¹⁹

Nature of Employers' Liability

If the plaintiffs chose to rely upon the provisions of the Revised Penal Code²²⁰ and base their action on the result of the criminal case against the employee, the liability of the employer is mere subsidiary.²²¹ The primary liability attaches only if the civil action is founded on Article 1903 of the old Civil Code.²²²

The attractive nuisance doctrine.

Trespassers, in all times and at all places, have no one but themselves to blame for any untoward incidents which may happen in the course of such trespass. To this, however, we find an exception in

²¹⁵ *Bank of the Phil. Islands vs. Albaladejo y Cia.*, 53 Phil. 141; *Bank of the Phil. Islands vs. Gooch et al.*, 45 Phil. 514.

²¹⁶ Now Articles 2176-2194 new Civil Code of the Philippines. See *Bernardo vs. Garcia and Almario*, 73 Phil. 607.

²¹⁷ *Asuncion Parker vs. Hon. A. J. Panlilio*, G. R. No. L-496, prom. March 5, 1952; *Anita Tan vs. Standard Vacuum Oil Co., Domingo and Rural Trinidad Co.*, G. R. No. L-4160, prom. July 29, 1952.

²¹⁸ G. R. No. L-4057, prom. March 31, 1952.

²¹⁹ See *Arambulo vs. Manila Electric Co.*, 55 Phil. 77.

²²⁰ See Article 1092, old Civil Code.

²²¹ Articles 102 and 103, Revised Penal Code.

²²² See Article 2180, Civil Code of the Philippines.

the Attractive Nuisance doctrine²²³ where the owner of the land is held liable. The liability of such owner rests, in the ultimate analysis on the knowledge that children of tender years, curious and inquisitive, may come in contact within their premises, with things alluring or tempting to them, possibly harmless in appearance but which, are harmful and dangerous if meddled with.²²⁴ Does the maintenance of a water tank within one's premises make the owner liable for any injury as a result thereof?

This was the question which confronted the court in *Hidalgo Enterprises Inc. vs. Balandan*.²²⁵ The plaintiff company was the owner of an ice plant factory. Within its compound are found 2 nine-foot deep water tanks used to cool its engine. While the factory compound was fenced, the tanks had neither railings nor top covers. The gates to the compound were continually open, where vehicles, men and children streamed in and out, unhampered. One eventful day, several boys entered the compound to bathe in said tanks, which resulted in the drowning of one of them. An action for damages was filed which was granted by the trial court on the ground that the company maintained an attractive nuisance within its premises and neglected to adopt such measures as are necessary to avoid accidents to those entering the premises, especially curious children.

In reversing the decision on appeal by certiorari, and holding that the Attractive Nuisance Doctrine²²⁶ was misapplied, the Supreme Court resorted to American jurisprudence. The doctrine, being of Anglo-American origin, reference to American decisions on the subject was fitting and proper²²⁷ especially considering the fact that Philippine precedents on the subject are meagre.

²²³ The Attractive Nuisance doctrine is that "one who maintains instrumentalities or appliances on his premises of a character likely to attract children in play, or permits dangerous conditions to remain thereon with the knowledge that children are in the habit of resorting thereto for amusement, is liable to a child *non sui juris* who is injured therefrom." BALLANTINE, LAW DICTIONARY, 1948 Ed., p. 125.

²²⁴ Annotation, 29 A. L. R. 876.

²²⁵ G. R. L-3422, prom. June 13, 1952.

²²⁶ Attractive Nuisance, defined. See note 1, *supra*.

²²⁷ "When the legislature of a State has used a statute of another state or country as a guide for the preparation and enactment of a statute, the courts of the adopting state will usually adopt the construction placed on the statute in the jurisdiction of its inception. The reason for this rule is that in adopting the statute, the legislature is presumed to have adopted the construction which has been put on the statute by the courts of the state of its origin." II SUTHERLAND, STATUTORY CONSTRUCTION, 3rd Ed. by Frank Horack Jr., pp. 551-552, Sec. 5209.

The case of *Taylor vs. Manila Electric Co.*²²⁸ recognized the existence of such doctrine in the Philippines.²²⁹ In said case, the Meralco was held liable for injuries suffered by a 15-year old boy in an explosion resulting from his application of a lighted match to the contents of several fulminating caps which he picked up from defendant's open and unguarded premises. It must be observed however, that the company therein was exempted from liability on the ground that it was plaintiff's action which constituted the proximate cause of his injury.²³⁰

The attractive nuisance doctrine applies only when the instrumentality or condition involved is dangerous and unusual and of such a nature as to render it attractive to children.²³¹ But not every instrumentality attractive to children fall under this doctrine,²³² otherwise the rule would result in absurdities²³³ as there is practically no limit to what may attract children.²³⁴ It is difficult if not impossible to accurately define what is such an attractive nuisance as to make the owner responsible for youth's irresponsibility.²³⁵

The attractive nuisance doctrine generally has not been applied to bodies of water,²³⁶ both natural and artificial²³⁷ in the absence of some unusual condition or feature other than the water and its loca-

²²⁸ 16 Phil. 8.

²²⁹ "Plaintiff contends, upon the authority of the Turntable and Torpedo cases, that because of plaintiff's youth, the intervention of his action between the negligent act of defendant in leaving the caps exposed on its premises and the explosion which resulted in his injury should not be held to have contributed in any wise to the accident; and it is because we cannot agree with this proposition, although we accept (italics supplied) the doctrine of the Turntable and Torpedo case (also known as the Attractive nuisance doctrine) that we have thought proper to discuss and to consider the doctrine at length in this decision. *Taylor vs. Meralco*. See note 228, *supra*, p. 23.

²³⁰ We think it is quite clear that under the doctrine thus stated (doctrine of proximate cause), the immediate cause of the explosion, the accident which resulted in plaintiff's injury, was his own act in putting a match to the contents of the cap, and that having "contributed to the principal occurrence, as one of its determining factors, he cannot recover."

²³¹ *Burns vs. City of Chicago*, 169 NE 811, 813; *Pollard vs. McGreggors*, 195 So., 736, 738; *Anderson vs. Reith-Riley Const. Co. Inc.*, 44 NE 2d 184, citing *Drew vs. Lett*, 182 NE 547; *Harris vs. Ind. Gen. Service Ice Co.*, 189 NE 410, 413.

²³² *Jarvis vs. Howard*, 219 SW 2d 958, 960.

²³³ *Vincent vs. Barnhill*, 34 So. 2d. 363, 365; *Bonhomie & H. S. Ry. Co. vs. Hinton*, 124 So. 271-272; *Hayko vs. Colorado Coal Co.*, 235 P. 373, 374.

²³⁴ *Vincent vs. Barnhill*, see note 11, *supra*; *Harris vs. Winston-Salem Southbound Ry. Co.*, 18 SE 2d. 204, 206.

²³⁵ *Von Almen's Adm'r vs. Louisville*, 202 SW 880, 882; 36 ALR 125.

²³⁶ *King vs. Simmons Brick Co.*, 126 P. 2d. 627, 629; *Peters vs. Bowman*, 47 P. 113, 114; *Melendez vs. City of Los Angeles*, 68 P. 2d. 971, 973-974.

²³⁷ *McCall vs. McCallie*, 171 SE 843, "Attractive nuisance doctrine does not apply

tion.²³⁸ Hence streams,²³⁹ swimming pools,²⁴⁰ water tanks,²⁴¹ ponds and reservoirs²⁴² have been exempt from the application of this rule. The reason for this is that while said bodies of water may attract children and lure them to play in the water, the children are presumed to have received early instruction against the dangers attendant thereto.²⁴³

The tanks herein, not being attractive nuisance, the question of reasonable precaution is immaterial.²⁴⁴

There was a dissenting opinion by Justice Pablo to the effect that the petitioner should have taken reasonable precautions and other measures to avoid dangers resultant from the maintenance of watertanks in his premises which attract curious youngsters.²⁴⁵

DAMAGES

Moral Damages.

Moral damages,²⁴⁶ though incapable of pecuniary computation²⁴⁷

where the thing or condition complained of is a natural condition or reproduction thereof." *Zagar vs. Union P. R. Co.*, 214 Pac. 107, 108.

²³⁸ *McCall vs. McCallie*, see note 237, *supra*.

²³⁹ *Denver Tramway Corp. vs. Callaghan*, 150 P. 2d. 798, 800.

²⁴⁰ *Hecht vs. Moines Playground & Recreation Assn.*, 287 NW 259, 265; *Swan vs. Riverside Bathing Beach Co.*, 294 P. 902.

²⁴¹ *Dolena vs. Pittsburg Terminal Coal Co.*, 324 Pa. 228.

²⁴² *Vincent vs. Barnhill*, see note 233, *supra*; *Polk vs. Laurel Hill Cemetery Assn.*, 36 ALR 244.

²⁴³ *Anderson vs. Reith-Riley Const. Co.*, 44 NE 2d 184, 185—"Nature has created streams, lakes and pools which attract children. Lurking in their waters is always the danger of drowning. Against this danger children are early instructed so that they are sufficiently presumed to know the danger; and if the owner of private property creates an artificial pool on his own property, merely duplicating the work of nature without adding any danger, . . . (he) is not liable because of having created an 'attractive nuisance.'" *Evansville vs. Blue*, 8 NE 2d. 224, 229.

²⁴⁴ *Hidalgo Enterprises vs. Balandan*, see note 225, *supra*.

²⁴⁵ Pablo, dissenting: Es evidente que la recurrente debio haber cercado dichos estanques como medida ordinaria de precaucion para que los niños de corta edad no puedan entrar, tanto mas cuanto que los bordes de esos estanques solo tienen un pie de altura sobre la superficie de terreno. El cerco puesto en el perimetro del solar, con puerta continuamente abierta, no es suficiente medida para impedir que los niños puedan meterse en los estanques: Ese cerco con su puerta abierta es como un velo transparente con que se cubre una mujer semidesnuda en un teatro, pica la curiosidad y atrae la atencion de publico." *Hidalgo Enterprise vs. Balandan*, see note 225, *supra*.

²⁴⁶ Art. 2217—"Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury." (Civil Code). "It includes any and all damages that a human being may suffer in any and all the manifestations of his life: Physical or material, moral or psychological, mental or spiritual, financial, economic, social, political, religious." (Perfecto, J., concurring in the case of *Castro vs. Acro Taxicab Co.*, 46 O. G. 2023.)

²⁴⁷ "In truth the admeasurement of suffering in terms of money is a most clumsy

are recoverable if they are the proximate result²⁴⁸ of the defendants' wrongful act or omission. This is indicative of the ancient maxim that when there is a wrong there is a remedy.²⁴⁹ It is unquestionable that the loss or injury occasioned by grief, anxiety, worry or mental anguish "is just as real as in other cases."²⁵⁰ What need be done therefore is to show the commission of the wrongful act or omission and that the moral damage was the proximate result therefrom.²⁵¹

In the case of *Enrique Layda vs. The Honorable Court of Appeals and Alfredo Brillantes*,^{251a} the petitioner, Enrique Layda, a passenger in the truck owned by Alfredo Brillantes which was driven by Jesus Bayona, was injured as a result of the collision of the truck with the side of a mountain. After 14 days of confinement in the hospital, Layda was released, but as he was not yet feeling well, he decided to submit to another x-ray examination by Dr. Daniel Ledesma, who found a green-stick fracture on the 8th and 9th ribs. These ribs took 3 months to solidify and return to their normal condition. Since the accident occurred Layda could not work, and

device; but it is the best device which the law will employ until something better is discovered. To forbid the consideration of these other elements of mental suffering because the scales are not sufficiently delicate for their admeasurement is equally to condemn the use of the scales in the very cases and for the very purposes now admittedly sanctioned by law." (*Merrill vs. Los Angeles Gas & Electric Co.*, 111 Pac. 534, 540.

²⁴⁸ Art. 2219, R. A. 386 and Art. 2220 also provides other instances wherein moral damages may be recovered.

²⁴⁹ Report of the Code Commission, p. 74.

²⁵⁰ Report of the Code Commission, p. 74; "Damages for mental anguish are not remote. They are direct and consequential." (*Merrill vs. Los Angeles Gas & Elec. Co.*, at p. 540, see note 249, *supra*).

²⁵¹ Whether the moral damages was the proximate result of the wrongful act or omission is the subject of divided decisions in the United States. Important to note is the case of *Linn vs. Duquesne Borough*, 204 Pa. 551; 54 Atl. 341; 93 Am. St. Rep. 2800; holding "anguish of mind, wholly sentimental, arising from a contemplation of a disfiguring of person, cannot be considered for the purpose of swelling damages . . ." In the legal sense "pain and anguish of mind" are confined to "such pain and anguish of mind as occur necessarily and spontaneously from any injury of or shock to the nerves of sensation or such pain and anguish as remain during the continuance of the original and exciting cause and arising therefrom. But where the injury only comes about by reflection or contemplation, then, in the legal sense, it is not caused by the injury, but arises and is produced by a combination of causes other than the injury."

In the *Merrill* case (see note 249 at p. 540, *supra*) the following was enunciated: "Physical pain is but one of many forms of mental suffering. If the law contemplated an award of damages solely for physical pain, it is meaningless to say that recovery may also be had on mental suffering. It is equally meaningless to say that the mental suffering must be that occasioned by the physical pain for then the latter phrase would alone be sufficient to convey the full meaning of the law."

^{251a} G. R. No. L-4487, prom. Jan. 29, 1952.

suffered pains for nearly six (6 months). An action for damages was brought against Brillantes. The lower court found Brillantes guilty of negligence and awarded the petitioner ₱4,000 moral damages and ₱915.00 actual damages. On appeal, the Court of Appeals affirmed the judgment "a quo" but reduced the moral damages to ₱500.00 and the actual damages to ₱495.55.

In the adjudication of moral damages, the very nature of moral damages as being incapable of exact pecuniary computation²⁵² renders it imperative for the courts to exercise a wide degree of discretion in determining the amount of the award. The court has to put itself in the injured party's place²⁵³ and take into account the different circumstances of the case. The injured party's reputation for beauty,²⁵⁴ his relations to his family,²⁵⁵ his or her matrimonial future,²⁵⁶ social standing,²⁵⁷ economic and financial stature, his nervous temperament, ability to stand shock, his age, "the nature of his injuries, whether permanent or not,"²⁵⁸ plays an important part. In this case, the Supreme Court took into consideration the circumstances surrounding the injury^{258a} in awarding to the petitioner the amount of ₱4,000 as moral damages. This decision is to be distinguished from the decision in the Acro Taxicab case.²⁵⁹ Both cases have a "marked parallelism" of facts and circumstances.

²⁵² Art. 2217, R. A. 386.

²⁵³ "It is mere self-stultification to believe that it will do other than to make up its verdict under the rule which, while not one at law is one of well-nigh universal human conduct, the rule of 'Put yourself in his place.'" (*Merrill vs. Los Angeles Gas & Elec. Co.* at page 540, see note 249, *supra*).

²⁵⁴ *Lilius vs. Manila Railroad Co.* (59 Phil. 758) where ₱10,000 was awarded for a permanent deformity on the face and left leg of a young and beautiful society woman.

²⁵⁵ "Worry and anxiety over the future of his family would be a great element of mental suffering to a man dependent upon his own exertions for his and their support." (*Merrill vs. Los Angeles Gas & Elec. Co.* at p. 540, see note 249, *supra*).

²⁵⁶ *Lilius vs. Manila Railroad Co.* (see note 254, *supra*), where ₱5,000 was awarded for a permanent deformity on the face and legs of a four-year old girl which ruined her matrimonial future.

²⁵⁷ "It would not constitute any element of suffering to a man of abundant means and wealth, identically injured." (*Merrill vs. Los Angeles Gas & Elec. Co.* at p. 540, see note 249, *supra*).

²⁵⁸ *Merrill vs. Los Angeles Gas & Elec. Co.* (at p. 540, see note 249, *supra*).

^{258a} Petitioner was thrown out of the truck and fell unconscious with blood streaming from his nose and mouth. He had internal hemorrhage, pains on the right chest aggravated by bleeding and coughing. He developed traumatism of the chest. . . . He had three fractured ribs and suffered pains for nearly six months.

²⁵⁹ "In the Acro Taxicab case, see note 246, *supra*, the offended party suffered less physical suffering than the petitioner in the case at bar. He did not fall from the taxi. He never lost consciousness, and had no internal or external hemorrhage. He

The Supreme Court supported its decision by the precedent set in the cases of *Lilius vs. Manila Railroad* and *Gutierrez vs. Gutierrez*.²⁵⁹ In the latter case the "defendants were sentenced to indemnify the plaintiff in the sum of ₱5,000 as moral damages in spite of the fact that said plaintiff "was neither young nor good looking, nor had he suffered any facial deformity, nor did he have the social standing" that Sonya Maria Lilius enjoyed. Attention is called to the pertinent part of the decision in the instant case, to wit: "It is true that petitioner is a mere farm laborer, while the plaintiff in the Acro Taxicab case was a general utility man, but this difference in their position or earning capacity cannot be considered of significance for the reason that in the determination of moral damages, the human value and the dignity of man are of paramount consideration." A marked shift from adjudicating moral damages on the basis of social position or earning capacity to the higher category of human value and dignity of man seems to indicate the present position which our Supreme Court has taken with respect to moral damages.

Special Damages in Transportation Contracts.

The damages²⁶⁰ recoverable upon breach of contract are, primarily, the ordinary, natural and in a sense the necessary damages resulting from the breach.²⁶¹ Other damages, known as special damages,²⁶² are also recoverable, where it appears that the particular

looked so well that he only stayed in the hospital for a few days." ₱3,000 was awarded for physical and mental suffering in this case.

²⁵⁹ 56 Phil. 177.

²⁶⁰ "In legal contemplation the term 'damages' is the sum of money which the law awards or imposes as pecuniary compensation, recompense, or satisfaction to an injury done or a wrong sustained as a consequence either of a breach of a contractual obligation or a tortious act." (*Fay vs. Parker*, 16 Am. Rep. 270). The law on damages is found in Title 18, Book 4, of the new Civil Code. The provisions contained in said Title are applicable to all kinds of obligations whether arising from law, contract, quasi-contract, quasi-delicti or crimes. (Article 2195, Civil Code.)

²⁶¹ "The damages which the plaintiff is entitled to recover in a civil action for damages are, in the absence of any statutory modification of the rule, such only as are the natural and probable consequences of the wrongful act or breach of contract. The law of damages is not concerned with the effect of remote causes, but only with those consequences of which the act complained of is the natural and proximate cause—that is, those which naturally and proximately flow from the original wrongful act. No rule of damages embraces within its scope all the resulting consequences of a given act. The effect would be to impose a liability entirely disproportionate to the act committed or to the failure to perform the duty assumed." (*Hunt Bros. vs. San Lorenzo Water Co.*, L. R. A. 913. See also *Garlan vs. Carolina*, L. R. A., 1917B, 706).

²⁶² "The term 'special damages' denotes such damages as arise from the special circumstances of the case. Special damages are the natural, but not the necessary result of an injury; or, in other words, such damages as actually, but not necessarily result

conditions which made such damages a probable consequence of the breach were known to the delinquent party at the time the contract was made. This is not so where such special damages are, in the legal sense, remote or speculative.²⁶³

The case of *Jose Mendoza vs. The Philippine Air Lines*^{263a} which reaffirms the above doctrine, relates to an action for the recovery of damages arising from the failure of the defendant to unload at its airport the film consigned to a theater. Appellant Mendoza was the owner of the theater located in the city of Naga. The fiesta of the City held on September 17 and 18, is generally attended by a great many people. Appellant, taking advantage of these circumstances, decided to exhibit a film which befits the occasion. He contracted with the LVN Pictures Inc., for a film intended to coincide with the City Fiesta and advertised the film through posters and the newspapers. The LVN Pictures, delivered to the defendant the film consigned to the theater on September 17th. Because of the negligence of the defendant's employees the film was not unloaded at Naga but was brought back to Manila and in spite of the telegrams requesting it to forward said film it did not do so until September 20th, when the fiesta was over.

Affirming the judgment denying recovery, the Supreme Court explained that Mendoza's action is based on a breach of a contract of transportation.²⁶⁴ Because of this contractual tie or relation, the rules of contracts in determining the rights and obligations of each of the parties were applied. While the defendant was negligent because it failed to unload the film at its point of destination, fraud²⁶⁵

from the injury, and so are not implied by law." (*Enrich Bowman Remedy Co. vs. Jensen Salsbery Laboratories*, 52 A. L. R. 1187).

²⁶³ *Daywalt vs. Corporation de PP. Agustinos Recoletos*, 39 Phil. 589.

^{263a} G. R. No. L-3678, prom. February 29, 1952.

²⁶⁴ "Transportation includes all instrumentalities of shipment and carriage." (*Interstate Commerce Commission vs. Brimson*, 154 U.S. 447. "It includes not only physical instrumentalities but all services in connection with receipt, delivery and handling of property transported." (BALLENTINE'S LAW DICT. 1295). "Common carriers are persons, corporations, firms or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their service to the public. (Article 1732, Civil Code.)

²⁶⁵ Respondent's Brief, page 22, citing the decision of the lower court, which was sustained by the Supreme Court to wit: "Negligence necessarily is inconsistent and diametrically opposed to fraud and bad faith. Fraud and bad faith imply manifest and deliberate intent to injure, while negligence implies merely lack of foresight or the failure to exercise that degree of diligence required by the circumstances and nature of the obligation." "In negligence, the actor does not desire to bring about the consequences which follow, or believe that they will occur, but a reasonable man in his

was not involved, so said the court, hence the defendant was a debtor in good faith, liable only for those damages which were foreseen or which have been foreseen, at the time of constituting the obligation, and which are a necessary consequence of the failure to perform it.²⁶⁶ The damages which were sought to be recovered were considered by the Supreme Court as special damages inasmuch as it did not result directly from the breach and could not be reasonable foreseen by the defendant. Applying the theory of special damages the claim was denied for the reason that neither the shipper nor the consignee had called attention of the defendant to the special circumstances attending the shipment and the showing of the film during the City Fiesta which would make such damages a probable consequence of the breach.

The doctrine reaffirmed in this recent case merely confirms the wise practice suggested in an array of previously decided cases in other jurisdictions.²⁶⁷

position would anticipate them, and guard against them." (PROSSER ON TORTS, p. 170, see also *Picart vs. Smith*, 37 Phil. 813).

²⁶⁶ Article 2201, Civil Code. "In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted. In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation."

²⁶⁷ In *Chapman vs. Fargo*, L. R. A. 1918F, p. 1049, the general rule is that before a defendant could be held to pay special damages, such as the present alleged loss of profits on account of delay or failure of delivery, it must have appeared that he had noticed at the time of delivery to him of the particular circumstances attending the shipment, and which probably would lead to such special loss if he defaulted. In the same vein, is the decision of the English Court of Exchequer in the cases of *Hadley vs. Baxendale*, 9 Exch., 341 as cited in *Daywalt vs. Corporacion de PP. Agustinos Recoletos*, p. 604 (*supra*) and *Horne vs. Midland R. Co.*, L. R., 8 C. P., 131 as cited in *Daywalt vs. Corporacion de PP. Agustinos Recoletos*, p. 604 (*supra*), cited with approval by our Supreme Court in *Daywalt vs. Corporacion de PP. Agustinos Recoletos*, 39 Phil. 604. Adopting the ratio decidendi of these cases our Supreme Court in the *Daywalt* case laid down the criterion for the determination of the type of damage and the conditions *sine qua non* for its recovery (In the case of *Daywalt vs. Corporacion de PP. Agustinos Recoletos*, at p. 605, it was held that "the damages recoverable in case of breach of a contract are two sorts, namely, (1) the ordinary, natural, and in a sense necessary damage; and (2) special damages. Ordinary damages is found in all breaches of contract where there are no special circumstances to distinguish the case specially from the other contracts. In all such cases the damages recoverable are such as naturally and generally would result from such a breach 'according to the usual course of things.' In cases involving only ordinary damage no discussion is ever indulged as to whether that damage was contemplated or not. This is conclusively presumed from the immediateness and inevitableness of the damage, and the recovery of such damage follows as a necessary legal consequence of the breach. Ordi-

nary damage is assumed as a matter of law to be within the contemplation of the parties. Special damage, on the other hand, is such as follows less directly from the breach than ordinary damage. It is only found in case where some external condition, apart from the actual terms to the contract exists or intervenes, as it were, to give a turn to affairs and to increase damage in a way that the promisor, without actual notice of that external condition, could not reasonably be expected to foresee."