NOTES ON RECENT DECISIONS

CIVIL LAW—

I. FRAUD THAT NULLIFIES CONTRACT

Dolo causante [1] nullifies a contract.[2] *Dolo incidente* [3] does not. The problem that usually confronts the court is: When is fraud *causante* and when *incidente?*

In *Woodhouse v. Halili,*[4] the court, in attempting to arrive at the answer, sought the purpose for which consent was given. Plaintiff Charles Woodhouse and defendant Fortunato Halili agreed to form a partnership for the bottling and distribution of Mission soft drinks in the Philippines on condition that plaintiff would transfer to the partnership his exclusive franchise from the Mission Dry Corporation of the United States. Plaintiff was to receive 30 *per cent* of the net profits. Actually, however, plaintiff had only an option on the franchise, and such option had expired. Defendant was able to obtain the franchise from the American corporation. When the bottling plant was already in operation, plaintiff demanded of defendant that the partnership papers be executed. Defendant refused and this action was brought to compel execution of the contract of partnership and accounting of profits and damages.

There was no necessity for the court to determine whether Woodhouse's misrepresentation as to his ownership of the franchise is one which nullifies the contract (*dolo causante*) or one which merely calls for damages (*dolo incidente*). A discussion on this matter would seem to be purely academic because the court later found that the contract was an executory one. What defendant promised to do was a "very personal act," hence, he "may not be compelled against his will to carry out the agreement nor (*sic*) execute the partnership papers."

The court's distinction between *dolo causante* and *dolo incidente,* however, merits more than passing attention. Justice Alejo Labrador, speaking for the court, declared:

> "The record abounds with circumstances indicative of the fact that the principal consideration, the main cause that induced defendant to en-

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[1] "*Dolo causante* is that fraud without which the contract would not have been executed, or that which affects the essence of the same or the substance of the thing which is the object of the contract." 4 SANCHEZ ROMAN 197, cited in III PADILLA, CIVIL LAW (1953), 481. "There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to." Art. 1338, Civil Code of the Philippines.

[2] 4 SANCHEZ ROMAN, 197, *supra.*

[3] *Dolo incidente* is that fraud which does not have the effect of *dolo causante,* but consists of the deceit used by one party upon the other which is inconsistent with the priniciple of good faith. 4 SANCHEZ ROMAN, 197. "Incidental fraud only obliges the person employing it to pay damages", Art. 1344, par. 2, Civil Code of the Philippines.

[4] G. R. No. L-4811, prom. July 31, 1953.

> ter into the partnership agreement with the plaintiff, was the ability of the plaintiff to get the exclusive franchise to bottle and distribute for the defendant or for the partnership. . . . The defendant was, therefore, led to believe that plaintiff had the exclusive franchise, but that the same was to be secured for or transferred to the partnership. The plaintiff no longer had the exclusive franchise, or the option thereto, at the time the contract was perfected. But . . . the principal obligation that he assumed or undertook was to secure said franchise for the partnership. . . . If he was guilty of a false representation, this was not the causal consideration, or the principal inducement, that led plaintiff to enter into the partnership agreement."

The court's formula was: Determine whether the misrepresentation was the *principal consideration*, the *main inducement* that led the other party to enter into the contract. If it were not so, as the court found, then, the fraud was *dolo incidente* and the contract was not vitiated. The aggrieved party could only collect damages.

Of course, it may be asked whether Halili would have entered into the agreement had he known that Woodhouse did not have the franchise. But defendant's reaction upon learning of plaintiff's misrepresentation offers the answer. Instead of totally repudiating the agreement, Halili reduced plaintiff's share in the profits to 15 *per cent*, a mere "modification of the contract." The court's distinction, though vague at first impression, in reality finds support in the acts of the parties.

That the fraud is anterior to the contract is not conclusive. *Dolo causante* must be prior to, or contemporaneous with, consent;[5] but fraud prior to, or contemporaneous with consent, is not necessarily *dolo causante*.

II. CONSIGNATION

Two cases decided during the period under review (July-December, 1953) touch on problems encountered in the matter of consignation. In *Valenzuela v. Bakani*,[6] the court seems to do away with the requirement of double notice in consignation, apparently satisfied with only one. In *Rustia v. Aguinaldo*,[7] the court reiterates the rule that conditional consignation is no consignation in the eyes of the law.[8]

In *Valenzuela v. Bakani*, plaintiff Valenzuela sold his rights to the land which he had previously conveyed to defendant Bakani, in a contract with right to repurchase, to one Florencio Araullo, intervenor herein. He bound himself at the same time to obtain cancellation of the *pacto a retro* sale made in favor of Bakani. He then offered payment to Bakani, but the latter rejected it and refused to reconvey the property. Valenzuela deposited the sum with the clerk of court.

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[5] *Hill v. Veloso* (1915), 31 Phil. 160; *Eguaros v. Great Eastern Life Assurance Co. and Smith* (1916), 33 Phil. 263.

[6] G. R. No. L-4689, prom. August 31, 1953.

[7] G. R. No. L-4005, prom. September 16, 1953.

[8] *Phil. National Bank v. Relativo*, G. R. No. L-5298, prom. October 29, 1952.

One of the defendant's contentions was that he received no previous notice of the consignation as required by Article 1177 of the old Civil Code.[9] Citing the case of *Andres v. Court of Appeals*,[10] the Supreme Court held the consignation to be valid, for "the service of the summons and copy of the complaint upon the appellee constituted sufficient notice."

The accepted rule is that, in consignation, there must be two notices to the creditor: one, before the deposit of the thing to be consigned, and another, after the consignation.[11] Although no special form for the first notice is required, it however should not be dispensed with.[12] And while it may be waived by failure to attack the consignation on that score,[13] there should be a finding of waiver by the party entitled to notice. The principle is settled that the second notice may be fulfilled by the service of summons and a copy of the complaint upon the defendant.[14] In the case under discussion, reference is made to Article 1177 of the old Civil Code. Apparently, this article speaks of the first notice, the notice of the intention to consign. The case of *Andres v. Court of Appeals*, cited by the court, involves the second kind of notice, that is, the notice after the consignation. There it was held:

> "Suffice it to say at this point that after the rejection by the petitioners of the valid tender made by the respondents, the latter filed the corresponding complaint in court accompanying the filing of the suit with the consignation of the money in court and alleging that consignation in the complaint. This was sufficient notice to the petitioners of the consignation so that if they wanted to receive that money from the court in return for a reconveyance of the property in question, they could have done so."

It would seem that the court means that the two notices may be consolidated into one notice which may take the form of service of summons and a copy of the complaint. If service of summons and a copy of the complaint would serve as notice of the *consignation*

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[9] Now Article 1257, par. 1, New Civil Code: "In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation." It is clear from this provision that an announcement of the consignation must first be made in order that it may produce its effect.

[10] 47 O.G. 2876 (1949).

[11] Article 1257 of the Civil Code speaks of the first notice; Article 1258, par. 2, of the second: "The consignation having been made, the interested parties shall also be notified thereof."

[12] In fact, Article 1258, par. 1, of the Civil Code of the Philippines provides: "Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases."

[13] *Limkako v. Teodoro*, (1943), 74 Phil. 313.

[14] *Limkako v. Teodoro, supra; Dungao v. Roque*, G.R. Nos. L-4140 and L-4141, prom. December 29, 1951.

made, as well as of the *intention to consign*, the Supreme Court would be dispensing with a notice that the law requires.

In the *Rustia v. Aguinaldo* case, Mr. and Mrs. Rustia were sentenced, in Civil Case No. 52786, to pay Aguinaldo and Aguinaldo, plaintiff corporation in that case, the sum of ₱3,100 with 6 *per cent* interest *per annum*. Aguinaldo and Aguinaldo, in turn, was ordered to surrender to the Rustias their shares of mining stock which they had purchased through the Aguinaldo and Aguinaldo corporation. The defendant Aguinaldo and Aguinaldo in this case was unable to surrender to the Rustias their shares because the mining companies' offices were closed on account of the war. However, defendant offered to guarantee with proper security the delivery of those shares when conditions become normal. The Rustias refused and brought this action, consigning at the same time the ₱3,100 ordered to be paid to Aguinaldo and Aguinaldo in the judgment in Civil Case No. 52786. Aguinaldo and Aguinaldo assails the sufficiency and validity of the tender and consignation made by the Rustias.

The Court, in reiterating the doctrine that tender and consignation, in order to be valid, must be unconditional, held through Justice Pedro Tuason:

> "Actually, it was the judgment debtors who put obstacles in the way of settlement.
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> . . . Consignation and tender complement each other, tender being but a step preliminary to consignation, and neither must be encumbered by conditions if it is to procure the intended result . . . Conditional tender or consignation is a contradiction, self-nullifying, in the juristic sense."

III. Novation of Contract

The principle "Once a mortgage, always a mortgage" should not be taken literally. If the positive acts of the parties so indicate, a mortgage may be validly novated. A sale with right to repurchase may be converted into a lease with option to buy. This was shown in the case of *Cojuangco v. Gonzales*.[15] Plaintiffs sought to recover the rentals of a parcel of land leased to defendant. The land had been conveyed by defendant to Jose Cojuangco, Sr., as security for a loan of ₱20,000. The contract of conveyance was made to appear as a sale with right to repurchase and lease. The defendant paid neither the rentals nor the taxes to the government. Due to the failure to pay taxes, the land was declared forfeited to the government. The heirs of the vendee notified the defendant of these facts. Upon silence of defendant, the heirs of the vendee consolidated ownership in themselves, and title was issued in their favor. A new contract of lease was executed between the parties. Defendant was given various extensions for repurchasing the land at ₱60,000, but failed to redeem it. To the issue of whether the new contract upon which plaintiff sues is a mortgage, as defendant contends, or is a lease, as plaintiff maintains, the court, in upholding the plaintiff, saw an "incompatibility" between the original and subsequent

[15] G.R. No. L-5228, prom. September 15, 1953.

contracts, mainly, in (1) "the price of the repurchase," and (2) "the holder of the title."[16] Clearly there was a novation.

The Court in its decision referred to the "once a mortgage, always a mortgage" doctrine as applied in *Macapinlac v. Gutierrez Repide.*[17] In that case, plaintiff was indebted to the Bachrach Garage and Taxicab Company for ₱12,960. As security for the promissory notes he issued to said company, plaintiff conveyed his Hacienda Dolores to the company. The plaintiff executed what on its face purported to be a deed of sale with right to repurchase. Later on, the rights of the company in the property were acquired by Francisco Gutierrez Repide. In noting that "equity" demands that "said conveyance . . . be treated as a mere security or, substantially, as a mortgage," the court held, quoting Pomeroy:

> ". . . The doctrine has been firmly established from an early day that when the character of a mortgage has attached at the commencement of the transaction, so that the instrument, whatever be its form, is regarded in equity as a mortgage, that character of mortgage must and will always continue. If the instrument is in its essence a mortgage, the parties cannot by any stipulations, however express and positive, render it anything but a mortgage, or deprive it of essential attributes belonging to a mortgage in equity. . . . The equitable right of redemption, after a default is preserved, remains in full force, and will be protected and enforced by a court of equity, no matter what stipulations the parties may have made in the original transaction purporting to cut off this right."

Commenting on this, the Court held in the case of *Cojuanco v. Gonzales:*

> "The principle . . . prohibits the parties from making stipulations that would tend to destroy the contract of its essence as a mortgage and deprive the debtor of the equitable right of redemption. The stipulations that are prohibited are those executed or made simultaneously with the original contract, not those subsequently entered into. The principle does not prohibit modification of the original contract by subsequent agreements such as the parties may see fit to adopt."

The court's ruling is highly commendable. There is no reason why parties who enter into a contract of mortgage should be unduly restricted in changing their agreement. The Civil Code provides enough protection to those who may be forced to borrow money.[18]

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[16] A change in the holder of the title would not render the mortgage another contract: "* * * A conveyance of land, accompanied by registration in the name of the transferee and the issuance of a new certificate, is no more secured from the operation of this equitable doctrine than the most informal conveyance that could be desired." *Macapinlac v. Gutierrez Repide* (1922), 43 Phil. 770, 783.

[17] *Supra.*

[18] Article 1602, Civil Code of the Philippines: "The contract shall be presumed to be an equitable mortgage in *any* of the following cases: (1) * * *; (2) * * *; (3) * * *; (4) * * *; (5) * * *; (6) In any other case where it may be fairly in-

A literal application of the "once a mortgage, always a mortgage" theory would be unreasonable.

IV. LEGAL REDEMPTION

In *Torio v. Rosario*,[19] the issue was whether one may still exercise the right of redemption through court action in spite of the lack of a previous offer to the new owner.[20] In answering the question in the affirmative, the court quoted freely from the case of *De la Cruz v. Marcelino* [21] where it was held:

> ". . . The articles . . . do not postulate any previous notice to the new owner nor a meeting between him and the redemptioner, much less a previous formal tender, before any action is begun in court to enforce the right. . . .Such offer or tender is not an essential condition precedent to the co-owner's right to redeem. The important thing is to assert it in time and in proper form."

Though an offer to the new owner is not a prerequisite, still, as the court pointed out, a sensible and prudent man would endeavor to present the offer privately, to avoid the inconvenience of court proceedings.

V. CONDITIONAL OBLIGATIONS [22]

1. *When Is A Condition Potestative?*

It is a well-settled rule in contract law that the validity of, or compliance with, a contract cannot be left to the will of one of the contracting parties.[23] Article 1182 of the new Civil Code makes this rule more explicit by providing that when the fulfillment of the condition (in a conditional obligation) depends upon the sole will of the debtor, the conditional obligation shall be void. Such a condition is what is termed a potestative condition.[24] When does the fulfillment of a condition depend upon the exclusive will of the debtor? The Supreme Court in the case of *Hermosa v. Longara* [25] had occa-

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ferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation * * *"; Article 1603: "In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage"; Article 1604: "The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale."

[19] G.R. No. L-5536, prom. September 25, 1953.

[20] Article 1621, Civil Code: "A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person."

[21] 42 O.G. 1761 (1949).

[22] Article 1181, Civil Code: "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."

[23] Article 1308, Civil Code.

[24] An obligation subject to such a suspensive, potestative condition dependent upon the will of the debtor is non-demandable, and hence illusory. See III PADILLA, CIVIL LAW (1953), 82.

[25] G.R. No. L-5267, prom. October 27, 1953.

sion to pass upon this question. Petitioner Hermosa appealed from a decision of the Court of Appeals approving certain claims representing credit advances made to the intestate Fernando Hermosa, Sr., during the latter's lifetime. The claims were presented by the respondent Longara against the intestate estate of Hermosa. The respondent-claimant presented evidence, and the Court of Appeals found in accordance therewith, that the intestate had asked for the credit advances for himself and the members of his family "on condition that their payment should be made by Fernando Hermosa, Sr., as soon as he received funds derived from the sale of his property in Spain." It is contended by the petitioner Hermosa that the obligation contracted by the intestate was subject to a potestative condition and, therefore, null and void, citing for that purpose, the case of *Osmeña v. Rama*.[26]

Whether the condition upon which the obligation of the intestate was made to depend, *i.e.*, ". . . that their payment should be made . . . as soon as he received funds derived from the sale of his property in Spain," was potestative or not was resolved by the Supreme Court in the negative. After observing that the condition implies that the intestate had "already decided to sell his house. . ." and that all that was needed to make his obligation demandable is for the sale to be consummated and the proceeds remitted to the Islands, the Court found that there are other circumstances which take the fulfillment of the condition out of the exclusive will of the intestate. In the words of the Supreme Court, speaking through Justice Alejo Labrador:

> ". . . The will to sell on the part of the intestate was therefore present in fact, or presumed legally to exist, although the price and other conditions thereof were still within his discretion and final approval. But in addition to this acceptability of the price and other conditions of the sale to him, there were still other conditions that had to concur to effect the sale, mainly that of the presence of a buyer ready, able and willing to purchase the property under the conditions demanded by the intestate. . . . It is evident, therefore, that the condition of the obligation was not purely potestative one, depending exclusively upon the will of the intestate, but a mixed one, depending partly upon the will of the intestate and partly upon chance, *i.e.*, the presence of a buyer of the property for the price and under the conditions desired by the intestate."

The Court seems to have been too technical in its analysis. However, it is believed that whether a condition is potestative or not is a question which must depend upon the consideration of the nature of the condition and the surrounding circumstances.

VI. Limitations of Actions

Actions prescribe by the mere lapse of time fixed by law.[27] In most cases, the law fixes the definite time when a cause of action

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[26] 14 Phil. 99 (1909). In that case, defendant Rama stated in a note acknowledging an existing indebtedness, that "* * * If the house * * * in which I lived * * * is sold, I will pay my indebtedness * * *" This condition was held by the Supreme Court to be potestative.

[27] Article 1139, Civil Code of the Philippines.

accrues and the period of accrual.[28] Where, however, one party is prevented, by threats and intimidation by the other party, from bringing an action to annul a contract alleged to have been executed through violence and intimidation, the question arises: When does the period of prescription begin to run? The Supreme Court had occasion to pass upon this question in the case of *Paeste and Carpio v. Jaurigue.*[29] On June 28, 1951, plaintiffs brought an action for the annulment of two documents purporting to be sales with *pacto de retro* executed on March 12, 1945 and May 3, 1945, respectively, where, it is alleged, plaintiff Felix Carpio and son Maximo had been compelled to sign through force and intimidation and against their will.[30] The action was dismissed by the trial court on the ground that plaintiffs' action had prescribed, four years having elapsed since the execution of the contract. Plaintiffs asked for a reconsideration of the order of dismissal, and, to meet the defense of prescription, also filed an amended complaint alleging that, since the execution of the pacto de retro deed of May 3, 1945, "defendant, with aid of armed men has continuously committed and employed threats, intimidation and duress against plaintiffs and with warning to the latter not to bring this incident and matter to the proper authorities under pain of death."

The Supreme Court, quoting freely from Manresa,[31] held that plaintiffs' cause of action had not prescribed and remanded the case for further proceedings. While it is true that an action for annulment has to be brought within four years, in cases of intimidation, violence or undue influence, the period does not begin to run except from the time the defect of the consent ceases.[32]

The Supreme Court, speaking through Justice Alex. Reyes, observed:

> ". . . it is evident that, with the allegations in the amended complaint that the plaintiffs had executed the documents in question through force and intimidation, that defendant had been threatening plaintiffs with death if they took the matter to the authorities, and that these threats lasted until 1951, plaintiffs' action does not appear to have prescribed, for, in these cases prescription does not begin to run until the party affected is perfectly free to go to the court as he wishes."

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[28] Articles 1139-1155, Civil Code of the Philippines.

[29] G.R. No. L-5711, prom. December 29, 1953.

[30] "There is violence when in order to wrest consent, serious or irresistible force is employed.

"There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent. * * *" Art. 1335, Civil Code.

[31] 8 MANRESA, 797-798.

[32] Article 1391, Civil Code: "The action for annulment shall be brought within four years. This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases. * * *"

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