SURVEY OF 1955 CASES IN CIVIL LAW

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The treasures of the law, according to Benjamin Rush Cowen, in his life of Chief Justice Morrison Remick Waite, are largely concealed in books and their discovery requires the alembic of thought and equipment. This observation may be applied to the rulings of appellate courts, which are embedded in the reports of cases amidst "voluminous rubbish," as Chancellor Kent said.

It is the task of the annotator, as the successor of the medieval glossator, to extract the rulings and dicta from the reported cases and, by means of the alembic of synthesis, to correlate said rulings with codal provisions and past doctrines.

Painstaking endeavor has been made in the following digest of 1955 decisions of the Supreme Court in civil law to distill the rules and dicta found therein and to connect them with the provisions of the old and new Civil Codes and with old doctrines, so that the law student may readily grasp the recent doctrinal developments in civil law.

EFFECT AND APPLICATION OF LAWS.

RETROACTIVITY OF AMENDMENT.

The case of *Neri v. Rehabilitation Finance Corporation* [1] adopts the rule that "where a statute is amended and reenacted, the amendment should be construed as if it had been included in the original act; but it cannot be retroactive unless plainly made so by the terms of the amendment." [2] This rule is in harmony with article 4 of the new Civil Code, which provides that "laws shall have no retroactive effect, unless the contrary is provided."

In the *Neri* case, it appears that Paz Neri San Jose had a pre-war loan of ₱5,000 with the former Agricultural and Industrial Bank, now the Rehabilitation Finance Corporation. On March 14, 1951, Neri paid to the RFC ₱7,162.59 in full settlement of her loan plus interest. The RFC did not collect the interest from January 1, 1942 because it had been condoned by Republic Act No. 401, which was approved on June 18, 1949.

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[1] G.R. No. L-7766, Nov. 29, 1955; 51 O.G. 6209 (1955).

[2] State v. Montgomery, 117 S.E. 870 (1923); 59 C.J. 1183.

On June 16, 1951 Republic Act No. 671 was approved. It amended Republic Act No. 401 by condoning the interest from January 1, 1946 to the date of payment, as long as the principal of the prewar obligation was paid on or before December 31, 1952. In view of this provision, Paz Neri sued the RFC for the recovery of ₱2,162.59 as the interest for the period from January 1, 1946 to March 14, 1951 which she had previously paid. The question was whether the amendment introduced by Republic Act No. 671 applied to the interest paid by Paz Neri.

It was held that the amendment did not apply. It applied only to interest that had not yet been paid when Republic Act No. 671 was approved on June 16, 1951. The amendment could not be given a retroactive effect.

COMPUTATION OF TIME APPLIES TO PENAL CODE.

The "exclude the first and include the last" rule found in article 13 of the new Civil Code, relative to the computation of time, applies to the computation of the prescriptive period in articles 90 and 91 of the Revised Penal Code. The application of article 13 to the Revised Penal Code is justified by article 18 of the new Civil Code. The meaning of "month" in article 13, as referring to the 30-day month, and not to the civil or solar month, also applies to articles 90 and 91.[3]

WAIVER OF RIGHTS MUST BE UNEQUIVOCAL.

In connection with article 6 of the new Civil Code, which provides that rights may generally be waived, it was held in *Jocson v. Capitol Subdivision*[4] that the waiver of rights must be manifested in an unequivocal manner. A mere withholding of the enforcement of the right to demand payment is not a waiver of anything, nor does a waiver arise from forbearance for a reasonable time. Mere neglect to insist upon a forfeiture would not alone constitute a waiver.

HUMAN RELATIONS.

PROPERTY ACQUIRED WITH JUST TITLE.

Article 22 of the new Civil Code, which provides for the return of property acquired "without just or legal ground", was invoked in *Escudero v. Flores*[5] where plaintiffs sued for the recovery of a parcel of land on the ground that the previous final judgment adjudicating the land to the defendants was void because of intrinsic fraud in procuring the judgment. It was held that article 22 did not apply

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[3] People v. Del Rosario, G.R. No. L-7234, May 21, 1955; 51 O.G. 2868 (1955).
[4] G.R. No. L-6363, Feb. 28, 1955.
[5] G.R. No. L-7401, June 25, 1955; 51 O.G. 3444 (1955).

to such a situation because the defendants "received the land with just title, i.e. the decision, which is conclusively presumed to be right."

COURTS PROTECT PARTY AT A DISADVANTAGE IN CONTRACTS OF ADHERENCE.

Article 24 provides that "in all contractual, property or other relations, when one of the parties is at a disadvantage on account of weakness, tender age or other handicap, the courts must be vigilant for his protection." This provision was cited in the case of *Qua Chee Gan v. Law Union & Rock Insurance Co., Ltd.*[6] in connection with the rule that ambiguities in insurance contracts should be construed against the insurer responsible for such ambiguities.

According to Justice J. B. L. Reyes, the rigid application of the rule on ambiguities has become necessary in view of current business practices. "The courts cannot ignore that nowadays monopolies, cartels and concentrations of capital, with overwhelming economic power, manage to impose upon parties dealing with them cunningly prepared 'agreements' that the weaker party may not change one whit, his participation in the agreement being reduced to the alternative 'take it or leave it'. Labelled since Raymund Saleilles 'contracts of adherence' (*contrata d' adhesion*) in contrast to those entered into by parties bargaining on an equal footing, such contracts (of which policies of insurance and international bills of lading are prime examples) obviously call for greater strictness and vigilance on the part of courts of justice with a view to protecting the weaker party from abuses and imposition, and prevent their becoming traps for the unwary".

PROTECTION OF MINORS.

There is an established public policy to protect minors and incapacitated persons.[7]

WHEN ARTICLE 29 APPLIES.

Article 29 of the new Civil Code, which provides that a civil action for damages may be brought, when the accused was acquitted on the ground of reasonable doubt, applies only to criminal cases involving the acquittal on that ground. It does not apply to a case where the accused agent was acquitted of estafa on the ground that there was no misappropriation.[8]

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[6] G.R. No. L-4611, Dec. 17, 1955.

[7] Visaya v. Suguitan, G.R. No. L-8300, Nov. 18, 1955.

[8] Laperal de Guzman v. Alvia, G.R. No. L-6207, Feb. 21, 1955; 51 O.G. 1311 (1955).

"PHYSICAL INJURIES" INCLUDE DEATH.

Article 33 of the new Civil Code, which provides that in cases of physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party, contemplates bodily injury and not merely the crime of "lesiones" in the Revised Penal Code. Under article 33, an independent civil action may be brought to recover damages for frustrated homicide or even death.[9]

PREJUDICIAL QUESTION.

A civil action for cancellation of a copyright is not a prejudicial action which must first be decided before a criminal action for violation of the Copyright Law may be tried. It is an independent action.[10]

CITIZENSHIP AND NATURALIZATION.

CITIZENSHIP CANNOT BE DETERMINED IN ACTION FOR DECLARATORY RELIEF.

The rule that an action for declaratory relief does not lie to determine whether a person is a Filipino citizen [11] was reiterated in *Sen v. Republic* [12] and *De Azajar v. Ardales*.[13]

In the *Sen* case, petitioners alleged that in their landing certificates they were described as "returning P.I. citizens" and "children of P.I. citizen Sin Pin." They wanted the court in their petition for declaratory relief to construe said landing certificates as meaning that they were Filipino citizens. It was held that the petition was improper. Landing certificates are not the "written instruments" contemplated in an action for declaratory relief. Petitioners' remedy, according to the Supreme Court, is to file a petition for naturalization with an alternative prayer that they be declared Filipino citizens on the basis of the evidence that they would present in such a proceeding, conformably with the rule in *Sy Quimsuan v. Republic* [14] that "when the evidence in applicant's possession proves, in his opinion, that he has already the status of a Filipino citizen

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[9] Carandang v. Valenton, G.R. No. L-8238, May 25, 1955; 51 O.G. 2878 (1955). See Laya v. Paras, (C.A.) 52 O.G. 841 (1956).

[10] Ocampo v. Tancinco, G.R. No. L-5967, Jan. 31, 1955; 51 O.G. 1357 (1955).

[11] Obiles v. Republic, 49 O.G. 932 (1953); Delumen v. Republic, 50 O.G. 578 (1954).

[12] G.R. No. L-6868, April 30, 1955.

[13] G.R. No. L-7913, Oct. 31, 1955; 51 O.G. 5640 (1955).

[14] 49 O.G. 492 (1953).

as would make it unnecessary to press further his petition for naturalization," he may be declared a Filipino citizen in the same proceedings.

In the *Azajar* case, plaintiff filed an application in the Bureau of Lands for the purchase of a lot of the public domain. Her application was opposed on the ground that she was not a Filipino citizen. Before the Director of Lands could rule on her citizenship, she filed a petition for declaratory relief in the Court of First Instance, joining the oppositor and also the Director of Lands as respondents, for the purpose of seeking a declaration as to her Philippine citizenship.

It was also held that the petition was improper and should be dismissed. Petitioner's remedy would be to prosecute her sales application in the Bureau of Lands, prove to that office that she is a Filipino citizen and resort to the courts, "if the exercise of her rights as a Filipino citizen be prevented or denied, to compel the officer who prevented or denied her the exercise of her rights as a Filipino citizen, to allow her to exercise such rights."

JURISDICTION OF DEPORTATION BOARD TO DETERMINE CITIZENSHIP.

Ordinarily, the Deportation Board may determine whether a person to be deported is a Filipino citizen or an allien.[15] But where the evidence is neither decisively conclusive in favor of the deportee's claim of Filipino citizenship nor decisively conclusive against said claim, the question of alienage or citizenship should first be decided in a judicial proceeding, suspending the deportation proceeding in the meantime that the question of citizenship or alienage is being determined in the courts.[16]

DIGEST OF RULINGS IN NATURALIZATION CASES.

1. It is incumbent upon an applicant for naturalization to show by competent proof that he possesses all the qualifications and none of the disqualifications as provided by law. An applicant cannot be naturalized if he does not speak and write English or Spanish and understands only a little of either language.[17]

2. The petition for naturalization cannot be granted where it appears that petitioner's two minor children were not enrolled in

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[15] Bata Lianco v. Deportation Board, 50 O.G. 1596 (1954); Miranda v. Deportation Board, G.R. No. L-6784, March 12, 1954.

[16] Chua Hiong v. Deportation Board, G.R. No. L-6038, March 19, 1955; 51 O.G. 1837 (1955).

[17] Te Chao Ling v. Republic, G.R. No. L-7346, Nov. 25, 1955, citing Ang Ke Choan v. Republic, G.R. No. L-6330, Aug. 25, 1954.

Government recognized schools where Philippine history, government and civics are prescribed subjects. "The law demands the enrollment of applicant's children in our schools, not only to insure that they are trained in our way of life, but also as evidence of the petitioner's honest and enduring intention to assume the duties and obligations of Filipino citizenship. If the applicant for naturalization is really inspired by an abiding love for this country and its institutions (and no other reason is admissible), he must prove it by acts of strict compliance with the legal requirements. It may mean hardship and sacrifices, but citizenship in this Republic, be it ever so small and weak, is always a privilege; and no alien, be he a subject of the most powerful nation of the world, can take such citizenship for granted or assume it as a matter of right".[18]

3. Where, according to applicant, his daughter studied in Grade IV of a central school, his son studied in a private school and his other son in a certain institute, and he presented certificates from the respective schools, but he did not present as witnesses the signers of the certificates and it appears in the certificates that the surname of his children is "Uy", a surname which does not appear in his alien certificate of registration, the petition for naturalization was denied for noncompliance with the requirement that the applicant should give his children primary and secondary education in the public schools or in private schools recognized by the Government.[19]

4. Even if there is no direct evidence that a petitioner for naturalization can write the Visayan and Tagalog dialects, nevertheless, since he has finished the first year high school, "he is literate and, as such, may be deemed capable of writing the dialects he speaks, namely, the Visayan and the Tagalog, which are phonetic." [20]

5. Pursuant to section 7 of the Revised Naturalization Law an applicant for naturalization must attach to his petition the affidavits of at least two credible persons stating "that they are citizens of the Philippines and personnaly know the petitioner to be a resident of the Philippines for the period of time required by this Act" which is ten years, subject to the exceptions in section 2 of the law. In other words it is essential that the application be supported by the affidavits of two Filipino citizens who knew him to be a resident of this country for at least ten years.[21]

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[18] Ng Sin v. Republic, G.R. No. L-7590, Sept. 20, 1955; Dy Chan Tiao v. Republic, G.R. No. L-6430, Aug. 31, 1954; Quing Ku Chay v. Republic, G.R. No. L-5477, April 12, 1954.

[19] Ng Eng Sia v. Republic, G.R. No. L-7780, Sept. 27, 1955.

[20] Awad v. Republic, G.R. No. L-7685, Sept. 23, 1955; Lao Chin Kieng v. Republic, 48 O.G. 2654, 2656 (1952).

[21] Cu v. Republic, G.R. No. L-3018, July 18, 1951.

Where petitioner's application was accompanied by the affidavits of two Filipino citizens, but one of them did not testify and the other testified that he knew the petitioner for only a period of five years prior to the filing of the petition, it is obvious that the petition is fatally defective and must necessarily be dismissed.[21a]

The petitioner in a naturalization case must satisfactorily explain his failure to present as a witness either one of the two persons whose affidavit is attached to his petition and why he is presenting another witness in lieu of the absent affiant. The law requires the affidavit of two persons who know the petitioner in order that an imposition may not be made upon the court and that the Government be informed in advance of the witnesses by whom or by whose testimonies a petitioner for naturalization seeks to prove that he possesses the qualifications and none of the disqualifications enumerated in the law. Without previous investigation, it is difficult, if not impossible, on the part of the Government to determine if the witness had really known or had the occasion or opportunity to know the petitioner and for such a period of time as may qualify him to testify on the petitioner's character, conduct and actuations during the entire period of his stay in the Philippines. Hence, "the petitioner must present the very witnesses who have signed the joint affidavit supporting his petition; if no valid, legitimate excuse for not presenting any of the affiants is given, the petitioner may not change or substitute other persons for said affiants, otherwise the proceedings should be declared void." [22]

But in *Pe v. Republic* [23] it appears that in the petition for naturalization it was stated that the affidavits of Delfin Encarnacion and Perpetuo Lotilla were attached to the petition and it was stated that said affiants would testify at the hearing. Encarnacion testified but Lotilla did not and in lieu of the latter, the applicant presented Higino Loza as his other witness. The affidavit of Loza, executed at the same time as the other affidavits, was attached to the record and it was stated in said affidavit that it was a part of the petition. The Solicitor General objected to the granting of the petition on the ground that Lotilla did not testify as a witness. It was held that there was substantial compliance with the requirements of section 7.

6. The petition for naturalization cannot be granted if the joint affidavit of two persons attached to the petition failed to state that they personally know the petitioner or that petitioner is a person

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[21a] Awad v. Republic, *supra* note 20.

[22] Singh v. Republic, G.R. No. L-7567, Sept. 29, 1955; 51 O.G. 5172 (1955); Cabrales Cu v. Republic, G.R. No. L-7836, Oct. 25, 1955; 51 O.G. 5625 (1955).

[23] G.R No. L-7871, Oct. 29, 1955.

of good repute, or that petitioner has all the qualifications and none of the disqualifications. These matters are required to be stated by section 7 of the Revised Naturalization Law. Noncompliance with said requirement renders the petition void.[24]

7. Under section 4 of the Revised Naturalization Law (Commonwealth Act No. 473), one of the disqualifications for naturalization is that applicant's country does not grant Filipinos the right to become naturalized citizens or subjects thereof. A citizen of India, applying for naturalization, must prove that the laws of India permit Filipinos to be naturalized therein. Failure to present such proof justifies the dismissal of the petition for naturalization. It is applicant's duty to establish that he has complied with all the legal requirements.[25]

8. In a number of decisions it has been declared as a fact that Filipinos may acquire citizenship in the Republic of China, and, consequently, it was not necessary to prove that fact in subsequent cases. However, since those decisions were rendered some years ago, China has split into two governments—one Nationalist, and the other Communist. It is necessary for applicant to prove satisfactorily that he is a citizen of Nationalist China. His mere statement that he does not believe in communism does not necessarily prove that he is a citizen of Nationalist China. It was incumbent upon him to produce in court his alien certificate of registration or any other reliable official document to show that he is an adherent of Nationalist China.[26]

9. The application for naturalization cannot be granted if applicant did not file any declaration of intention and he had not finished the secondary education [26a] and not resided continuously here for a period of thirty years.[27]

10. The fact that an applicant for naturalization is the operator of a cabaret does not mean that he is not of good moral character. The cabaret business is not illegal and is licensed by the government. Neither is hardness of hearing a disqualification for naturalization. Neither is the circumstance that the applicant has lived in the Phil-

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[24] Pidelo v. Republic, G.R. No. L-7796, Sept. 29, 1955.

[25] Singh v. Republic, G.R. No. L-4177, May 29, 1955; 51 O.G. 3172 (1955); Yap Chin v. Republic, G.R. No. L-4177, May 29, 1953.

[26] Cabrales Cu v. Republic, G.R. No. L-7836, Oct. 25, 1955; 51 O.G. 5625 (1955).

[26a] De la Cruz v. Republic, 49 O.G. 958 (1953); Dy v. Republic, 49 O.G. 939 (1953); Yu v. Republic, G.R. No. L-3808, July 29, 1952; Sy Kiap v. Republic, 48 O.G. 3362 (1952); Yap v. Republic, G.R. No. L-4270, May 8, 1952; Chua v. Republic, G.R. No. L-4112, Aug. 28, 1952.

[27] Pidelo v. Republic, G.R. No. L-7796, Sept. 29, 1955.

ippines for 56 years and that he filed his application when he was already 70 years old a ground for denying his petition for naturalization.[28]

11. The case of *Y. Kin v. Republic* [29] reiterates the rule that the application for naturalization cannot be granted if the applicant failed to comply with the requirement that he should have enrolled his minor children in public or private schools recognized by the government.[30]

12. Republic Act No. 530 provides that a decree granting an application for naturalization shall become executory only after two years from its promulgation provided that during the two-year period the applicant should not leave the Philippines. This provision was interpreted to mean that during the two-year period the applicant's physical presence in the Philippines is a condition without which the decree cannot become executory. Departure from the Philippines during the two-year period for vacation purposes or for business or educational purposes would not justify absence from the Philippines. Thus, where the petitioner, a flight purser of the Philippine Air Lines, had to leave the country, during the two-year period, on foreign flights and on one occasion took a vacation in Hongkong for eight days, without discharging his duties as flight purser, it was held that the decree granting naturalization did not become executory and the applicant could not take his oath as a Filipino citizen.[31]

Reliance was placed on *Uy v. Republic* [32] where petitioner, during the two-year period, following the promulgation of the decision granting his application for naturalization, left the Philippines for the United States in order to submit himself to a medical checkup and to strengthen the business ties of his firm in the United States. He was not allowed to take his oath as a nautralized citizen.

13. Republic Act No. 530 also provides that the decree of naturalization shall become executory two years after its promulgation provided that the applicant, among other things, "has not been convicted of any offense or violation of Government promulgated rules" within the said two-year period. The term "conviction" in

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[28] Sy Chiuco v. Republic, G.R. No. L-7545, Oct. 25, 1955; 51 O.G. 5622 (1955).

[29] G.R. No. L-6894, April 27, 1955.

[30] Bangon Du v. Republic, G.R. No. L-3683, Jan. 28, 1953; Hao Lian Chu v. Republic, 48 O.G. 1780 (1952); Lim Lian Hong v. Republic, G.R. No. L-3575, Dec. 26, 1950; Tan Hi v. Republic, G.R. No. L-3354, Jan. 25, 1951; Chan Su Hok v. Republic, G.R. No. L-3863, Dec. 27, 1951.

[31] Te Tek Lay v. Republic, G.R. No. L-7412, Sept. 27, 1955; 51 O.G. 5154 (1955).

[32] G.R. No. L-7054, April 29, 1955.

said provision includes the violation of an ordinance. Where the applicant, whose naturalization was decreed, was convicted during the 2-year period following the issuance of the decree of having violated a municipal ordinance for his failure to remove his lumber yard from a prohibited zone and he was fined ₱50, he cannot be permitted to take oath, although the alleged violation was committed prior to the taking effect of Republic Act No. 530 and although the violation was *malum prohibitum*.[33] It was noted also in the *Tiu San* case that section 1 of Republic Act No. 530 makes a distinction between "conviction" of an offense (clause 3) and "commission" of an act prejudicial to the public interest (clause 4).

MARRIAGE.

MARRIAGE LICENSE WAS NOT REQUIRED IN FIRST MARRIAGE LAW.

In *Bigornia de Cardenas v. Cardenas* [34] it was noted that a marriage license, as provided for in article 53 of the new Civil Code and in section 7 of Act No. 3613, was not required under the first marriage law, General Orders No. 68.

It was also held in the *Cardenas* case that the marriage certificate attesting that a marriage ceremony was performed by a minister gives rise to the presumption that all legal formalities had been complied with. If the minister was not authorized to perform such marriage ceremony, it is incumbent upon those attacking the validity of the marriage to show such lack of authority.

PROOF OF MARRIAGE.

In the absence of a marriage certificate, the marriage may be proved by circumstantial or oral evidence. In *Howard v. Padilla*,[35] the marriage was proved (a) by means of the Torrens title, which stated that the deceased owner of the property was married to plaintiff; (b) by the order of the court in the probate proceedings, relative to the decedent's will, wherein it was stated that plaintiff was decedent's widow; (c) by the deed of donation executed by the deceased, which stated that plaintiff was the deceased donor's wife; and (d) by the order in the intestate proceedings relative to the decedent's estate, which order stated that plaintiff was the decedent's widow and was his sole legal heir.

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[33] Tiu San v. Republic, G.R. No. L-7301, April 20, 1955.
[34] G.R. No. L-8218, Dec. 15, 1955; 51 O.G. 6167 (1955).
[35] G.R. Nos. L-7064 & L-7098, April 22, 1955.

VOIDABLE BIGAMOUS MARRIAGE.

Section 29 of the old Marriage Law, Act No. 3613, now section 83 of the new Civil Code, which provides for the exceptional circumstances under which a bigamous marriage would not be considered void *ab initio* but merely voidable was cited in the case of *Cortes v. Brownell.*[36]

In the *Cortes* case, one Narciso Cortes was married to Guillerma Abarquez. They had one child, Amario Cortes. They separated in 1925 and Guillerma later married a Japanese national. Amario Cortes died and in 1947 his estate consisting of two parcels of land, was summarily settled in the Davao Court of First Instance and adjudicated to his mother, Guillerma Abarquez, as sole heir. As Guillerma had married a Japanese, the property which she inherited from her son was considered enemy property and was claimed by the Philippine Alien Property Administrator. In 1951 Narciso Cortes sued for the annulment of the proceedings adjudicating the property in question to Guillerma Abarquez and of the vesting order issued by the Alien Property Administrator. Narciso Cortes claimed one-half of the property as his hereditary share.

It was held that the action filed by Cortes had already prescribed, since a decree of summary settlement could be attacked only within two years from the date of its rendition; that there was no extrinsic fraud in the issuance of said decree of adjudication and that the marriage of Guillerma to the Japanese was only voidable but not void because she supposedly thought that her husband was already dead when she married for the second time.

CASE NOT COVERED BY ARTICLE 88.

Articles 88 and 101 of the new Civil Code, which provide that no judgment annulling a marriage nor a decree of legal separation shall be promulgated upon a stipulation of facts, contemplate the annulment of a marriage or legal separation where the parties might secure the annulment of their marriage or their legal separation by collusion. This is the ruling in *Bigornia de Cardenas v. Cardenas.*[37]

In the *Cardenas* case, the wife of the first marriage brought an action against her husband and his second wife for the annulment of the second marriage. The parties entered into a stipulation of facts. The two marriage certificates were made a part of the stipulation. Defendants pleaded the defense that the first marriage was void for absence of license and due to the lack of authority of

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[36] G.R. No. L-7554, Aug. 31, 1955; 51 O.G. 4558 (1955).
[37] See note 34 *supra.*

the minister to solemnize the same. These grounds were found to be devoid of merit. The trial court annulled the marriage. In affirming the annulment, the Supreme Court noted that although the annulment was based on a stipulation of facts such stipulation was not entered into for collusive purposes. There could be no collusion because the interests of the two wives were conflicting. Moreover, the marriage certificates attached to the stipulation of facts are evidence and cannot be categorized as mere stipulations of facts. The second marriage, being bigamous, was annulled.

It should be noted in this connection that in a 1954 case it was held that no summary judgment can be rendered for the annulment of marriage.[38]

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE.

STIPULATION DEPRIVING WIFE OF SHARE IN CONJUGAL ASSETS IS VOID.

Under article 1413 of the old Civil Code no alienation or agreement which the husband may make with respect to the conjugal property in fraud of the wife shall prejudice her or her heirs. This provision is not literally reproduced in the new Civil Code, but its article 173 provides substantially for the same rule. Illustrations of the rule are found in several cases.[39]

A recent case illustrating the same rule is that of *Hofer Borromeo v. Borromeo*.[40] In this case it appears that the brothers Canuto and Maximo Borromeo made a joint deposit of money in the bank under the agreement that "said money deposited, without reference to previous ownerships, and all interest, dividends, and credits thereon shall be the property of all of us as joint owners and shall be payable to and collected by anyone of us, during our lifetimes and after the death of anyone of us shall be the sole property of and payable to the survivor or survivors, provided that this last disposition is not contrary to provisions of laws now in force or may hereafter be in force in the Philippine Islands." Maximo Borromeo died, without any descendants and he was survived by his widow, Johanna Hofer. His brother Canuto was appointed executor of his testate estate. During the pendency of a motion for the removal of Canuto Borromeo as executor, he withdrew from the bank the joint deposit in question. The court relieved him from his office as executor. He appealed.

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[38] Roque v. Encarnacion, 50 O.G. 4193 (1954).

[39] Uy Coque v. Navas L. Sioca, 45 Phil. 430 (1923); Gallion v. Gayares, 53 Phil. 43 (1929); Badllo v. Villanueva, 54 Phil. 213 (1930); Escutin v. Escutin, 60 Phil. 922 (1934); Layson v. Oliquino, (C.A.) 47 O.G. 4216 (1951).

[40] G.R. No. L-6363, Sept. 15, 1955; 51 O.G. 5145 (1955).

Held: There were sufficient grounds for his removal as executor, particularly, his withdrawal of the joint deposit. The stipulation already quoted could not deprive the wife of her share of the conjugal assets.

DONATIONS BY THE FATHER TO CHILDREN.

In *Tang Ho v. Board of Tax Appeals* [41] it was held that an *inter vivos* donation by the husband alone does not become in law a donation by both spouses merely because it involves property of the conjugal partnership and that a donation of property belonging to the conjugal partnership, made during its existence by the husband alone in favor of the common children, is taxable to him exclusively as donor. The fact that the donation was taken out of community property does not mean that the donation should be regarded as made by both spouses. Article 1409 of the old Code, now article 162, clearly differentiates the donations made by the husband alone and those made by both spouses by common consent. Moreover, donations made by the husband to the common children are chargeable to the community assets irrespective of whether the wife agrees or not to the donation.

It should be noted that under article 174 of the new Code, which is a new provision, "neither husband nor wife can donate any property of conjugal partnership without the consent of the other," with the exception of moderate donations for charity. The donations contemplated in article 174 apparently refer to donations made to persons other than the common children of the spouses.

SURVIVING SPOUSE CAN DISPOSE OF ONLY HIS OR HER ½ SHARE OF THE CONJUGAL ASSET WITHOUT JUDICIAL AUTHORIZATION.

Act No. 3176, amending section 685 of the Code of Civil Procedure, provides that "any sale, transfer, alienation or disposition" of conjugal property effected without judicial authorization by the surviving spouse "shall be null and void, except as regards the portion that belonged to the vendor at the time the liquidation and partition was made." This provision was applied in the case of *Corpus v. Corpus*.[42]

In this case it appears that Francisco Corpus, surviving spouse of Bernarda Mantile, sold in 1934 a parcel of conjugal land to the spouses Domingo Corpus and Eugenia Rigal. After the death of said spouses and of their only son Isabelo, who was married to Susana

[41] G.R. No. L-5949, Nov. 19, 1955; 51 O.G. 5600 (1955).
[42] G.R. No. L-7495, Sept. 30, 1955; 51 O.G. 3185 (1955).

Cruz, the latter (Susana) tried to secure a copy of the title for the said land, which was lost, and for this purpose she enlisted the help of Evaristo Corpus, a child of the vendors of the said land. Evaristo, instead of helping Susana, secured the title for the land in his own name. Susana, in behalf of her minor children, as heirs of the original vendees, sued Evaristo for the purpose of establishing her children's right to the said land.

Held: Applying Act No. 3176, which was already in force when the land was sold in 1934, "the sale made by Francisco Corpus of the land . . . should be held to have conveyed title only to the vendor's share in said land, with the result that the legal heirs of the deceased Bernardo Mantile cannot be deemed to have been divested of their title to her share of the property." The children of Susana Cruz, as heirs of the original vendees, are entitled only to one-half of the land. A similar rule is found in other cases.[43]

PRESUMPTION THAT PROPERTY OF THE MARRIAGE IS CONJUGAL.

1. The disputable presumption in article 160 of the new Civil Code that "all property of the marriage is presumed to belong to the conjugal partnership" was applied in the case of *De Guinoo v. Court of Appeals.*[44] In this case the spouses Bernabe Santos and Feliza Enriquez acquired during their marriage a parcel of land registered in the name of "Bernabe M. Santos casada con Feliza Enriquez." The wife died in 1930. The surviving husband sold ½ of the land to Teofila de Guinoo in 1934 and the other half to a Japanese religious corporation on April 1, 1935. Both sales were registered and the buyers obtained certificates of title for the portions sold to them.

In 1948 the two children of the said spouses sued De Guinoo and the Director of Lands (representing the Republic of the Philippines which had succeeded to the land sold to the Japanese entity) for the annulment of the sale on the theory that their father had no right to sell the land, because it was conjugal property of their father and deceased mother.

It was held that the property in question was conjugal, following the presumption in article 1407 of the old Code, now article 160. "No evidence was presented that the funds with which Bernabe purchased the land belonged to him exclusively. The fact that it was acquired by Bernabe in his own name does not destroy the con-

[43] Antejo v. Court of Appeals, 48 O.G. 597 (1952); Obliosca v. Obliosca, (C.A.) 47 O.G. 4267 (1951); Coronel v. Ona, 33 Phil. 456 (1916).

[44] G.R. No. L-5541, June 25, 1955.

jugal character of the property, especially considering that the husband is administrator of the conjugal partnership."

The Supreme Court found that the two children did not protest against the sale made by their father to the Japanese religious association. This sale was considered valid because it was effected prior to the effectivity of the Constitution on November 15, 1935.

With respect to the sale to De Guinoo, the Supreme Court concluded that the action to annul the sale, brought in 1948, had not yet prescribed because the period of prescription should be counted from the registration of the sale in 1940 and not from the execution of the sale in 1934. Plaintiff children of the vendor were considered third parties to the sale.[44a] The Court also found that the buyer could not claim the land by prescription since "there can be no prescription against registered property."

The sale to De Guinoo was voided to the extent of ½ of the portion sold to her because in their complaint the plaintiffs asked only for ½ of the said portion and, besides, according to the Court, "this is in accordance with the fact that only the sale of ½ should be declared void as belonging to them."

It may be observed in this case that the question of whether a coowner of the land could sell a *specific* portion thereof, or only his *proindiviso* interest therein, was not discussed. There was likewise no discussion in the decision of Act No. 3176, which deal with the right of the surviving spouse to sell the conjugal assets after the dissolution of the marriage.

2. Following the presumption in article 160, the adjudication of real property in a cadastral or registration case to one of the spouses only, does not mean that it is his or her exclusive property, if said land was acquired during the marriage.[45]

As noted in *Ramos v. Ramos*,[46] oftentimes, the husband, acting as administrator of the conjugal partnership, registers conjugal property in his own name alone; or he acquires public land also in his own name; but as long as said properties were acquired during the marriage, they all belong to the conjugal partnership.

In the *Ramos* case, it appears that the spouses Jose Ramos and Margarita Tanate died intestate, survived by seven children and leaving a hacienda. In the partition of the estate of said deceased spouses, executed on December 1, 1914, it was agreed that the whole

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[44a] But see Galasinao case, *infra* note 81.
[45] Commonwealth v. Sandiko, 72 Phil. 258 (1941).
[46] G.R. No. L-7546, June 30, 1955.

hacienda should be assigned to the heir, Francisco Ramos, who agreed to pay in cash for the shares of the other six heirs. Seven months before said partition, Francisco Ramos married Dolores Garcia. During the marriage, Ramos made the payments stipulated in the partition. The money used in making the payments was conjugal because it came from the fruits of the hacienda. Said hacienda was adjudicated in the cadastral proceeding to "Francisco Ramos, married to Dolores Garcia."

After the death of Francisco Ramos, his widow and legitimate children claimed that the whole hacienda was conjugal. On the other hand, his acknowledged natural children contended that the whole hacienda was his capital.

It was held that 6/7 of the hacienda, or the portions acquired from the coheirs during the marriage and paid for with conjugal funds, was conjugal, while only 1/7 thereof, or the portion actually inherited by Francisco Ramos from his parents, was his separate property.

OTHER RULINGS.

1. The sale of a homestead made by the husband for the purpose of paying a conjugal debt is binding on his wife and children and said sale cannot be annulled after his death at the instance of the latter.[47]

2. Where the attorney's fees being claimed would be deducted from the husband's share of the conjugal assets, the claimants of the other half of said assets have no cause for complaint.[48]

PATERNITY AND FILIATION.

FILIATION AND ACKNOWLEDGMENT SHOULD BE PROVEN IN ORDER THAT A PERSON MAY HAVE THE STATUS OF A LEGITIMATED CHILD.

Under article 121 of the old Code, now article 271, in order that legitimation by subsequent marriage may take place, it is necessary that the natural child should be duly acknowledged. If the natural child was not acknowledged, the marriage of his supposed parents would not operate to legitimize him and he would have the status of an unacknowledged natural child, who, under the new and old Civil Codes, has no rights whatsoever.[49]

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[47] Galasinao v. Austrit, G.R. No. L-7198, May 25, 1955; 51 O.G. 2874 (1955).

[48] Matute v. Macadaeg, G.R. No. L-7759, May 12, 1955; G.R. No. L-7764, May 16, 1955.

[49] Siguiong v. Siguiong, 8 Phil. 5 (1907); Serrano v. Aragon, 22 Phil. 10 (1912); Roquejo v. Rabalo, 34 Phil. 14 (1916); Ferrer de Inchausti, 38 Phil. 905 (1918); Madridejo v. De Leon, 55 Phil. 1 (1930); Crisolo v. Macadaeg, G.R. No. L-7017, April 29, 1954.

A recent case illustrating this rule is that of *Rodriguez v. Reyes.*[50] In this case, it appears that one Gavino Villota died in 1935. Prior to his death he and his wife Rosa Venal sold a lot to Basilisa Coronel. After his death the widow Rosa Venal sold to Mariano and Concepcion Rodriguez, not only the lot already sold to Basilisa Coronel, but also other lots. Basilisa Coronel sued Rosa Venal and Mariano and Concepcion Rodriguez for the recovery of the lot previously sold to the former. The trial court, in holding that Basilisa Coronel could recover the lot, incidentally stated that Gavino Villota had two nephews named Zoilo and Andres Reyes, children of his deceased brother Luciano Reyes. The Court of Appeals affirmed the decision of the trial court but did not make any statement as to the relationship of Zoilo and Andres Reyes to Gavino Villota.

Later Zoilo Reyes instituted administration proceedings for the settlement of the estate of Gavino Villota. He included in the inventoried estate of the deceased the lots sold to Mariano and Concepcion Rodriguez. Zoilo Reyes asked the court that he and his brother Andres Reyes and a child of their deceased sister, Josefa Reyes, be declared heirs of Gavino Villota, their theory being that their father, Luciano Reyes, was a brother of Gavino Villota. Mariano, Concepcion and Marta Rodriguez opposed his pretension. Their contention was that Luciano Reyes was not a legitimate child of Gavino Villota. In view of this development, it became necessary to ascertain the filiation of the deceased Luciano Reyes.

The baptisimal certificate of Luciano Reyes showed that he was born in 1871, a natural child of Maxima de los Reyes, then single, and an unknown father. In 1872 Maxima married Juan Villota and the couple later had a legitimate child who was no other than the deceased Gavino Villota. The question was whether Luciano Reyes could be regarded as a legitimated child of Maxima and Juan Villota and therefore a full blood brother of Gavino Villota.

Held: The case should be decided under Law 11 of Toro. Under that law, Luciano Reyes could not be considered a legitimated child of the spouses Maxima de los Reyes and Juan Villota because there was no proof that Juan Villota was the father of Luciano Reyes, who never used the surname "Villota." Even granting that Luciano was the son of Juan Villota, still he could not be considered legitimated by the marriage of Maxima and Juan because there was no proof that he was ever acknowledged by said couple.

The statement of the trial court in the case brought by Basilisa Coronel that Gavino Villota was survived by his nephews Zoilo and

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[50] G.R. No. L-7760, Sept. 30, 1955; 51 O.G. 5188 (1955).

Andres was not *res judicata* on the question of their relationship to Gavino Villota because the parties in that case are different from the parties in the instant proceedings. Since Luciano was an illegitimate child, his children Zoilo and Andres cannot inherit from the uncle, Gavino Villota, a legitimate child.

UNACKNOWLEDGED NATURAL CHILD HAS NO RIGHTS WHATSOEVER.

The rule under the new and old Civil Codes that an unacknowledged natural child has no rights whatsoever,[51] was reiterated in the case of *Mundoc Cojuangco v. Caluag*.[52] It was also held in that case that when the motion asking for a declaration that the movant is the acknowledged natural daughter of the deceased has already been set for hearing, it is not proper that the testimony of the movant be taken by deposition, since it is preferable that the movant actually testify in court.

ACTION FOR COMPULSORY RECOGNITION MUST BE BROUGHT SEASONABLY.

If a natural child, who has not been voluntarily recognized in accordance with law, does not bring an action for compulsory recognition within the time prescribed by law, he would have the status of an unacknowledged natural child, who, as already noted, has no rights whatsoever and whose status is even inferior to that of a spurious child. This is the situation in *Mendoza v. Cayas*.[53]

In the *Mendoza* case it appears that Josefa Mendoza was born in 1893. She was begotten out of wedlock by Claro Bustamante, widower, and Paula Mendoza, single. Josefa was brought up by Claro Bustamante and was openly introduced by him as his daughter to his acquaintances. Shortly before his death in 1929, Claro delivered to Josefa a private document signed by him and attesting that she was his natural daughter. She kept this document until the outbreak of the war in 1941. She lost it during the war and found it only in 1953, when she instituted proceedings for the settlement of Claro's estate. In the meantime, however, Claro's estate had been partitioned by his widow and legitimate son.

Under these facts it was held that Josefa could not claim voluntary recognition. The old Civil Code requires that voluntary recognition should be evidenced by a record of birth, will or public docu-

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[51] Crisolo v. Macadaeg, G.R. No. L-7017, April 29, 1954; Buenaventura v. Urbano, 5 Phil. 1 (1905); Concepcion v. Untaran, 38 Phil. 736 (1918); Duepec v. Torres, 39 Phil. 760 (1919).

[52] G.R. No. L-7952, July 30, 1955.

[53] G.R. Nos. L-8562-63, Dec. 17, 1955; 52 O.G. 200 (1956).

ment. The private document in Josefa's possession and the acts showing that she possessed the status of a natural child are not evidence of voluntary recognition. Implied voluntary recognition, which was allowed under Law 11 of Toro, was abolished by the old Civil Code.[54]

On the other hand, said document and the acts showing possession of the status of a natural child could support an action for compulsory recognition.[55] However, said action should have been brought during the lifetime of Claro Bustamante, unless he died during Josefa's minority. She was already of age when Claro died in 1929.

Even assuming that the period of prescription found in article 137 was repealed by the Code of Civil Procedure and that an action for compulsory recognition could be brought within ten years from the father's death, in this case up to 1939, it is clear that Josefa's action had already prescribed. She was guilty of laches. *Vigilantibus sed non dormientibus jura subveniunt:* the law aids the vigilant, not those who slumber on their rights.

The situation in the *Mendoza* case, which is that of a natural child whose action for compulsory recognition has prescribed and who therefore remains as unacknowledged and without any rights whatsoever, is similar to that found in decided cases.[56]

ARTICLE 285 DOES NOT APPLY TO REDISCOVERY OF DOCUMENT.

One of the exceptions to the rule that an action for compulsory recognition should be brought during the lifetime of the putative parent is found in paragraph 2 of article 285 of the new Civil Code, which provides that "if after the death of the father or mother, a document should appear of which nothing had been heard and in which either or both parents recognize the child," the action for compulsory recognition "must be commenced within four years from the finding of the document." This provision was taken from article 137 of the old Code, which however provides only for a period of six months. Article 137 refers to a document "de que antes no se hubiese tenido noticia" or a document "previously unknown." It

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[54] Ramirez v. Gmur, 42 Phil. 885 (1922); Larena v. Rubio, 43 Phil. 1017 (1922); Allarde v. Abaya, 57 Phil. 909 (1933).

[55] Gitt v. Gitt, 68 Phil. 385 (1939); Celis v. Crisostomo, (C.A.) 46 O.G. 598 (1950).

[56] Vidaurrazaga v. Ruiz, 48 O.G. 2643 (1952); Gabrinao v. Latorre, G.R. No. L-5825, Feb. 27, 1953; Canales v. Arrogante, G.R. No. L-2821, March 17, 1952; Villalon v. Villalon, 71 Phil. 98 (1940); Ramos v. Ortuzar, G.R. No. L-2399, Aug. 29, 1951.

does not include documents that a claimant once possessed and subsequently lost or mislaid.[56a]

In the *Mendoza* case,[56b] the private document evidencing paternity and filiation was in claimant's possession up to 1941; then, she lost it and found it in 1953. It was held that article 137, now article 285, did not apply to such document.

FILIATION CANNOT BE PROVED DURING THE PROBATE OF THE WILL.

The case of *Reyes v. Ysip* [57] is authority for the proposition that a natural child, who opposed the probate of the will of his putative father and whose right to interpose an opposition has not been questioned by the proponent of the will, cannot present evidence as to his filiation in the hearing for the probate of the will. He should present such evidence during the stage when the estate of the deceased is ready for distribution and the court is ready to issue the order of declaration of heirs.[58]

In this connection, it should be remembered that a natural child claiming recognition may enforce his right either in a separate action brought against the potential heirs of his deceased parent or in the proceeding for the settlement of the estate of said deceased.

SUPPORT.

SUPPORT MAY BE DEMANDED IN ACTION FOR LEGAL SEPARATION.

In *Veloso v. Olayvar* [59] the husband instituted against his wife an action for legal separation in the Cebu Court of First Instance on the ground of adultery. The wife denied the charge of adultery and filed a counterclaim for support. Later the wife instituted against her husband in the Leyte Court of First Instance an action for support. It was held that the separate action for support was properly dismissed, since there was no need for prosecuting the two actions separately. It would result only in duplicity of work.

[56a] Mendoza v. Cayas, *supra* note 53.

[56b] See note 53 *supra*.

[57] G.R. No. L-7516, May 12, 1955; 51 O.G. 2357 (1955).

[58] See Nicolas v. Enriquez, G.R. No. L-8371, June 30, 1955, holding the question of whether investigation of paternity is forbidden or not is immaterial in a concubinage case.

[59] G.R. No. L-8088, Nov. 29, 1955; 51 O.G. 6219 (1955).

PARENTAL AUTHORITY.

MOTHER IS ENTITLED TO CHILD'S CUSTODY.

The mother of a child, whose father is unable to exercise parental authority in view of his assignment to Saigon as a military attache, is entitled to the custody of said child. Habeas corpus lies, at the mother's instance, to recover custody of said child from another person, to whom said child was entrusted by the father.[60]

WIDOW AS LEGAL ADMINISTRATRIX CANNOT COMPROMISE HER MINOR CHILDREN'S CLAIMS.

The first case construing article 320 of the new Civil Code, which provides that "the father, or in his absence the mother, is the legal administrator of the property pertaining to the child under parental authority," is *Visaya v. Suguitan*.[61] It was ruled in this case that the widow, as legal administratrix of her minor children's property, has no power to compromise their claims, because a compromise has always been deemed equivalent to an alienation (*transigere est alienare*) and is an act of strict ownership that goes beyond mere administration. Hence, article 2032 of the new Civil Code provides that the court's approval is necessary in compromises entered into by the parents.

In the *Visaya* case, it appears that in 1941 Antonio Suguitan sold his homestead to the spouses Modesto Visaya and Juana Bayaua; that in 1952, he sued Juana Bayaua for the repurchase of the homestead; that said case was compromised with the court's approval; and that in 1954, the children of the deceased Modesto Visaya brought an action for the purpose of annulling the compromise and the judgment in the case between Suguitan and their mother, insofar as their ½ interest in the homestead was concerned. The question was whether the compromise entered into between Suguitan and Juana Bayaua was binding on her children.

It was held that the compromise was not binding because the children were not parties in the case between Suguitan and Bayaua. In this connection, it should be noted that under Act No. 3176 the alienation by a surviving spouse of conjugal property, without judicial approval is valid only to the extent of the said spouse's interest in the property and is not binding on the heirs of the deceased spouse who did not participate in the transaction.

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[60] Banzon v. Alviar, G.R. No. L-8806, May 25, 1955.
[61] G.R. No. L-8300, Nov. 18, 1955.

DECREE OF ADOPTION MAY BE SET ASIDE ON THE GROUND OF EXTRINSIC FRAUD.

In *Dayrit v. Dayrit* [62] it appears that a child five years old was adopted with the consent of its natural mother, but without the knowledge of its putative father. The decree of adoption was rendered on January 27, 1951. About a year later the father moved for the setting aside of the decree of adoption and the trial court granted the motion, but on certiorari proceedings to the Supreme Court it was held that the trial court had no more jurisdiction to set aside the decree which had already become final.[63] A petition for habeas corpus filed by the natural father was also denied by the Supreme court in the case of *Dayrit v. Dayrit*.[64]

Subsequently, the natural father of the child filed a suit for the annulment of the decision in the adoption proceedings on the ground that said decision was obtained through fraud. The question was whether the decree of adoption could still be set aside notwithstanding the two decisions of the Supreme Court already mentioned.

Held: Said decisions are not *res judicata* because they did not pass upon the issue of extrinsic fraud as vitiating the adoption proceedings. The suit for the annulment of the decree of adoption should therefore be tried on the merits.

WHEN MATERNAL GRANDPARENT IS PREFERRED TO PATERNAL GRANDPARENT IN THE EXERCISE OF SUBSTITUTE PARENTAL AUTHORITY.

Article 355 of the new Civil Code provides that substitute parental authority should first be exercised by the paternal grandparents and then by the maternal prandparents. This provision was not considered inflexible or mandatory in the case of *Flores v. De Leon Vda. de Esteban*,[65] where it was ruled that as against the paternal grandparents, the maternal grandparents of a minor child may be given substitute parental authority if in doing so the welfare of the child would be served.

In the *Flores* case, it appears that the child has been taken care of by his maternal grandmother since he was twenty days old; that his mother is dead; that his father is stationed in Okinawa; that the child, already eight years old, is being sent to school by his grandmother; and that the paternal grandfather wants to have custody of

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[62] G.R. No. L-7858, Oct. 26 ,1955.
[63] Dayrit v. Piccio, 49 O.G. 949 (1953).
[64] Duran v. Dayrit, G.R. No. L-6013, March 10, 1953.
[65] G.R. No. L-8768, Aug. 26, 1955; 51 O.G. 4525 (1955).

him. It was held that the maternal grandmother is almost a mother to the child and her affection for the child is as great or even greater than that of the child's mother herself. The maternal grandmother was therefore given custody of the child in preference to the paternal grandmother, following the rule in article 363 of the new Code that the child's welfare is the paramount consideration.

WHEN EXPROPRIATION IS IMPROPER.

The owner of a parcel of land has the right to determine to whom he should sell the land or portions thereof. The mere fact that one is a tenant does not entitle him to compel his landlord to sell a portion of the land to him (the tenant). A parcel of land of around 65 hectares, formerly forming part of a hacienda, cannot be expropriated for resale to the tenants thereof, if the landowner has already subdivided the same and is selling it to those willing to pay his price.[66]

Expropriation proceedings likewise will not lie where the land sought to be expropriated consists of 26 hectares of fishpond and is intended for distribution among 400 persons to be worked by each participant, because the fishpond cannot be practically subdivided among the persons working therein. Commonwealth Act. No. 539 requires that each tenant should have his own property to be cultivated by himself.[67]

CIVIL FRUITS.

An illustration of civil fruits is found in the case of *Velayo v. Republic* [68] where it was ruled that the charges or rentals for the use of the airports and air navigation facilities, administered by the National Airports Corporation, belong to the National Government as civil fruits and not to the instrumentality or agency, through which the Government administers said airports and air navigation facilities.

ILLUSTRATION OF BUILDING IN GOOD FAITH.

Article 448 of the new Civil Code, formerly article 361, provides that the owner of the land on which anything has been built in good faith shall have the right to appropriate as his own the building after payment of the proper indemnity or to oblige the one who built it to pay the price of the land.

Is it necessary under this provision that the entire building should be built on another's land, or would said provision apply even if only part of a building is built on another's land?

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[66] Republic v. Baylosis, G.R. No. L-6191, Jan. 31, 1955; 51 O.G. 722 (1955).
[67] Republic v. Castro, G.R. No. L-4370, Feb. 25, 1955; 51 O.G. 1315 (1955).
[68] G.R. No. L-7915, July 30, 1955.

In *Cabral v. Ibañez* [69] article 361 was applied to a case where plaintiffs built a part of their house on the land of another with an area of 14-square meters. Plaintiffs acted in good faith because they thought that their house was being built entirely within the boundaries of their lot. Defendant was likewise unaware that a portion of plaintiff's house was occupying a part of her lot.

Under these circumstances, it was held that defendant owner of the 14-square meter portion in question has the option to elect, within 30 days from the time the decision becomes final, either to purchase that part of plaintiff's house which was built on her land, or to sell plaintiff's that 14-square meter portion in question. It was further held that, after defendant has made the election, the case should be set for hearing to determine the value of the improvement or of the land, depending on which option would be exercised by defendant.

QUESTION OF REIMBURSEMENT TO BUILDER IN GOOD FAITH MAY BE PASSED UPON IN AN EJECTMENT CASE.

The rules of accession with respect to land do not apply to the improvements made by the lessee upon the land leased.[70] The right of indemnification secured in article 448 of the new Civil Code, formerly article 361, "is manifestly intended to apply only to a case where one builds or sows or plants on land in which he believes himself to have a claim of title and not to lands wherein one's only interest is that of tenant under a rental contract; otherwise it would always be in the power of the tenant to improve his landlord out of his property." [71] The right of the tenant with respect to the improvements made by him on leased real property is governed by article 1678 of the new Civil Code, not by the rules of accession.[72]

However, if in an ejectment suit it turns out that the lessee of a parcel of land had constructed a building on the land leased prior to the execution of the lease, the courts, to avoid multiplicity of suits, may decide the question of reimbursement in the ejectment case, instead of requiring a separate action be brought. This is the ruling in *Uy Tayag v. Yuseco.*[73]

In the *Yuseco* case, it appears that in 1930 Maria Lim, by way of appreciation of the legal services rendered to her by Joaquin

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[69] G.R. No. L-8555, Dec. 20, 1955.

[70] Tiala v. Navarro, (C.A.) 38 O.G. 1197 (1939).

[71] Alburo v. Villanueva, 7 Phil. 277, 280 (1907).

[72] Montinola v. Bantug, 71 Phil. 449 (1941); Fojas v. Velasco, 51 Phil. 520 (1928); Rivera v. Trinidad, 48 Phil. 396 (1925); Cortes v. Ramos, 46 Phil. 184 (1924).

[73] G.R. No. L-8139, Oct. 24, 1955; 51 O.G. 5140 (1955).

Yuseco, allowed him to build a house valued at ₱50,000 on two lots belonging to her. The building was therefore constructed in good faith. The owner had intended that the land would be occupied without charge by Yuseco. However, to legalize the possession, a contract of lease was later executed providing that Yuseco would pay a rental of ₱120 a year. Before Maria Lim died in 1945, she sold the two lots to her daughter, Belen Uy, and the latter sued Yuseco for ejectment. Yuseco never paid any rentals to Lim. It was held that the new owner of the land had the option either to require Yuseco to pay the value of the land or pay to Yuseco the amount of the useful expenditures or "increase in the value of the land" resulting from the construction of the said building, pursuant to articles 361 and 453 of the old Code, now articles 448 and 546.

NO REIMBURSEMENT FOR BUILDING BUILT IN BAD FAITH.

The case of *Miranda v. Fadullon* [74] illustrates the situation of a builder in bad faith who is not entitled to reimbursement for the useful improvements made by him on the land of another. It appears in that case that defendant spouses bought a parcel of land from an alleged attorney-in-fact of the owner. The sale was with right of repurchase. The period for repurchase was only one month. At the time the *pacto de retro* sale was executed by the alleged attorney-in-fact the land was already mortgaged to the creditor of the owner. The improvements were constructed by the purchasers seven months after they had been summoned in a civil case instituted by the owner of the land for the annulment of the *pacto de retro* sale in their favor. The sale was annulled and the purchasers were held not entitled to be reimbursed for the value of the improvements made by them because they had purchased the land in bad faith. They also made the improvements in bad faith. They were required to pay rental to the owner of the land.

No authorities were cited by the Court, but it is easy to see that its holding is consistent with the rulings in previous cases, such as *Tacas v. Tobon;*[75] *Roman Catholic Church v. Ilocos Sur;*[76] and *Rivera v. Rivera v. Roman Catholic Church.*[77]

PLANTER IN BAD FAITH.

Where the possessor of a land was allowed to plant crops thereon but was prohibited from planting big trees, and he never gave the owner of the land any part of the produce thereof and refused to

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[74] G.R. No. L-8220, Oct. 29, 1955; 51 O.G. 6226 (1955).
[75] 53 Phil. 356 (1929).
[76] 10 Phil. 1 (1908).
[77] 40 Phil. 717 (1920).

vacate it on demand, he is a possessor or planter in bad faith, not entitled to compensation for the trees planted by him.[78]

COMMINGLING OF CATTLE IN BAD FAITH.

The case of *Siari Valley Estate, Inc. v. Lucasan*,[79] presents the novel situation of the commingling of the cattle of two ranches. The Supreme Court found that the cattle in plaintiff's ranch were rounded up and driven by defendant's men into defendant's ranch and that defendant later refused to return plaintiff's cattle despite repeated demands. Defendant, therefore, acted in bad faith.

Following the rule in article 382 of the old Code, now article 473, that "if the one who caused the mixture or confusion acted in bad faith, he shall lose the thing belonging to him thus mixed or confused," defendant was ordered to deliver to plaintiff all the cattle found in his ranch and to pay to plaintiff the value of the cattle which he had disposed of.

POSSESSION.

SCOPE OF ARTICLE 543.

Article 543 of the new Civil Code, formerly article 450, which provides that "each one of the participants of a thing possessed in common shall be deemed to have exclusively possessed the part which may be allotted to him upon the division thereof, for the entire period during which the co-possession lasted," was interpreted in *Ramos v. Ramos*.[80] It was held in this case that article 543 "refers only to the exclusive possession of the portion allotted to each co-heir." Where there were seven heirs and the hacienda, constituting the hereditary estate, was assigned in the partition to one heir, his possession of 1/7 of the hacienda (not of the entire hacienda) should be deemed to have lasted during the entire period following the death of the deceased and preceding the partition.

He cannot be deemed to have possessed the whole hacienda during the period of co-possession because he was supposed to be entitled to only 1/7 of the fruits of the hacienda.

REGISTRY OF PROPERTY.

NECESSITY FOR REGISTRATION.

1. As between the parties to a contract of sale of real estate, registration is not necessary to make it valid and effective, for actual notice is equivalent to registration.[81]

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[78] Mariano v. De los Santos, G.R. No. L-7376, May 31, 1955.
[79] G.R. No. L-7046, Aug. 31, 1955.
[80] G.R. No. L-7546, June 30, 1955.
[81] Galasinao v. Austria, G.R. No. L-7918, May 25, 1955; 51 O.G. 2874 (1955); citing Obras Pias v. Devera Ignacio, 17 Phil. 45 (1910); Gustilo v. Maravilla, 48

2. A judicially approved agreement granting plaintiff a footpath over defendants' land is valid and may be registered as a lien on said land.[82]

UNREGISTERED SALE OF REGISTERED LAND IS VALID BETWEEN THE PARTIES.

The *Galasinao* case [82a] clarifies the meaning of section 50 of Act 496 which provides:

> "But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of the register of deeds for the province or provinces or city where the land lies."

In *Tuason v. Raymundo,*[83] it was held that pursuant to section 50, "no act of the parties themselves can transfer the ownership of real estate under the Torrens system. That is done by the act of registration of the conveyance which the parties have made." However, in *Carillo v. Salak,*[83a] it was held that an unregistered sale of registered land is "valid and binding between the parties and can serve as basis to compel the register of deeds to make the necessary registration." Such sale, however, is not binding against a third person.

In *Galanza v. Nuesca* [84] the rule in the *Salak* case was reiterated. It was held in the *Galanza* case that section 50 means that "even without the act of registration, a deed purporting to convey or affect registered land shall operate as a contract between the parties. The registration is intended to protect the buyer against claims of third persons arising from subsequent alienations by the vendor and is certainly not necessary to give effect, as between the parties, to their deed of sale."

The *Galasinao* case follows the above rulings and stresses that actual notice is equivalent to registration and that as between vendor

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Phil. 442 (1925); Quimson v. Suarez, 45 Phil. 901 (1924); Winkleman v. Veluz, 43 Phil. 609 (1922).

[82] Bernardo v. De Jesus, G.R. No. L-7248, May 28, 1955.

[82a] See note 81 *supra.*

[83] 28 Phil. 635 (1914).

[83a] G.R. No. L-4133, May 12, 1952.

[84] 50 O.G. 4213 (1954).

and vendee, the same rights and remedies exist with reference to registered lands as exist in respect to unregistered land.[85]

DONATIONS.

DONATIONS INTER VIVOS AND MORTIS CAUSA.

Many legal battles have been fought on the issue of whether a donation is *inter vivos* or *mortis causa*. Such battles arise because the form required for the two kinds of donations is different and some lawyers are ignorant of the fact that donations *mortis causa* had ceased to be an independent legal concept, that they are now a part of testamentary dispositions,[86] and that if a donor wants to execute such donations it is necessary that a will or testament should be executed. There seems to be an apparent tendency on the part of the courts to consider a donation as *inter vivos*, whenever possible, so as to save it from the fate of invalidity. But where the donation was really intended to take effect after the donor's death, and it was not embodied in a will, the courts have no alternative but to invalidate it.[87]

The criterion for determining whether a donation is *inter vivos* or *mortis causa* (meaning in the latter case that it should take the form of a bequest) is the time of effectivity. If the donation is effective during the donor's lifetime, it is *inter vivos;* if after death, it is *mortis causa*.

The rule, that the question of whether a donation is *inter vivos* or *mortis cause* depends on the effectivity of the donation, was applied in the case of *Kiene v. Collector of Internal Revenue*.[88] According to the *Kiene* case, the ascertainment of the effectivity of the donation is to be made from the document evidencing the donation and the circumstances surrounding its execution. Where it is apparent from the document of trust that the donee's acquisition of the property or right accrued immediately upon the effectivity of the instrument and not upon the donor's death, the donation is *inter vivos* and not *mortis causa*.

The fact that a donation was made in consideration of the love and affection of the donor for the donee is not a safe criterion in the determination of the nature of a donation because both donations *morits causa* and *inter vivos* may have such motivation. That consideration may be useful only in ascertaining whether the donor

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[85] Medina v. Imaz and Warner, Barnes & Co., 27 Phil. 314 (1914).
[86] Bonsato v. Court of Appeals, 50 O.G. 3568 (1954).
[87] Cariño v. Abaya, 70 Phil. 182 (1940); Bautista v. Sabiniano, G.R. No. L-4236, Nov. 18, 1952; David v. Sison, 76 Phil. 418 (1946).
[88] G.R. No. L-5974, July 30, 1955.

intended to transfer immediately to the donee the ownership of the donated property.[89]

In the *Padilla* case,[89a] the deed of donation stated that the donor wanted to give the donee something "to take effect after his death" and that "this donation shall produce effect only by and because of the death of the donor, the property herein donated to pass title after the donor's death." It was held that the donation was *mortis causa*, although possession of the donated property was delivered to the donee upon the execution of the deed of donation and although the donee accepted the donation in the same deed.

The situation in the *Padilla* case is the reverse of that found in *inter vivos* donations, where the naked ownership is transferred upon the execution of the deed of donation but possession of the property will be delivered to the donee only after the donor's death, as contemplated in article 729 of the new Civil Code.

Another 1955 case, revealing the unfamiliarity of the legal profession with donations *mortis causa* or their failure to realize that such donations have ceased to be an independent legal concept is *Cuevas v. Cuevas*.[90]

In the *Cuevas* case, it appears that one Antonina Cuevas executed on September 18, 1950 a notarial conveyance styled as "Donacion Mortis Causa," wherein she ceded to her nephew Crispulo Cuevas a parcel of unregistered land. Cuevas accepted the donation in the same instrument. Subsequently, or on May 26, 1952, the donor revoked the donation. The question was whether the conveyance entitled "Donacion Mortis Causa" was intended as an *inter vivos* donation or as a *mortis causa* transfer of land. It is a familiar rule in the law of donations that neither the designation *mortis causa* nor the provision that the donation is "to take effect at the death of the donor" is a controlling criterion in defining the true nature of donations.[91]

The deed of donation in the *Cuevas* case contained this provision which, as in previous cases, is susceptible of being construed as making it an *inter vivos* or a *mortis causa* transfer:

> "Dapat maalaman ni Crispulo Cuevas na samantalang ako ay nabubuhay, ang lupa na ipinagkakaloob ko sa kaniya ay ako pa rin ang patuloy na mamomosecion, makapagpapatrabajo, makikinabang at ang iba pang

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[89] Howard v. Padilla, G.R. No. L-7064, April 22, 1955.

[89a] *Ibid.*

[90] G.R. No. L-8327, Dec. 14, 1955; 51 O.G. 6163 (1955).

[91] Laureta v. Mata, 44 Phil. 668 (1923); Concepcion v. Concepcion, G.R. No. L-4225, Aug. 25, 1952.

karapatan sa pagmamayari ay sa akin pa rin hanggang hindi ako binabawian ng buhay ng Maykapal at ito naman ay hindi ko figa iya-alis pagkat kung ako ay mamatay na ay inilalaan ko sa kaniya."

As noted by Justice J. B. L. Reyes, there is an apparent conflict between the expression that the donor reserves to herself the right of possession, etc. (*ako pa rin ang patuloy na mamomosecion*, etc.") and the expression that the donor "will not take away" (the property) "because I reserve it for him (the donee) when I die" (*"hindi ko nga iya-alis*, etc.").

It was necessary to ascertain whether the donor intended to part with title to the property immediately upon the execution of the deed, or only upon her death. In the first case, the donation is *inter vivos;* in the second case, *mortis causa.* It was held that the controlling words in the deed of donation, stating that the donor will not dispose or take away (*hindi ko nga iya-alis*), signified that the donor expressly renounced the right to freely dispose of the property in favor of another (a right essential to ownership) and manifested the irrevocability of the conveyance of the naked title to the property in favor of the donee. Such irrevocability is a characteristic of donation *inter vivos,* as ruled in the *Bonsato* case.[91a] The donor retained merely the beneficial ownership or *dominium utile.* Being *inter vivos,* the donor could not revoke the donation, except on the grounds specified by law. No such grounds existed. The donee was not guilty of ingratitude.

Justice Reyes enjoined notaries drafting deeds of donation to make clear to donors that retention of the right to dispose of the property, notwithstanding the donation, means that the donation is *mortis causa* and that it should take the form of a testament; while, a *converso,* the express waiver of the right of disposition would place the *inter vivos* character of the donation beyond dispute.

SUFFICIENCY OF ACCEPTANCE.

In the *Cuevas* case it was held that the statement of the donee in the deed of donation that he would respect the terms of the donation and that he was grateful for the donor's benevolence, constitutes a sufficient acceptance, although the donee did not state categorically that he was accepting the donation.

TRANSFERS PROVEN TO BE DONATIONS, NOT SALES.

In *Tang Ho v. Board of Tax Appeals* [92] one of the issues was whether the shares of stock acquired by the children of Li Seng Giap

[91a] See note 86 *supra.*
[92] G.R. No. L-5949, Nov. 19, 1955; 51 O.G. 5600 (1955).

were donated to them by their father or were purchased by them. The finding that said shares were donated and that, therefore, the donations were subject to gift tax, was supported by the circumtances that the transferees did not possess adequate independent means to buy the shares and that no evidence was introduced to prove the purchase, other than the gift tax returns of the spouses.

Under articles 1470 and 1471 of the new Civil Code gross inadequacy of price or a simulated price may indicate that a purported sale is in reality a donation.

SCOPE OF UNCONDITIONAL DONATION INTER VIVOS.

A donation *inter vivos* of land made in a public instrument and duly accepted by the donees operates to transfer ownership to the latter. If said donation appears on its face to be absolute and unconditional, it cannot be construed that it was limited to the naked ownership of the land donated. Article 749 of the new Civil Code requires that the charges to be assumed by the donee must be stated in the deed of donation.[93]

But it is elementary that an oral donation of land is void. And if the property donated is registered land and the deed of donation was not registered, it would not affect third persons.[94]

RESERVATION OF PROPERTY FOR DONOR'S SUPPORT.

Article 750 of the new Code, formerly article 634, relative to the reservation by the donor of property sufficient for his support was cited in the case of *Kiene v. Collector of Internal Revenue* [95] to bolster the opinion of the court that in the computation of the *donee's* gift tax the donor's tax is not deductible because the assumption is that the donor's tax is not to be paid out of the property donated but will be paid by the donor out of the property which he has reserved for himself.

In *Cuevas v. Cuevas* [96] the contention that the donor did not reserve sufficient property for her support was not sustained, considering that she reserved for herself all the benefits derivable from the donated property as long as she lived. On the other hand, it was noted in said case that the donee could not be charged with ingratitude, considering that his monthly income amounted only to ₱30, out of which he had to support himself, his wife and his two child-

[93] Ortiz v. Basada, G.R. No. L-7307, May 19, 1955.
[94] Padilla v. Jordan, G.R. No. L-8494, Dec. 22, 1955, citing § 50, Act No. 496.
[95] G.R. No. L-5794, July 30, 1955.
[96] G.R. No. L-8327, Dec. 14, 1955; 51 O.G. 6163 (1955).

ren. Evidently, his means did not allow him to add the donor's support to his own burdens.

SUCCESSION.

SUCCESSIONAL RIGHTS ARE VESTED AS OF THE MOMENT OF DEATH.

Since successional rights are vested as of the moment of death, a fundamental principle in succession, the legal heirs of a deceased may file an action arising out of a right belonging to their ancestor without a separate judicial declaration of their status as such, provided that there is no pending judicial proceeding for the settlement of the decedent's estate.[97]

The principle that successional rights are vested as of the moment was cited in *Visaya v. Suguitan*[98] to support the view that a surviving spouse cannot dispose of the share of her children in the estate of the deceased spouse.

USE OF SPANISH WORDS IN A WILL WRITTEN IN THE DIALECT.

The mere fact that the Spanish words "legado," "partes iguales" and "plena propiedad" were used in a will written in the Visayan dialect would not signify that the will was written in a language not known to the testatrix. The evidence shows that those terms are of common use even in the vernacular and that the testatrix was a woman of wide business interests.[99]

This ruling is similar to that found in the case of *In re Estate of Rallos*.[100]

NOTARIAL ACKNOWLEDGMENT NEED NOT BE ACCOMPLISHED IN ONE SINGLE ACT.

The requirement in article 806 of the new Civil Code, that every will must be acknowledged before a notary public by the testator and the witnesses, was interpreted for the first time in *Javellana v. Ledesma*.[101] In this case the will was signed in the hospital by the testatrix and witnesses in the presence of the notary. However, the notary did not then and there sign and seal the will. Instead, he brought the will to his office and signed and sealed it there.

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[97] Atun v. Nuñez, G.R. No. L-8018, Oct. 26, 1955; 51 O.G. 5628 (1955); citing Mendoza Vda. de Bonnevie v. Cecilio Vda. de Pardo, 59 Phil. 486 (1934); Gov't of the P.I. v. Serafica, 61 Phil. 93 (1935); Uy Coque v. Navas, 45 Phil. 430 (1923).

[98] G.R. No. L-8300, Nov. 18, 1955.

[99] Javellana v. Ledesma, G.R. No. L-7179, June 30, 1955; 51 O.G. 3453 (1955).

[100] (C.A.) 44 O.G. 4938 (1948).

[101] G.R. N. L-7179, June 30, 1955; 51 O.G. 3453 (1955).

It was argued that the will was invalid because the notarial acknowledgement was not accomplished on the same occasion as the signing of the will. This contention was not sustained. The Supreme Court noted that, while the law requires that the testator and the witnesses must sign in the presence of each other, all that is thereafter required is that "every will must be acknowledged before a notary public by the testator and the witnesses." This means that they should avow to the notary the authenticity of their signatures and the voluntariness of their actions in signing the testamentary disposition. The subsequent signing and sealing by the notary of his certification, that the testament was duly acknowledged by the participants therein, is not a part of the acknowledgment itself nor the testamentary act. Hence, their separate execution out of the presence of the testatrix and her witnesses cannot be said to violate the rule that testaments should be completed without interruption, or as the Roman maxim puts it: *Uno eodem die ac tempore in eodem loco*. Article 806 does not contain words requiring that the testator and the witnesses should acknowledge the testament on the same day or occasion that it was executed.

ONLY PERSONS INTERESTED MAY INTERVENE IN PROBATE PROCEEDINGS.

A person who has no interest in the succession cannot be allowed to intervene and oppose the probate of a will.[102]

A person intervening in the proceedings should be required to show his interest in the will or the property affected thereby. However, if a person without interest was allowed to intervene and his testimony was the basis for the disallowance of the will, the order of disallowance is not thereby rendered void.[103]

Only prima-facie evidence is necessary to prove that a person has on interest in the probate of the will or the property affected thereby.[104]

NO RECIPROCAL SUCCESSION BETWEEN MEMBERS OF LEGITIMATE AND ILLEGITIMATE FAMILY.

Article 943 of the old Code, now article 992, provides that "a natural child has no right to succeed *ab intestato* the legitimate children and relatives of the father or mother who has acknowledged it; nor shall such children or relatives inherit from the natural child."

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[102] *In re* Cabigting, 14 Phil. 473 (1909).

[103] Paras v. Narciso, 34 Phil. 244 (1916).

[104] Asinas v. Court of First Instance of Romblon, 51 Phil. 665 (1928); Reyes v. Ysip, G.R. No. L-7516, May 12, 1955; 51 O.G. 2357 (1955).

Article 943 embodies the rule that there is no reciprocal succession among the legitimate and illegitimate relatives. The reason for the rule, according to Manresa, is that "the natural child is disgracefully looked down upon by the legitimate family; the legitimate family is, in turn, hated by the natural child; the latter considers the privileged condition of the former and the resources of which it is thereby deprived; the former, in turn, sees in the natural child nothing but the product of sin, a palpable evidence of blemish upon the family. Every relation is ordinarily broken in life; the law does no more than recognize this truth, by avoiding further grounds of resentment." [104a]

In *Rodriguez v. Reyes*,[105] one Maxima de los Reyes had a natural child named Luciano Reyes and a legitimate child, Gavino Villota. Luciano was survived by his child Zoilo Reyes. After the death of Gavino Villota, Zoilo sought to annul the sale of certain lots effected by the widow of Gavino Villota. Zoilo claimed to be a legal heir of his uncle Gavino.

Held: Since Luciano Reyes, the father of Zoilo, was an illegitimate child, Zoilo could not inherit from Gavino, a legitimate child, because Luciano himself could not inherit from Gavino. Zoilo could not represent his father in the succession to the estate of Gavino. The foregoing holding is supported by the case of *Anuran v. Aquino*.[106]

RIGHT OF REDEMPTION UNDER ARTICLE 1088.

The right of redemption granted by article 1088 exists before partition. It is incorrect to state, as the Court of Appeals did, that the said right of redemption should exist only *after* adjudication or partition of the estate and that pending partition the heir's right is only "in the nature of hope." Successional rights are vested as of the moment of death, and one of such rights is the right of redemption.[107]

DECLARATION OF HEIRS.

After the debts and expenses of administration have been paid, the court should ascertain who are the heirs, devisees and legatees entitled to share in the inheritance. It is at this stage that

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[104a] Grey v. Fabie, 68 Phil. 128, 131 (1939).

[105] G.R. No. L-7760, Sept. 30, 1955; 51 O.G. 5188 (1955).

[106] 38 Phil. 32 (1918); Grey v. Fabie, 68 Phil. 129 (1939); Llorente v. Rodriguez, 10 Phil. 585 (1908); Centeno v. Centeno, 52 Phil. 322 (1928); Allarde v. Abaya, 57 Phil. 909 (1933).

[107] Saturnino v. Paulino, G.R. No. L-7389, May 19, 1955.

the filiation of illegitimate children should be ascertained. The court will issue what is known as an order of declaration of heirs.[108]

ILLUSTRATION OF ARTICLE 1091.

Article 1091 of the new Civil Code is illustrated in the case of *Ramos v. Ramos*.[109] In this case the deceased was survived by his seven children. Among the properties left by him was a hacienda, which was assigned during the partition to one heir who paid cash to the other heirs for their *proindiviso* shares in the hacienda. It was argued that, because of the assignment, the heir, who received the hacienda, should be regarded as having owned the whole hacienda since the death of the deceased, following the rule in article 1091 that "a partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him." This contention was rejected. Article 1091 would apply only to the 1/7 portion of the hacienda corresponding to the said heir. He obtained the 6/7 portion of the hacienda by purchase, not by right of succession.

PRESCRIPTION.

PRESCRIPTION ALREADY RUNNING BEFORE EFFECTIVITY OF NEW CODE IS GOVERNED BY OLD LAW.

Article 1116 of the new Civil Code, which provides that prescription already running before the effectivity of the new Civil Code (August 80, 1950 is the settled date of effectivity) shall be governed by laws previously in force, was applied in *Osorio v. Tan Jongko*,[110] a case involving the recovery of two parcels of land. The cause of action accrued on May 2, 1942. The action was brought only on November 21, 1952 or after the expiration of ten years.

There was a written extrajudicial demand for the delivery of the land on December 5, 1950. It was contended that this extrajudicial demand, which was made before the expiration of the 10-year period counted from May 2, 1942, interrupted the running of the prescriptive period, pursuant to article 1155 of the new Civil Code, which provides that prescription of actions is interrupted when there is a written extrajudicial demand made by the creditor. The question was whether article 1155 applied to the case.

It was held that it did not apply because article 1116 clearly provides that prescription already running before the effectivity of the

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[108] Reyes v. Ysip, 51 O.G. 2357 (1955); Capistrano v. Nadurata, 46 Phil. 726 (1924); Lopez v. Lopez, 68 Phil. 227 (1939); Jimoga-on v. Velmonte, 47 O.G. 1119 (1951).

[109] G.R. No. L-7546, June 30, 1955.

[110] G.R. No. L-8262, Nov. 29, 1955; 51 O.G. 6221 (1955).

new Civil Code is governed by the Code of Civil Procedure, under which the prescriptive period for recovering a parcel of land is 10 years. The Code of Civil Procedure does not recognize an extrajudicial demand as a circumstance which interrupts the running of the prescriptive period.[111] Since more than ten years had elapsed when the action was brought, it had clearly prescribed. Parenthetically, it should be noted that under article 1141 of the new Code, "real actions over immovables prescribe after thirty years."

POSSESSION MUST BE ADVERSE IN ACQUISITIVE PRESCRIPTION.

Section 41 of the Civil Code Procedure expressly requires that the possession in acquisitive prescription of land must be adverse. The same requirement may be implied from articles 1118 and 1119 of the new Civil Code, which state that the possession should be "en conceptio dueño" and that possession by mere tolerance of the owner does not give rise to prescription.

In *Garcia v. Vda. de Arjona*,[112] it appears that certain lands of Felix Garcia were sold at public auction to satisfy a judgment rendered against him; that Marcelino Arjona redeemed said lands with the understanding that Garcia would execute a mortgage to guarantee the payment to Arjona of the sum of ₱4,350 which he had used in redeeming said lands; and that in 1932 Arjona and Garcia executed an agreement, whereby Arjona bound himself to sell said lands to Garcia if Garcia paid him ₱4,350. Arjona was placed in possession of the lands. He died in 1941. In 1951 the administrator of the estate of Arjona asked Garcia to redeem the lands for ₱10,000. In 1952 Garcia asked the widow of Arjona that he be allowed to redeem the lands but she refused to allow redemption. So Garcia in 1952 consigned the sum of ₱4,350 in court. One of the contentions of the widow and her children was that the action of Garcia for the recovery of said lands had prescribed and that they had acquired the same by prescription.

It was held that there was no prescription since Arjona held the land as a mortgagee and his possession was not adverse.

RECOVERY OF LAND UNDER THE OLD LAW.

Under section 41 of the Code of Civil Procedure the action for the recovery of a parcel of land precribes within 10 years. In *De Guinoo v. Court of Appeals*,[113] a parcel of conjugal land was illegally

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[111] Pelaez v. Abreu, 26 Phil. 415 (1913); Peralta v. Alipio, G.R. No. L-8273, Oct. 24, 1955.

[112] G.R. No. L-7279, Oct. 29, 1955.

[113] G.R. No. L-5541, June 25, 1955.

sold by the surviving spouse in 1934, but the sale was registered only in 1940. The action for annulment of the sale or recovery of the land was filed by the children of the vendor in 1948. It was held that the period of prescription should be counted from the date of registration in 1940, not from the date of the sale, although the plaintiffs were advised in 1934 that the land was about to be sold, but there was no evidence that they were actually informed of the sale. The children were considered third persons with respect to the sale.

ACTION FOR DAMAGES BASED ON FRAUD.

The remedy of a landowner who has been fraudulently deprived of his real property, which was subsequently sold to an innocent purchaser for value, is an action for damages against the person who perpetrated the fraud. The remedy may only be demanded judicially within four years after the discovery of the deception, pursuant to article 1146 of the new Code, formerly section 43 of the Code of Civil Procedure.[114]

A JUDGMENT CANNOT BE ENFORCED AFTER THE EXPIRATION OF TEN YEARS.

The rule in article 1144 of the new Civil Code and section 6, Rule 39 of the Rules of Court, that a judgment must be enforced within ten (10) years from the date of its entry, was applied in *Chua Lamko v. Dioso*.[115] It appears in this case that in 1939 Chua Lamko obtained a money judgment against Eligio Dioso; that to satisfy said judgment the mortgage executed by Dioso was foreclosed and the mortgaged property was sold to Chua Lamko at public auction, but the sale was not confirmed by the court; that the property was sold by Chua Lamko to another person and the latter in turn sold it to other persons. Dioso's successor in 1950 sued for the annulment of the sale and the recovery of the mortgaged property. Chua Lamko was joined as a defendant in this action and he filed a counterclaim for the amount of his judgment.

It was held that the sale of the mortgaged property at public auction was void because it was not confirmed by the court and the subsequent transferees of the property did not acquire a valid title thereto. Chua Lamko's counterclaim for the amount of the 1939 judgment in his favor was dismissed on the ground of prescription. He asserted it only in 1950 or more than ten years after the entry of the judgment.

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[114] Raymundo v. Afable, G.R. No. L-7651, Feb. 28, 1955; 51 O.G. 1329 (1955).
[115] G.R. No. L-6923, Oct. 31, 1955.

RIGHT TO DEMAND PAYMENT FOR EXPROPRIATION OF ROAD HAS PRESCRIBED AFTER 33 YEARS.

In the case of *Jaen v. Auditor General*,[116] it appears that in 1920 a portion of the lot of Monsignor Juan Gorordo was used as a road by the provincial government of Cebu on the understanding that payment for it would be deferred until the width of the road had been determined. Monsignor Gorordo died in 1934 without having been paid for the portion of his lot. In the distribution of his estate said lot was adjudicated to Telesfora Jaen, who secured a Torrens title therefor. There was no encumbrance of any kind on said title.

In 1953 Telesfora Jaen demanded payment for the portion of the lot used as a road. The Auditor General ruled that no payment could be allowed because the road was constructed in 1920 and the claim was presented only after a period of 33 years.

Held: The decision of the Auditor General should be upheld. Section 46 of Act 496, providing that title to registered land does not prescribe, has no application to the case because it does not involve acquisitive prescription but a claim for a sum of money. Neither does the rule that recovery of possession of registered land does not prescribe [117] apply to the case because the road was constructed in 1920. Telesfora Jaen obtained her title to the land in 1941 and she must have been aware of the existence of said road, although not annotated on the back of her title.[118]

EJECTMENT SUITS.

The provision in article 1147 of the new Civil Code, that forcible entry and detainer actions should be brought within one year from the date of the unlawful deprivation was applied in the case of *Suares v. Giok Nong Que*.[119] In this case the notice to vacate the land in dispute was served upon the defendant on April 17, 1951. In view of defendant's refusal to vacate the premises plaintiff filed an ejectment suit against defendant in the justice of the peace court. The justice of the peace dismissed the action because the dispute between the parties over the same land was being investigated by the Director of Lands.

Instead of appealing from the judgment of dismissal, plaintiff, on August 1, 1951, or within one year from the date the notice to vacate was given, from which date defendant's unlawful posses-

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[116] G.R. No. L-7921, Sept. 28, 1955.
[117] Francisco v. Cruz, 44 O.G. 5105 (1948).
[118] Mendoza v. Roxel, 74 Phil. 84 (1943).
[119] G.R. No. L-7927, Nov. 18, 1955.

sion allegedly commenced, filed an ejectment suit against defendant in the Court of First Instance.

It was held that the case was outside the jurisdiction of the Court of First Instance,[120] and came within the exclusive original jurisdiction of the justice of the peace court whose judgment of dismissal was *res judicata*. Plaintiff was estopped to assail the judgment of the justice of the peace.

LAND COVERED BY TORRENS TITLE CANNOT BE ACQUIRED BY PRESCRIPTION.

The rule in section 46 of Act 496 that no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession and that as a corollary the right of the registered owner to recover possession of registered land is equally imprescriptible, since possession is a consequence of ownership, [121] was reaffirmed in *Atun v. Court of Appeals;*[122] *Eugenio v. Perdido;*[123] and *Padilla v. Jordan.*[124]

It was also held in the *Atun* case that if prescription is unavailing against the registered owner, it must equally be ineffectual against the latter's hereditary successors, who step into the shoes of the decedent by operation of law, as provided for in article 777 of the new Civil Code.

The rule in section 46 of Act 496 was applied in the *Eugenio* case [125] to support the action for the recovery of a homestead which was sold in violation of the legal prohibition against alienation. Ten years' adverse possession of a duly registered homestead cannot defeat the right of the owner to recover possession thereof.[126]

PRESCRIPTION OF ACTION TO RECOVER PROPERTY HELD IN TRUST.

The case of *Bancairen v. Diones* [127] and *Sevilla v. De los Angeles* [128] reiterate the rule that an action to compel a trustee to convey property registered in his name in trust for the benefit of

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[120] Bongala v. Barbaza, 80 Phil. 767 (1948).

[121] Manlapaz v. Llorente, 48 Phil. 298 (1925); J. M. Tuazon & Co., Inc. v. Bolaños, G.R. No. L-4935, May 28, 1954; Valiente v. Court of First Instance of Tarlac, 80 Phil. 415 (1948).

[122] G.R. No. L-5541, June 25, 1955.

[123] G.R. No. L-7083, May 19, 1955.

[124] G.R. No. L-8494, Dec. 22, 1955.

[125] See note 123 *supra*.

[126] Acierto v. De los Santos, G.R. No. L-5828, Sept. 29, 1954.

[127] G.R. No. L-8013, Dec. 20, 1955.

[128] G.R. No. L-7745, Nov. 17, 1955; 51 O.G. 5590 (1955).

the *cestui que trust* does not prescribe.[129] In the *Bancairen* and *Sevilla* cases the trust involved was a constructive trust.

However, in the case of *Claridad v. Benares*,[130] where a constructive trust was sought to be established, the Supreme Court cited the well established rule in the American law of trust (expressly made applicable by article 1142 of the Civil Code) "that constructive or implied trusts, as distinguished from express ones *are barred by laches or prescription* without need of repudiation."[131] There is an apparent conflict between the two rulings.

It should be noted that in another case, it was held that a trustee (probably referring to an express trust) may acquire the property held in trust when he makes an open repudiation of the trust by unequivocal acts made known to the beneficiary.[132]

CLAIM OF RES JUDICATA.

Article 1143 of the new Civil Code provides that the action to demand a right of way and to abate a nuisance does not prescribe. According to *Apurada v. Director of Lands* [133] the claim of *res judicata* does not prescribe. It may be interposed as a defense anytime, like the defense of illegality or inexistence of a contract.

EFFECT OF WAR ON THE STATUTE OF LIMITATIONS.

Article 1154 of the new Civil Code provides that "the period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him." Does war, as a fortuitous event, interrupt the running of the prescriptive period? The general rule, reiterated in *Claridad v. Benares*,[134] is that the statute of limitations is deemed suspended by war only to such an extent that the courts are closed and cannot be reached by the people.[135]

However, the general rule does not apply to enemy aliens. As to them the applicable ruling, as followed in *Santos Vda. de Montilla v. Pacific Commercial Company* [136] is that "a foreign or internation-

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[129] Manalang v. Canlas, 50 O.G. 1980 (1954); Cristobal v. Gomez, 50 Phil. 810 (1927); Castro v. Castro, 57 Phil. 675 (1932); Salinas v. Tuason, 55 Phil. 729 (1931).

[130] G.R. No. L-6438, June 30, 1955.

[131] 34 AM. JUR. 143; 54 AM. JUR. 449; RESTATEMENT ON RESTITUTION, AMER. LAW INSTITUTE, § 179; 37 C.J. 719.

[132] Laguna v. Levantino, 71 Phil. 566 (1941).

[133] G.R. No. L-6067; Feb. 21, 1955.

[134] G.R. No. L-6438, June 30, 1955.

[135] España v. Lucido, 8 Phil. 420 (1907); Palma v. Celda, 46 O.G. Jan Supp. 198 (1950).

[136] G.R. No. L-8223, Dec. 20, 1955.

al war suspends the operation of the statute of limitations between the citizens of the countries at war as long as the war lasts, or at least as regards enemy aliens resident in enemy territory." [187]

In the *Santos* case, it appears that the Pacific Commercial Company, a corporation which was organized under Philippine laws with principal office in Manila and whose stockholders and officers were Americans, secured in 1940 a judgment against Agustin Montilla. This judgment, together with another debt, was not paid by Montilla at the outbreak of the war. During the occupation, the company's offices were closed and its officers were interned or went into hiding. The Japanese Military Administration issued an order suspending court actions affecting enemy aliens except in cases where express authority was obtained from the military authorities. The company sought to enforce the said judgment and the unpaid debt of Montilla only in 1951. The question was whether the action to enforce collection had already prescribed.

It was held that, while in places where the occupation government was functioning, the statutes of limitations were not suspended because then any citizen could secure the aid of the courts for the enforcement or vindication of his rights,[188] the same situation did not obtain when the parties affected were enemy aliens who by the laws of war are generally interned or placed in concentration camps. The statute of limitations cannot apply to the Pacific Commercial Company because its stockholders and officers were enemy aliens who were interned or went into hiding. It was difficult for them to invoke the aid of the courts, even if they wanted to. It would be most unfair to apply to the company the effects of such a statute simply because of the alternative afforded to enemy aliens by the military order, that they could secure the requisite authority for the enforcement of their rights. The company's cause of action for the enforcement of its claim cannot be deemed to have been barred by prescription.

MORATORIUM SUSPENDED RUNNING OF STATUTE OF LIMITATIONS.

Another important ruling adopted in *Santos Vda. de Montilla v. Pacific Commercial Company* [188a] is that "moratorium acts ordinarily operate to suspend the running of limitations as to suits barred by the provisions of the act, irrespective of whether or not the debtor has sought relief thereunder." This rule removes the doubt heretofore entertained as to whether the moratorium laws (Executive Or-

[187] 54 C.J.S. 289.
[188] See note 135 *supra*.
[188a] See note 136 *supra*.

ders Nos. 25 and 32 and Republic Act No. 342), which were in force until they were declared void in *Rutter v. Esteban,*[139] suspended the running of the statute of limitations. This point was not passed upon in *Chua Lamko v. Dioso* [140] because it was not raised in that case.

INTERRUPTION OF THE PERIOD OF LIMITATION OF ACTIONS.

1. Article 1155 of the new Civil Code, whose antecedents are section 50 of the Code of Civil Procedure and article 1973 of the old Civil Code, provides that "the prescription of action is interrupted when they are filed before the court, when there is written extra-judicial demand by the creditors, and when there is any written acknowledgement of the debt by the debtor." As ruled in *Veloso v. Fontanosa,*[141] "when the running of the statute (of limitations) is interrupted with respect to the obligations of an heir of the deceased debtor, the interruption benefits or prejudices all heirs alike, inasmuch as each and all of them represent their ancestor and jointly succeed him in his rights and obligations." This rule was reaffirmed in *Mina v. Favis Vda. de Rivero.*[142]

In the *Mina* case, it appears that in 1919 Rufina Clarin mortgaged to Salvador Rivero a house and lot as security for the payment of ₱1,000 with 12% interest per annum. Rufina Clarin died in 1929 but before her death she paid the accrued interests on the loan. In 1929 and 1937 Maria Mina, one of the heirs of Rufina Clarin, in her behalf and in behalf of her coheirs, wrote to Teodora Favis, the widow of Rivero, to whom the credit was adjudicated, stating that they would pay the debt to her. In 1938 the said heirs, through their relative paid to Teodora Favis the accrued interests. In 1946 Teodora Favis instituted proceedings for the summary settlement of the estate of Rufina Clarin and in those proceedings, Teodora proved her claim which had already reached the sum of ₱5,159. The administrix of the estate was ordered to pay the amount. The heirs of Rufina Clarin appealed. They contended that the debt had already prescribed.

Held: Applying section 50 of the Code of Civil Procedure, the period of prescription was interrupted by the letters of acknowledgment written in 1929 and 1937 by one of the heirs, acting in her behalf and in behalf of the other coheirs, and also by the payment of interests in 1938. The interruption prejudiced all the heirs.

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[139] G.R. No. L-3708, May 18, 1953; 49 O.G. 1803 (1953).
[140] G.R. No. L-6923, Oct. 31, 1955.
[141] 13 Phil. 79 (1909).
[142] G.R. No. L-7534, Sept. 27, 1955.

2. The principle in article 1155 of the new Civil Code, that the filing of an action interrupts the running of the period of prescription, is not recognized in the Code of Civil Procedure, as may be implied from its section 49. Under said Code, it was held that the filing of the action within the period of prescription does not interrupt the running of said period should plaintiff desist in the prosecution of the action.[143] This rule was reaffirmed in *Peralta v. Alipio*.[144]

In this case it was ruled that where plaintiffs had five years from August 1, 1947 within which to repurchase a homestead, and they brought the action for reconveyance on September 17, 1951, but the action was dismissed without prejudice, on March 11, 1952, the second action for conveyance, brought on November 1, 1952, cannot be entertained because it was brought outside the five-year period. The filing of the first action did not interrupt the running of the five-year period.[145]

OBLIGATIONS.

CASO FORTUITO.

In the case of *De Gillaco v. Manila Railroad Company* [146] the rule regarding fortuitous events, that "no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable," found in article 1105 of the old Civil Code, now article 1174, was applied to a novel situation. In the *Gillaco* case, a guard of the Manila Railroad Company encountered his personal enemy, Tomas Gillaco, in one of the trains of the company. Gillaco was a passenger in the train. The guard shot Gillaco to death. The shooting occurred when the guard was not on duty. Gillaco's heirs sued the company for damages.

It was held that the company was not liable because the act of the guard in shooting a train passenger was a "caso fortuito," an unforseeable and inevitable event under the given circumstances. The company had no means to anticipate or ascertain that the two would meet, nor could it reasonably foresee every personal rancor that might exist between each one of its many employees and anyone of the thousands of eventual passengers riding in its trains. The resulting breach of the company's contract of safe carriage with the deceased was excused thereby.

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[143] Oriental Commercial Co. v. Jureidini, Inc., 71 Phil. 25 (1940); Conspecto v. Fruto, 31 Phil. 144 (1915).

[144] G.R. No. L-8273, Oct. 24, 1955.

[145] *Ibid.*

[146] G.R. No. L-8034, Nov. 18, 1955; 51 O.G. 5596 (1955).

The rule in article 1174 of the new Civil Code, formerly article 1105, was also applied in the case of *Victorias Milling Association, Inc. v. Victorias Milling Co., Inc.*[147] In this case, certain sugar cane planters executed milling contracts stipulating that they were to deliver their sugar cane to the central "por espacio de treinta (30) años desde la primera molienda." The first milling started in 1918. In 1948 the planters terminated the milling contracts.

The central contended that the term "treinta años" in the milling contracts means 30 milling years, whereas the planters contended that it means 30 calendar years ending in 1948.

It was held that the term means calendar years, ending on the thirtieth agricultural year; that the failure of the planters to comply with their obligation of delivering their sugar cane during the years 1942 to 1947 was due to the war, which was a fortuitous event rendering performance impossiole (*nemo tenetur ad impossibilia*) and precluding the central from later on insisting on the performance of the same obligation; that the suspension of the contract during the occurrence of fortuitous events, such as war, does not mean that the term thereof was also suspended; that the central cannot demand that the milling contracts be extended for another six (6) years to make up for the nonperformance of the planters' obligation during the year 1942 to 1947, which "the law has written off."

The decision in the *Victorias* case is supported by the holding in *Lacson v. Diaz;*[148] *Lo Ching v. Court of Appeals;*[149] and *American Eastern School of Aviation v. Ayala y Cia.*[150]

APPROPRIATE ACTION TO PRESERVE RIGHT IN CONDITIONAL OBLIGATIONS.

In the case of *Philippine Long Distance Telephone Company v. Jeturian* [151] the company adopted in 1923 a pension plan, one of the conditions of which was that the beneficiaries or employees entitled to claim benefits under the plan should have attained the age of 50 and rendered 20 years' service. The company cancelled the plan in 1945 before any employee had met the conditions of the plan. Some prewar employees of the company, who were not recalled to the service and who had not met the age and service requirements, wanted to claim benefits under the plan.

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[147] G.R. No. L-6648, July 25, 1955; 51 O.G. 4010 (1955).
[148] 47 O.G. Dec. Supp. 337 (1951).
[149] 46 O.G. Jan. Supp. 399 (1950).
[150] G.R. No. L-2376, June 27, 1951.
[151] G.R. No. L-7756 June 30, 1955.

It was held that the fact that the right to claim benefits under the pension plan would not vest until the conditions were fulfilled did not authorize the company to disregard the plan at will, as if it had never been contracted, on the pretext that until the conditions were met, it had no obligations whatsoever toward the employees. In support of this view, the Supreme Court relied on the rule in article 1188 of the new Civil Code, formerly article 1121, that "the creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right" and on article 1186, formerly article 1119, that "the conditions shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment."

The Court observed that "the conditional obligation to pay the pension is one thing, and the contract or bargain producing such conditional obligation is quite another; that the former should not arise until the condition is fulfilled does not mean that the second is nonexistent. Neither does the fact that the effects of the contract are unilateral mean that one party may repudiate it at will." The pension plan in question did not contain a provision that the company could alter or amend the plan at any time. Moreover the company could not insist on the conditions of the plan which it had itself discontinued without the employees' consent.[152]

The assent of the employees is inferable from their entering the employ of the company, or their stay therein after the plan was made known. The pension plan was "a continuing part consideration for the services rendered by the employee," "a daily inducement to continuation of service." [153] The Supreme Court held that the pension plan should be liquidated and that the petitioning employees should be given pension payments in proportion to their respective age and length of service as of October 31, 1941.

SOLIDARITY IS NOT PRESUMED.

Where the suit is not upon tort but upon contract, solidarity is not presumed. In the absence of express stipulation or specific law to the contrary, the intentional nonperformance of a joint contractual obligation does not convert the latter into a solidary one. Such is the rule even if the obligation is indivisible. The obligation of each joint debtor being separate, the damages due to its breach must be borne by him alone. This is the holding in *Mollers (Hongkong) Ltd. v. Sarile.*[154] It is sanctioned by article 1207 of the new Civil Code, formerly article 1137, which states that there is no presumption

[152] Bosque v. Yu Chipco, 14 Phil. 95 (1909).
[153] Wilson v. Wurlitzer Co., 194 N.E. 441 (1934).
[154] G.R. Nos. L-7038-39, Aug. 31, 1955.

of solidarity and that solidary liability exists "only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity." Thus, article 2194 of the new Civil Code provides that "the responsibility of two or more persons who are liable for a quasi-delict is solidary."

LACK OF NOTICE RENDERS CONSIGNATION VOID.

Article 1258 of the new Civil Code, formerly article 1178, provides that "the consignation having been made, the interested parties shall also be notified thereof." Lack of such notice renders the consignation void, according to *Arambulo v. Ayson.*[155]

GENUS NUNQUAM PERIT.

In *Philippine Long Distance Telephone Company v. Jeturian,*[156] the rule in article 1263 of the new Civil Code that "in an obligation to deliver a generic thing, the loss or destruction of any of the same kind does not extinguish the obligation," was applied in resolving the contention of an employer that it could not make any pension payments to its employees because of its war losses. It was ruled that the company's obligation was a generic one, that is, to pay money, and such an obligation is not extinguished by losses or inability to raise funds.[157]

DEBT TO AMERICAN NATIONAL WAS EXTINGUISHED BY PAYMENT TO JAPANESE ENEMY PROPERTY CUSTODIAN.

Article 1240 of the new Civil Code, formerly article 1162, provides that "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." In connection with this provision it was held in the leading case of *Haw Pia v. China Banking Corporation* [158] that payment to the Bank of Taiwan, Ltd., in its capacity as liquidator of the China Banking Corporation, of a debt due to the latter bank was valid, because under the rules of international law the Japanese military forces had the power to sequestrate and impound the assets of the China Banking Corporation, an enemy-owned corporation, and for that purpose to liquidate it by collecting the debts due to the said bank and paying its creditors and therefore to appoint the Bank of Taiwan as liquidator. The Bank of Taiwan, Ltd. could be regarded as an entity "authorized" to receive payment within the meaning of article 1162. The words "a person

[155] G.R. No. L-6501, May 31, 1955.
[156] G.R. No. L-7756, July 30, 1955.
[157] Reyes v. Caltex (Phil.) Inc., 47 O.G. 1193 (1951).
[158] 80 Phil. 604 (1948).

authorized to receive it," as used in article 1162, now article 1240, means not only a person authorized by the creditor, but also a person authorized by law to do receive payment, such as a guardian, executor or administrator of the estate of a deceased person, assignee or liquidator of a partnership or corporation, as well as any other who may be authorized to do so by law.

The ruling in the *Haw Pia* case was amplified in the case of *Shotwell v. Urquico de Lazatin*,[159] where it was held that payment to the Enemy Property Custodian of the Japanese Military Administration of a debt due to an American, who was not interned and whose assets were not sequestrated, was likewise valid. This holding is a reiteration of a similar doctrine laid down in the case of *Hodges v. Gay*.[160] The Enemy Property Custodian was considered as an entity authorized by law to receive payment of a debt due to enemy aliens.

Another case illustrating payment to any person authorized to receive it is *Price Stabilization Corporation (Prisco) v. Francisco*.[161] In this case, defendants purchased textiles from the PRRA, now the Prisco. They paid the price to Joaquin Lectura, the PRRA administrative officer. Lectura did not turn over the entire price to the Prisco. He either misappropriated or misapplied ₱1,655. The Prisco refused to give defendants credit for said sum of ₱1,655. The question was whether the payment to Lectura was valid.

Since Lectura was the administrative officer of the PRRA and had ostensible authority to receive payment, as shown by the fact that other customers made payments to him and, as a matter of fact, the textiles in question were released from the PRAA bodega and delivered to defendants upon Lectura's order, plaintiff seller was bound by the act of Lectura in receiving payment from defendants. "Such apparent authority should be enough to bind the principal to third persons who, in good faith, have dealt with the agent."

The court also applied to the case the principal of equity "that where one of two innocent parties must suffer for a breach of trust committed by a third person, the one who reposed the confidence that was breached should bear the loss. As it was the plaintiff that put Lectura in a position of trust and allowed him to act therein under circumstances which justified the belief that he had authority to receive payment, the loss due to his defalcation must be borne by plaintiff."

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[159] G.R. No. L-6833, Oct. 10, 1955.
[160] 48 O.G. 136 (1952).
[161] G.R. No. L-8011, Dec. 29, 1955.

NO REVALUATION OF OCCUPATION OBLIGATION PAYABLE ONLY AFTER LIBERATION.

The settled rule that, if a money obligation contracted in war notes during the Japanese occupation is due and payable only after liberation and was not payable at all anytime of the Japanese occupation, said obligation should be paid, without revaluation, "in legal tender or Philippine currency at par value or at the rate of one Philippine peso for each peso in Japanese military notes,[162] was reformulated in the case of *Nicolas v. Matias*[163] in this wise: ". . . whenever, pursuant to the terms of an agreement, an obligation assumed during the Japanese occupation is not payable until after liberation of the Philippines, the parties to the agreement are deemed to have intended that the amount stated in the contract be paid in such currency as may be legal tender at the time when the obligation becomes due."

It was held in the *Nicolas* case that where the parties agreed that a mortgage loan of ₱30,000 in war notes should be paid within one year *after* the expiration of five years from June 29, 1944 or should be paid within the period from June 29, 1949 to June 28, 1950, the said obligation "must be satisfied, peso for peso, in Philippine currency." No revaluation of said loan under the Ballantyne scale of values can be allowed.

The same rule was followed in *Zaragoza v. Alagar*,[164] where it appears that on December 27, 1944 the spouses Anastacio Alagar and Paulina Baltazar borrowed ₱7,500 in war notes from Sabina Zaragoza. The debt was payable within six months after the termination of the war. It was held that the amount of ₱7,500 should be paid peso for peso without revaluation. However, to lessen the harshness of the rule, the Supreme Court remitted the interests and cost of the litigation.

PAYMENT SHOULD BE APPLIED TO THE MORE ONEROUS OBLIGATION.

The rule in article 1254 of the new Civil Code that, when the application of payment cannot be determined by any other rule, the payment should be applied to "the debt which is more onerous to the debtor," was followed in *Montinola v. Gatila*.[165] In this case, it

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[162] De la Cruz v. Del Rosario, G.R. No. L-4859, July 24, 1951; Arevalo v. Barreto, G.R. No. L-3519, July 31, 1951; Wilson v. Berkenkotter, 49 O.G. 1401 (1953); Ilusorio v. Busuego, G.R. No. L-822, Sept. 30, 1949; Roño v. Gomez, 46 O.G. Nov. Supp. 339 (1950); Gomez v. Tabia, 47 O.G. 641 (1951); Ponce de Leon v. Syjuco, G.R. No. L-3316, Oct. 31, 1951; Garcia v. De los Santos, 49 O.G. 4830 (1953).

[163] G.R. No. L-8093, Oct. 29, 1955.

[164] G.R. No. L-7883, Nov. 19, 1955.

[165] G.R. No. L-7558, Oct. 31, 1955.

appears that a labor contract was executed between Aurelio Montinola and defendants Alejo Gatila and Nemesia Rubino; that pursuant to said contract Montinola advanced ₱4,500 to defendants with the understanding that the said advance would be deducted from the wages to be earned by the laborers; that Montinola advanced for the subsistence of the laborers commodities worth ₱3,223.40; that it was agreed that the amounts advanced by Montinola for the laborers' subsistence would also be deducted from their wages; that the total wages earned by the laborers amounted to ₱4,791.31, whereas the total advances made by Montinola in cash and commodities amounted to ₱7,723.40, and that after deducting therefrom the wages earned by the laborers, a balance of ₱2,932.09 remained in Montinola's favor. Defendant labor contractors had executed in Montinola's favor a bond stipulating that the surety in said bond would indemnify Montinola in case the labor contractors failed to account to Montinola for his advances and that the surety's liability would not exceed ₱4,500.

The question was whether the wages earned by the laborers in the sum of ₱4,791.31 should be applied to the cash advance of ₱4,500 or to the commodities furnished for their subsistence in the sum of ₱3,223.40. This question arose because the surety contended that said wages should first be credited to the cash advance of ₱4,500 and, it they were so credited, then the surety would not be liable to pay Montinola the unpaid balance of ₱2,932.09, since the surety was liable only to pay Montinola for the failure of the contractors to account for the cash advance of ₱4,500.

The contention of the surety was not sustained. The bond clearly provided that it would answer for the contractors' faithful compliance with the terms of the labor contract and this contract provided that Montinola could set off against the wages of the laborers, not only the cash advance which he had given to the contractors, but also the amount which he had spent for the laborers' subsistence. Following the rule in *Hongkong & Shanghai Banking Corporation v. Aldanese,*[166] the wages earned by the laborers should first be set off against the amount spent by Montinola for their subsistence because this amount is not secured by the surety's bond and, not being secured, it was more onerous to the debtors or the labor contractors.

Justice J. B. L. Reyes, concurring in the *Montinola* case, pointed out that article 1254 of the new Code has no application to the case, because that article presupposes the existence of various debts of the same kind, whereas in the instant case there was only one debt, and that was the advance to the contractors and to the laborers for

[166] 48 Phil. 990 (1926).

their subsistence. That debt could not be divided into a secured portion and an unsecured portion; and, if it could be so divided, the secured portion would be more onerous to the debtor, since the debtor in such a case is liable to two persons: the creditor and surety.

CONTRACTS.

ACCEPTANCE MUST BE ABSOLUTE.

According to article 1319 of the new Civil Code, "consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute." The implication is that there is no consent if the acceptance is not absolute. There being no consent, there can be no perfected contract.

The case of *Meads v. Land Settlement and Development Corporation (Lasedeco)*[167] illustrates an acceptance which was not absolute and which did not result in a perfected contract of barter. In that case, plaintiff Morton Meads offered to trade a sawmill for some tractors of defendant Lasedeco. Upon receipt of the offer, the Lasedeco's general manager replied that the corporation was "willing to accept the proposition," and he advised plaintiff to see the property officer of the corporation "for a possible arrangement."

The question was whether the contract of barter was perfected so as to entitle plaintiff to demand specific performance. It was held defendant's reply did not amount to a definite acceptance of the offer; that the phrase "willing to accept" did not mean acceptance; that it merely signified that defendant was disposed to accept or was agreeable to the proposition or offer, in principle, but that other considerations still remained before a contract of barter could be perfected; and that, moreover, the phrase "possible arrangement" indicated that there was nothing definite in the contemplated barter. The *Meads* case is similar to *Rosenstock v. Burke.*[168]

EMPLOYER'S PENSION PLAN MAY BE TREATED AS AN IMPLIED CONTRACT.

The interesting question in the case of *Philippine Long Distance Telephone Company v. Jeturian*[169] was whether an employer's pension plan for employees should be treated as a binding contract and as such cannot be unilaterally revoked by the company. In that case the Philippine Long Distance Telephone Company adopted in 1923

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[167] G.R. No. L-7824, Dec. 20, 1955; 52 O.G. 208 (1956).
[168] 46 Phil. 217 (1924).
[169] G.R. No. L-7756, July 30, 1955.

a "Plan for Employees Pensions" and for this purpose it accumulated a reserve amounting to ₱224,000 on December 31, 1941. In 1945 the company discontinued the pension plan as of January 1, 1942 in view of the fact that it received no revenue during the 4-year period from 1942 to 1945. Some prewar employees of the company, who were not recalled, demanded in 1951 monetary benefits under the pension plan. The Court of Industrial Relations ordered the liquidation of the pension plan and the payment to the petitioning employees of pensions in proportion to their respective age and length of service as of October 31, 1941.

The company contended that the pension plan did not constitute a binding contract but was a mere offer of a gratuity, which was not a vested right, and that the company could cancel the plan before any of the petitioning employees had satisfied the conditions thereof. This contention was rejected by the Supreme Court. It ruled that the pension plan was not a mere offer of gratuity by the company but was a binding contract impliedly accepted by the employees. The consideration for this contract was the desire of the company to spur its employees to "greater efforts in its service and increase their zeal i nits behalf." The company "undoubtedly stood to benefit from the diminished turnover of skilled labor, the avoidance of long and costly training of apprentices, and the reduced cost of operation and equipment, because the goodwill of the laborers tended to make them husband the company's physical resources to the limit of their ability and control." Manresa says that pensions or participations of employees in the earnings of the employer are not donations because their consideration is not the liberality of the employer but the desire of the latter to "recabar por el estimulo de ganancia una cooperación más activa e inteligente que la humanamente puede esperarse de la retribución fija, no accompanada de futuras aunque aleatorias, ventajas." [170]

ARTICLE 1324 DOES NOT APPLY TO OPTIONS.

Article 1324 of the new Civil Code, which provides that "when the offeror has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal," lays down a general rule which does not apply to an option to sell or a promise to buy or sell. Such an option is governed by article 1479 of the new Code which provides that it must be supported by a consideration distinct from the price. If the

[170] 5 MANRESA, CODIGO CIVIL ESPAÑOL 102 (6th ed.).

option has no consideration, it may be withdrawn although it has already been accepted by the other party.[171]

FAILURE OF AGREEMENT TO STATE INTENTION OF PARTIES SHOULD BE ALLEGED IN COMPLAINT FOR REFORMATION.

Under article 1359 of the new Civil Code, an allegation that the instrument sought to be reformed does not express the real agreement or intention of the parties is essential, since the object sought in an action for reformation is to make an instrument conform to the real agreement or intention of the parties. It is not the function of the remedy of reformation to make a new agreement, but to establish and perpetuate the true existing one. Courts do not reform instruments merely for the sake of reforming them but only to enable some party to assert rights under them as reformed. This is the doctrine followed in the case of *Garcia v. Bisaya*.[172]

In the *Garcia* case, plaintiff filed a complaint alleging that he bought a parcel of land from defendants and that the deed erroneously designated the land as unregistered, when in truth it was part of a big tract of registered land in the name of Torcuata Sandoval. He prayed that defendants be ordered to correct the deed of sale. *Held:* The complaint stated no cause of action because it did not allege that the deed failed to state the true agreement of the parties. Plaintiff's theory, probably, was that he was defrauded because he was led into the belief that the land he was buying was unregistered land. If that was the case, then according to article 1359 the proper remedy is not reformation of the instrument but annulment of the contract. Plaintiff's complaint did not ask for annulment. It was properly dismissed.

REFORMATION OF INSTRUMENT.

An action for the reformation of a written instrument prescribes in ten years. Such an action can only accrue from the discovery of the error in the instrument. Where it is alleged that the error was discovered "only recently," it cannot be said that, on the face of the complaint, the ten-year period had already prescribed.[173]

OBSCURE STIPULATIONS ARE CONSTRUED AGAINST PARTY WHO CAUSED OBSCURITY.

The rule in article 1377 of the new Civil Code, formerly article 1288, that "the interpretation of obscure words or stipulations in a

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[171] Southwestern Sugar and Molasses Co. v. Atlantis, Gulf & Pacific Co., G.R. No. L-7382, June 29, 1955; 51 O.G. 3447 (1955).

[172] G.R. No. L-8060, Sept. 28, 1955.

[173] Garcia v. Bisaya, G.R. No. L-8060, Sept. 28, 1955.

contract shall not favor the party who caused the obscurity," was applied to an insurance contract involved in the case of *Calanoc v. Philippine American Life Insurance Co.*[174] The supplemental policy construed in the *Calanoc* case concerns accidental death. The question was whether the death of the insured, who was a watchman of the Manila Auto Supply, located at the corner of Rizal Avenue and Zurbaran Streets, and who was killed by a random shot fired from a house, located at the corner of Oroquieta and Zurbaran Streets, on the occasion of a robbery in said house, was an accidental death within the meaning of the policy.

In holding that the death of the insured was covered by the policy, reliance was placed on the rule found in article 1377 and on the doctrine that the "terms in an insurance policy, which are ambiguous, equivocal or uncertain, are to be construed strictly and most strongly against the insurer, and liberally in favor of the insured, so as to effect the dominant purpose of indemnity or payment to the insured, especially where forfeiture is involved." [175]

The reason for this rule is that the "insured usually has no voice in the selection or arrangement of the words employed and that the language of the contract is selected with great care and deliberation by experts and legal advisers employed by, and acting exclusively in the interest of, the insurance company." [176]

So long as insurance companies insist upon the use of ambiguous, intricate and technical provisions, which conceal rather than frankly disclose, their own intentions, the courts must, in fairness to those who purchase insurance, construe every ambiguity in favor of the insured.[177] "An insurer should not be allowed, by the use of obscure phrases and exceptions, to defeat the very purpose for which the policy was procured." [178]

The rule that ambiguities or obscurities must be construed against the party that caused the same was applied in another insurance case, *Qua Chee Gan v. Law Union & Rock Insurance Co., Ltd.*[179] Justice J. B. L. Reyes noted in the *Qua Chee Gan* case that "this rigid application of the rule on ambiguities has become necessary in view of current business practices."

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[174] G.R. No. L-8151, Dec. 16, 1955; 52 O.G. 191 (1956).
[175] 29 Am. Jur. 181.
[176] 44 C.J.S. 1174.
[177] Algoe v. Pacific Mutual L. Ins. Co., 157 Pac. 993 (1916).
[178] Moore v. Aetna Life Insurance Co., L.R.A. 1915D 264 (1915).
[179] G.R. No. L-4611, Dec. 17, 1955.

CLERICAL MISTAKE IN CONTRACT MAY BE CORRECTED.

The case of *Palacios v. Palacios* [180] illustrates the correction of a clerical mistake in a contract of lease. In that case there were four coowners of a parcel of coconut land which was under lease. It was stated in the lease contract that the share of one of the coowners in the rental was 15%. However, said coowner claimed 25% as his share of the rental, and he averred that the figure "15%" was a clerical error. It was held that there was really a clerical error, because, there being four coowners, the share of each coowner in the rental would be 25%.

NO COLLECTIVE DURESS DURING THE JAPANESE OCCUPATION.

The case of *Claridad v. Benares* [181] reaffirms the rule that the Japanese occupation did not constitute collective duress upon the population.[182] The mere fact that defendant was a friend of the Japanese occupants and that plaintiffs could not sue him during the Japanese occupation allegedly for fear of reprisal is not sufficient to interrupt the running of the period of prescription.

A party who spent the proceeds of the sale of land made to a Japanese firm during the Japanese time cannot allege that there was duress in the sale. This is the ruling in *Osorio de Fernandez v. Brownell.*[183]

NONDISCLOSURE OF FACTS IN A LITIGATION.

Article 1339 of the new Civil Code, which provides that failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud," was invoked in *Escudero v. Flores* [184] where the previous judgment of the Supreme Court in *Flores v. Escudero* [185] was attacked on the ground of fraud. The alleged fraud was that the defendants failed to disclose the real facts to the court. It was held that article 1339 does not apply to the parties to a litigation whose relations, far from being friendly or confidential, are openly antagonistic. The nondisclosure of the facts to the court would amount to *intrinsic* fraud which does not prevent the application of the principle of *res judicata*. It is *extrinsic* fraud that can be used as a ground to nullify the judgment.

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[180] G.R. No. L-8322, Dec. 29, 1955.
[181] G.R. No. L-6438, June 30, 1955.
[182] Philippine Trust Co. v. Araneta, 46 O.G. 4254 (1950).
[183] G.R. No. L-4436, Jan. 28, 1955; 51 O.G. 713 (1955).
[184] G.R. No. L-7401, June 25, 1955; 51 O.G. 3444 (1955).
[185] G.R. No. L-5302, March 11, 1953.

ACTION FOR ANNULMENT MUST BE BROUGHT WITHIN FOUR YEARS.

1. Article 1391 of the new Civil Code provides that an action for annulment based on fraud must be brought within four years from the discovery of the fraud, a provision similar to that found in section 44 of the Code of Civil Procedure.

In *Claridad v. Benares* [186] plaintiffs claimed that defendant in 1935 fraudulently asked them to sign a document, which was represented to them as lease. In 1940 they discovered that the document was a sale. They sued defendant in 1945 for the annulment of the sale. It was held that the action had prescribed because it was brought more than five years after the discovery of the fraud. Plaintiffs' theory that their action was for recovery of land based on the invalidity of the sale for lack of valid consent was not sustained.

2. An action for the recovery of real property on the ground that the defendant had obtained a transfer certificate of title by means of a fraudulent deed of sale is virtually an action for the annulment of the deed by reason of fraud, which action should be filed within four years after the discovery of the fraud. If the action for annulment was begun after that period, it could not be maintained because it had already prescribed. This is the ruling in *Raymundo v. Afable.*[187]

In the *Raymundo* case plaintiff owners of a parcel of land agreed to mortgage it to defendant Felisa Afable. However, Felisa Afable, allegedly with abuse of confidence, made them sign a deed of sale and on the strength of said deed, she was given a new transfer certificate of title for the said land in 1931. In 1945 plaintiffs learned for the first time that the document that they had signed was a sale and not a mortgage. They sued for the recovery of the land in 1953. *Held:* The action should have been brought within four years from the discovery of the fraud. The action in this case was brought after said period. It had already prescribed, following the rule in *Rone v. Claro.*[188]

NO PRESUMPTION THAT A MAN CIRCUMVENTED THE LAW.

In the case of *Gamboa de Hilado v. Assad* [189] it appears that former Justice Serafin Hilado of the Court of Appeals sold in 1943 to Salim Assad, a naturalized Filipino citizen, a certain lot with buildings thereon, located in Manila. The sale was made through Jacob

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[186] G.R. No. L-6438, June 30, 1955.
[187] G.R. No. L-7651, Feb. 28, 1955; 51 O.G. 1329 (1955).
[188] G.R. No. L-4472, May 8, 1953.
[189] G.R. No. L-6397, Aug. 30, 1955; 51 O.G. 45 O.G. 4527 (1955).

Assad, Salim's nephew and attorney-in-fact. On January 2, 1945 Justice Hilado was taken from his house by the Japanese and after that nothing was ever heard of him and he is presumed to be dead. His wife, Blandina Gamboa, sued Salim and Jacob Assad for the annulment of the sale, on the theory that the real purchaser was Jacob, a Syrian, and that the sale was therefore prohibited by law.

The Supreme Court found that the sale was made to Salim, a Filipino citizen, and that there was no evidence that the real purchaser was Jacob Assad, an alien. It rejected the assumption of the trial court that Jacob Assad circumvented the law, by using his uncle, Salim, as a dummy. "A court of justice cannot, should not, make that assumption. The legal presumption is that men act in good faith and intend the consequences of their acts. A violation of the law is never presumed." The sale was sustained as valid.

NO PRESCRIPTION FOR DECLARATION OF VOID CONTRACT.

The rule in article 1410 of the new Civil Code, that "the action or defense for the declaration of the inexistence of a contract does not prescribe" and the rule in 1409 of the same Code that the right to set up the defense of illegality cannot be waived are not new, as noted by the Supreme Court in the case of *Corpuz v. Beltran.*[190] The same principle was invoked in the early case of *Tipton v. Velasco* [191] were it was held that "mere lapse of time cannot give efficacy" to void contracts.

The rule in article 1410 was applied in the case of *Eugenio v. Perdido.*[192] This case was about the sale of a homestead effected within five years from the date of the issuance of the patent. The sale was void, inasmuch as it is expressly outlawed by section 116 of Act No. 2874, now section 118 of Commonwealth Act No. 141, the Public Land Act.

VOID CONTRACT.

1. Following the *Krivenko* ruling, the donation of a parcel of land by a Filipino citizen to an unregistered religious organization operating through trustees, all of Chinese nationality, is void and cannot be registered. The refusal of the Register of Deeds to register the void donation is not a violation of religious freedom.[193]

2. It is the State, not the Filipino vendor, that can assail the legality of the sale of land to an alien. If the State takes no action

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[190] G.R. No. L-7487, Oct. 27, 1955; 51 O.G. 5631 (1955).
[191] 6 Phil. 69 (1906).
[192] G.R. No. L-7083, May 19, 1955.
[193] Register of Deeds v. Ung Siu Si Temple, G.R. No. L-6775, May 21, 1955; 51 O.G. 2866 (1955).

and in the meantime the alien becomes a Filipino citizen, the defect in the alien's title is cured.[194]

VOID DISTINGUISHED FROM VOIDABLE CONTRACT.

In *Claridad v. Benares* [195] the Supreme Court distinguished void and voidable contracts. In a void contract there is no consent whatsoever on the part of the complaining party and he is not therefore bound by the contract. Whereas, in a voidable contract, entered into through error, violence, intimidation, fraud, or undue influence, consent, although defective, was actually given. Until annulled, a voidable contract is operative and binding. Where a party was fraudulently tricked into signing a sale of land, believing that it was a lease, the sale is voidable and his remedy is either annulment on the ground of fraud, or reformation of the contract to make it express the true intention of the parties. In either case the action should be filed within four years from the time the cause of action accrues, i.e., from the discovery of the fraud.[195a]

If the defrauded party brought an action for the recovery of the land from the alleged vendee, such action would, nevertheless, be regarded as an action for annulment, subject to the rule that it should be brought within four years from the discovery of the fraud. It cannot be regarded as a purely reinvidicatory action.[196]

EXCEPTION TO "IN PARI DELICTO RULE."

The rule of in *pari delicto* does not apply to the action of a homesteader or his heirs for the recovery of a homestead invalidly sold.[197] The case of the homesteader is sanctioned by article 1416 of the new Civil Code which provides that "when the agreement is not illegal per se but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered."

ESTOPPEL.

ILLUSTRATIONS OF ESTOPPEL.

1. Article 1431 of the new Civil Code on estoppel (to be read in connection with section 68, Rule 123, Rules of Court) was cited

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[194] Vasquez v. Li Seng Giap, 51 O.G. 717 (1955).
[195] G.R. No. L-6438, June 30, 1955.
[195a] Compare with the *Garcia* case, *supra* note 172.
[196] Rone v. Claro, G.R. No. L-4472, May 8, 1952.
[197] Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955.

in support of a ruling that "a party cannot be allowed to plead his own deceitful act to the detriment of those who relied upon it." [198]

2. A person who obtains a license under a law and seeks for time to enjoy the benefits thereof, cannot, afterwards, when the license is sought to be revoked, question the constitutionality of the law.[199]

3. Estoppel cannot be predicated on an invalid act, as, say, an invalid sale of a homestead. As between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited law or is against public policy.[200]

TRUSTS.

EXPRESS TRUST.

Following the rule that no particular words are required to create an express trust, it was held that a will, designating the executor named therein as administrator of the properties given as legacies and providing that "los poderes de dicho administrador seran los de un trustee", creates a trust and the administrator should be regarded as a trustee of the properties bequeathed in the will. This is the holding in *Tuason v. Caluag*.[201]

CONSTRUCTIVE TRUST.

The rule in *Gayondato v. Provincial Treasurer* [202] that "if a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party" was applied in the cases of *Bancairen v. Diones;* [203] and *Sevilla v. De los Angeles*.[204]

In the *Bancairen* case, the overseer of a tract of unregistered land was entrusted by the owner with the task of attending to the survey of the land and indicating to the official surveyors its boundaries for purposes of registration. Through fraudulent representation, the overseer caused the land to be divided into two lots and succeeded in registering one of the lots in his own name. It was held that the fraud perpetrated by the overseer created a constructive trust in favor of the owner of the land, who has the right to vindicate the property regardless of the lapse of time.

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[198] Moller's (Hongkong) Ltd. v. Serile, G.R. Nos. L-7038-39, Aug. 31, 1955.
[199] Philippine Scrappers, Inc. v. Auditor General, G.R. No. L-5670, Jan. 31, 1955.
[200] Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955.
[201] G.R. No. L-6182, April 13, 1955.
[202] 49 Phil. 244 (1926).
[203] G.R. No. L-8013, Dec. 20, 1955.
[204] G.R. No. L-7745, Nov. 17, 1955; 51 O.G. 5590 (1955).

In the *Sevilla* case it appears that Torrens title was issued to the "heirs of Felix Sevilla" in 1934 for a homestead which was acquired by Felix Sevilla during his marital union with Ciriaca Ramos. After the death of Ciriaca Ramos, Felix Sevilla married defendant Concordia de los Angeles, and the latter, by fraudulently representing that she was the sole heir of Felix Sevilla, was able to cause the cancellation of the old title and the issuance in 1936 of a new title in her name for said homestead. In 1951 plaintiffs, the children of Felix Sevilla and Ciriaca Ramos, sued defendant for the recovery of the said homestead. The trial court dismissed the action on the ground of prescription. Plaintiffs appealed.

It was held that the dismissal was erroneous. The action was for the recovery of property held in trust by defendant for the plaintiffs. Such action generally does not prescribe. However, there is a contrary holding in the *Claridad case*.[204a]

In this connection, attention is directed to article 1456 of the new Civil Code, which provides that "if property is acquired through mistake or *fraud*, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." This provision might apply to the situation in the *Sevilla* and *Bancairen* cases.

TRUSTEE CANNOT DONATE PROPERTY HELD IN TRUST.

A trustee, who had bound himself to deliver to the beneficiary the land held by him in trust, as soon as a certain condition is fulfilled, cannot donate said land to another. Not being the absolute owner of the land, he cannot dispose of the same. This is the ruling in *Padilla v. Jordan*.[205]

In connection with constructive trusts, it was noted that, while the Supreme Court, even before the new Civil Code, had applied the doctrine of constructive trusts in cases of fraudulent breach of confidence or fiduciary relations, it had never applied the doctrine to conveyance where consent was obtained through deceit, neither party having reason to confide in the other. Hence, if the rule in article 1456 is to be interpreted as granting parties to contracts tainted with deceit an action for recovery, separate and distinct from the action for annulment, such right would be entirely new, and not retroactively applicable to cases that arose under the old Civil Code.[206]

[204a] See note 195 *supra*.

[205] G.R. No. L-8494, Dec. 22, 1955.

[206] Claridad v. Benares, G.R. No. L-6438, June 30, 1955; Rone v. Claro, G.R. No. L-4472, May 8, 1952.

CONSTRUCTIVE TRUSTS ARE BARRED BY LACHES OR PRESCRIPTION.

In *Claridad v. Benares* [207] plaintiffs invoked article 1456 of the new Civil Code which provides that "if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." Plaintiffs' theory was that, because defendant came into the possession of the disputed land by virtue of a fraudulent contract of sale, they had ten (10) years to recover the land from defendant as a trustee, without the necessity of annulling the original conveyance. This theory was rejected by the Supreme Court, which held that following the rule in the American law of trusts, made applicable by article 1442 of the new Civil Code, "constructive or implied trusts, as distinguished from express ones, are barred by laches or prescription without need of repudiation." This holding seems to be in conflict with the holding in the *Bancairen* and *Sevilla* cases.

SALES.

SALE, NOT AGENCY.

Where plaintiff commissioned defendant to import abroad certain textiles at a certain price, without paying any commission or brokerage fee to defendant, the liability is for breach of the contract of sale if the textiles shipped from abroad does not correspond with the specifications contained in the buyer's order. In such a transaction the profit of the defendant is the difference between the price he quoted to plaintiff buyer and the net price at which defendant secured the textiles from the foreign supplier or exporter. This is the ruling in *Far Eastern Export & Import Co. v. Lim Teck Suan*,[208] and it is in harmony with the doctrine of the case of *Gonzalo Puyat & Sons, Inc. v. Arco Amusement Company*.[209]

PERFECTED SALE.

Where plaintiff offered in writing to purchase certain lots at a price payable under certain conditions and the offer was accepted by the owner of the lots, there is a perfected written contract of sale.[210]

OPTION TO SELL MUST BE SUPPORTED BY DISTINCT CONSIDERATION.

In *Southwestern Sugar and Molasses Company v. Atlantic, Gulf & Pacific Company*,[211] plaintiff on March 24, 1958 was granted by

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[207] G.R. No. L-6438, June 30, 1955.
[208] G.R. No. L-7144, May 31, 1955.
[209] 72 Phil. 402 (1941).
[210] Aquino v. Macondray & Co., G.R. No. L-5976, Oct. 25, 1955; 51 O.G. 5615 (1955).
[211] G.R. No. L-7382, June 29, 1955; 51 O.G. 3447 (1955).

defendant an option to buy the latter's barge within 90 days. Plaintiff accepted the option, but the sale could not be consummated because the barge was not available. Before the expiration of the 90-day period plaintiff sued for specific performance. While the action was pending in court and one day before the expiration of the 90-day period, defendant withdrew its offer. The question was whether defendant could be compelled to sell the barge.

Applying article 1479 of the new Civil Code, which provides that "an accepted unilateral promise to buy or to sell a determinate thing is binding upon the promisor if the promise is supported by a consideration distinct from the price," the Supreme Court held that "an option can still be withdrawn, even if accepted, if the same is not supported by any consideration." Since in the instant case the option was without consideration, it could be withdrawn notwithstanding plaintiff's acceptance thereof.

The Court noted that article 1479 lays down a rule different from the rule in American jurisprudence that "an offer, once accepted, cannot be withdrawn, regardless of whether it is supported or not by a consideration." [212] It further noted that article 1479 is an exception to article 1324 of the new Code, which lays down a general rule regarding offer and acceptance, and that although the offeror had assume the obligation to sell the barge and the offer had been accepted and there was no reason for withdrawing the offer, still the offer could be withdrawn because there was no consideration and article 1479 is very clear on that point.

PURCHASER IN BAD FAITH.

Where the purchaser of the land, at the time he bought the land, knew of the existence of a notice of *lis pendens* concerning said land, he is a purchaser in bad faith. This is the holding in *Bacairen v. Diones* [213] and *Maximo v. Fabian*.[214] There is bad faith, according to article 526 of the new Civil Code, when the possessor is aware that there exists in his title or mode of acquisition any flaw which invalidates it. And, as may be implied from article 1127 of the new Code, there is bad faith when the possessor does not have any reasonable belief that the person from whom he received the thing was the owner thereof and could transmit his ownership.

DELIVERY TO THE CARRIER IS DELIVERY TO THE BUYER.

Under article 1523 of the new Civil Code, delivery of the goods to the carrier is generally regarded as a delivery to the buyer, "where

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[212] 12 AM. JUR. 528.
[213] G.R. No. L-8013, Dec. 20, 1955.
[214] G.R. No. L-8015, Dec. 23, 1955.

in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer," and therefore title over the goods passes to the buyer when there is delivery to the carrier. This rule was applied in the case of *A. Soriano y Cia. v. Collector of Internal Revenue*,[215] which is authority for the doctrine that "where the contract is to deliver goods f.a.s. (free alongside ship), the property passes on delivery at the wharf or the dock," or that "delivery to the carrier is delivery to the buyer," as held in *Behn, Meyer & Co. v. Yangco*.[216]

In the *Soriano* case, the transaction was a sale of tractors, obtained by A. Soriano y. Cia. from the different surplus depots or military bases of the United States in the Philippines. The sale was made by A. Soriano y Cia. to the United Africa Co., Ltd., a foreign corporation doing business in East Africa. It was material to determine whether the sale was consummated in Philippines territory, because if not consummated here, the sale would be exempt from sales tax. To ascertain if the sale was consummated here, it was necessary to determine when title to the tractors passed to the foreign buyer.

The theory of the Bureau of Internal Revenue was that the sale of the tractors was consummated within the Philippines and that title passed upon delivery to the carrier, free alongside ship (f.a.s.), Manila. On the other hand, the taxpayer contended that title to the tractors passed to the foreign buyer while they were still in the U.S. army bases and installations, which were assumed by the taxpayer not a part of Philippine territory.

The Supreme Court found that title to the tractors passed to the foreign buyer when they were delivered to the carrier, f.a.s., Manila. Title to the tractors was still in the seller when they were removed from the bases and brought to the seller's yards for reconditioning. The situs of the sale was therefore the Philippines and the Philippine Government had jurisdiction and power to tax the sale in question.

WHEN THIRD PERSON IS BOUND TO PAY THE PRICE.

Where the vendor of real property parts with title thereto upon the assurance of a third person that he (the third person) would himself pay to the vendor the balance of the purchase price still due from the vendee, such third person is bound to make good his pro-

[215] G.R. No. L-5896, Aug. 31, 1955; 51 O.G. 4548 (1953).
[216] 38 Phil. 602 (1918).

mise to pay. This is the ruling laid down in *Rehabilitation Finance Corporation v. Realty Investments, Inc.*[217]

In that case, a contract for the sale of a lot on the installment plan was executed between Realty Investments, Inc. as seller and Delfin Dominguez as buyer. Dominguez made a down payment and promised to pay the balance of the price in 119 monthly installments. Later, Dominguez borrowed ₱10,000 from the RFC, which agreed to accept as security the said lot and the house to be constructed by Dominguez with the proceeds of the loan. The RFC requested Realty Investments, Inc. to transfer the lot in the name of Dominguez and at the same time the RFC bound itself to pay Realty Investments, Inc. the balance of the price of the lot.

Relying on the assurance of the RFC, Realty Investments transferred the lot to Dominguez and thereafter the mortgage deed executed by Dominguez in favor of the RFC was recorded. Dominguez failed to make regular amortization payments to the RFC, which foreclosed the mortgage and bought the mortgaged property at the auction sale. The RFC refused to pay the balance of the price to Realty Investments, Inc.

It was held that the RFC was liable to pay the balance of the price to Realty Investments, Inc. because the latter was induced to part with its title to the lot upon the guarantee of the RFC that it would pay the balance of the purchase price due from Dominguez.

PACTO COMISORIO IN SALE OF REALTY.

Article 1592 of the new Civil Code, formerly article 1504, lays down a special rule for the rescission of sales of real property in the event that the vendee fails to pay the price. It regulates the *pacto comisorio* in sales of real property. Manresa says that "the *pacto comisorio* or *ley comisoria* is nothing more than a condition subsequent of the contract of purchase and sale," that the sale would be rescinded if the vendee does not pay the price. Such rescission, however does not take place automatically. The defaulting vendee may pay the price as long as there is no judicial or notarial demand for the rescission of the sale.[218]

However, article 1504, now article 1592, does not apply to a promise to sell or a sale of land wherein the price is payable in installments.[219]

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[217] G.R. No. L-7185, Aug. 31, 1955; 51 O.G. 4555 (1955).

[218] Villaruel v. Tan King, 43 Phil. 251, 255 (1922); 10 MANRESA, CODIGO CIVIL 305 (5th ed.); Adiarte v. Court of Appeals, 49 O.G. 1421 (1953); Albea v. Inquimboy, 47 O.G. Dec. Supp. 131 (1951); Tirol v. Hodges, 46 O.G. 608 (1950).

[219] Caridad Estates, Inc. v. Santero, 71 Phil. 114 (1940); Mella v. Bismanos, 45 O.G. 2099 (1949).

The *pacto comisorio* in the law of sales should not be confounded with the *pacto comisorio* in pignorative agreements like pledge, mortgage and antichresis. In these contracts, the *pacto comisorio* is the stipulation allowing the creditor to appropriate or dispose of the thing given as security. It is a void stipulation.

The case of *De la Cruz v. Legaspi* [220] illustrates the operation of the *pacto comisorio* in the sale of a parcel of land. That case lays down the rule that in the sale of real property subsequent nonpayment of the price at the time agreed upon does not convert the contract into one without cause or consideration: *a nudum pactum*.[221] The situation is rather one in which there is a failure to pay the consideration with its resultant consequences. The vendor's remedy in such a case is generally to demand legal interest for the delay or to demand rescission in court. Even if the contract of sale provides for "automatic rescission upon failure to pay the price," the vendee may enforce the contract after the expiration of the period but before demand for rescission has been made upon him either by suit or by notarial act.[222]

In the *De la Cruz* case, plaintiff bought a parcel of land from defendants for ₱450. After the deed was ratified, plaintiff did not pay the price. Subsequently, plaintiff sued defendants to compel them to accept the price and deliver the possession of the land to him. Defendants answered that due to plaintiff's failure to pay the price, the sale was without consideration.

It was held that defendant should accept the price offered by plaintiff and after receipt of such price, the land should be delivered to the plaintiff.

NO RESCISSION AFTER OFFER TO PAY BALANCE OF PRICE HAD BEEN MADE.

The case of *Maximo v. Fabian* [223] is authority for the rule that after the vendee had offered to pay the balance of the purchase price of a parcel of land, the vendor cannot rescind the sale anymore. Any supposed rescission made after the vendor had refused to accept the balance of the price tendered to him, and the subsequent sale of the same land to another person would be void. The first purchaser can compel the vendor to make a formal conveyance of the land to him.

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[220] G.R. No. L-8024, Nov. 29, 1955; 51 O.G. 6212 (1955).
[221] Levy v. Johnson, 4 Phil. 650 (1905); Puato v. Mendoza, 64 Phil. 457 (1937).
[222] Villaruel v. Tan King, *supra* note 218.
[223] G.R. No. L-8015, Dec. 25, 1955.

In the *Maximo* case, it appears that Justa Fabian agreed in writing to sell to the spouses Susana Maximo and Lazaro Baraoidan a parcel of land. The price was payable in installments. In March 1944, the vendees offered to pay the balance of the price, but the vendor refused to accept payment on the ground that the vendees had allegedly violated the conditions for the payment of the price. The vendor sold the land to other persons. The spouses sued for specific performance.

It was held that the sale could not be rescinded; that the subsequent transfers of the same land were made in bad faith; and that the land should be conveyed to the spouses as the first purchasers.

CONVENTIONAL REDEMPTION.

1. Article 1606 of the new Civil Code, which provides that 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," was applied in *Ayson v. Arambulo*,[224] involving a *pacto de retro* sale, where the amount of the redemption price was invalidly consigned in court. The consignation was invalid because there was no notice to the vendee *a retro*. The vendor *a retro* was granted 30 days from the time final judgment was entered within which to make the redemption. Article 1606 was given a retroactive effect pursuant to article 2258.

2. Where a *pacto de retro* sale was executed on November 11, 1946 providing that the repurchase could be effected within two years, and on January 22, 1947 an action was brought by the vendor *a retro* for the recovery of the property sold, in which action the question of whether the transaction was a sale or a mortgage was litigated, and it was finally held in 1952 that the transaction was a *pacto de retro* sale, the vendor *a retro* could still redeem the property after the decision became final because the 2-year period for effecting redemption was interrupted by the action and it had not yet elapsed. The last paragraph of article 1606 does not apply in such a case.[225]

3. Where the provision in a *pacto de retro* sale executed during the Japanese occupation was that the repurchase should be made within the period of "three months from and after the termination of the war at present raging," the redemption made on April 8, 1946 is proper because on that date the war had not yet terminated. War terminates only upon the signing of the peace treaty. No peace

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[224] G.R. No. L-6501, May 31, 1955.
[225] Fernandez v. Suplido, G.R. No. L-5977, Feb. 17, 1955.

treaty and no formal declaration of peace had as yet been made in April, 1946.[226]

THIRD PERSON WHO ADVANCED REDEMPTION MONEY SHOULD BE REIMBURSED.

Where the redemption price in a *pacto de retro* sale was advanced by a third person in behalf of the *vendors a retro*, the third person is entitled to demand reimbursement from the said vendors. The reimbursement would include all the expenses incurred by the third person in order to effect the redemption. If the amount advanced was in war notes, the same should be revalued in accordance with the Ballantyne scale.[227]

PACTO DE RETRO SALE FOUND TO BE AN EQUITABLE MORTGAGE.

Article 1602 of the new Civil Code states the circumstances under which a contract purporting to be a *pacto de retro* sale shall be presumed to be an equitable mortgage. These circumstances are illustrated in *Garcia v. Vda. de Arjona*,[228] a case involving a transaction, which though not strictly a *pacto de retro* sale, was considered an equitable mortgage.

In the *Garcia* case an agreement was executed between Felix Garcia and Marcelino Arjona whereby it was stipulated that, if Garcia reimbursed Arjona the sum of ₱4,350, Arjona would sell certain parcels of land to Garcia. Arjona was in possession of the lands. They formerly belonged to Garcia but were attached by his creditor. Arjona redeemed the lands from the creditor who had purchased the same at the auction sale.

The Supreme Court confirmed the judgment of the trial court that the transaction between the parties was "an equitable mortgage or antichresis" designed to guarantee the payment of the sum of ₱4,350, which Arjona had advanced in behalf of Garcia for the redemption of the said lands from the purchaser at the auction sale and that the fruits received by Arjona offset the interest due from Garcia.

COMPUTATION OF JUDICIAL PERIOD FOR REDEMPTION.

In *Cueto v. Collantes*,[229] plaintiff was given by the trial court a period of ninety days from the time the judgment "shall become

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[226] Fabie v. Mordeno, G.R. No. L-6386, March 29, 1955.

[227] Gayon v. Ubaldo, G.R. No. L-7650, Dec. 28, 1955. See Rehabilitation Finance Corporation v. Court of Appeals, G.R. No. L-5942, May 14, 1954.

[228] G.R. No. L-7279, Oct. 29, 1955.

[229] G.R. No. L-7483, July 25, 1955.

final" within which to repurchase the land in litigation. The Court of Appeals affirmed the said judgment. Entry of judgment (with respect to the decision of the Court of Appeals) was made on July 8, 1953. Before such entry of judgment was made, plaintiff filed a petition for review by certiorari in the Supreme Court. The petition was denied. Entry of judgment in the certiorari case was made by the Clerk of Court on August 7, 1953. It was held that the 90-day period should be computed from August 7, 1953, not from July 8, 1953.

LEGAL REDEMPTION AMONG COOWNERS TAKES PLACE AFTER PARTITION OF HEREDITARY ESTATE.

Under article 1088 of the new Civil Code, formerly article 1067, "should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the coheirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided that they do so within the period of one month from the time they were notified in writing of the sale by the vendor." Under article 1067 of the old Code the reimbursement was to be made within one month from the time the coheirs were informed of the sale. Article 1088 expressly provides that it applies to a sale taking place "before partition." Therefore, if the sale took place after partition article 1088 would not apply.[230]

If the sale was made by a coowner prior to the effectivity of the new Civil Code, the provisions applicable would be those found in articles 1522 and 1524 of the old Code, which provide that the redemption should be effected within nine days, counted from the date of the record of the transfer in the Registry of Property. It should be noted that under article 1623 of the new Code, which is the counterpart of article 1524, the redemption should be exercised "within thirty days from the notice in writing" by the vendor to the possible redemptioners or coowners.

Article 1524 of the old Code was applied in the case of *Castro v. Castro* [231] where it appears that a parcel of land was owned in common. Two coowners sold their shares. A coowner wanted to redeem the shares sold but he exercised the right of redemption after nine (9) days from the registration of the sale. He claimed that his right to redeem had not yet expired because the provision that applied to the case was article 1067 of the old Code, involving the right of redemption given to coheirs, and not article 1524 relative to the right of redemption given to coowners. If article 1524 were to apply, de-

[230] De Jesus v. Daza, 77 Phil. 152 (1946).
[231] G.R. No. L-7464, Oct. 24, 1955; 51 O.G. 5612 (1955).

fendant could not redeem anymore because of the expiration of the 9-day period. But under article 1067 the one-month period had not yet expired.

It was held that the case did not fall under article 1067 because there had already been a partition of the hereditary estate. Article 1524 was the one applied because defendant was a coowner, not a co-heir. He could not therefore exercise the right of redemption granted to a coowner because the 9-day period had already expired.

DEBTOR OF ASSIGNED CREDIT IS NOT A THIRD PERSON WITH RESPECT TO THE ASSIGNMENT.

In *Mollers' (Hongkong) Ltd. v. Sarile*,[232] it was held that the debtor of an assigned credit is not a third person within the meaning of article 1526 of the old Civil Code, now article 1625, which provides that "an assignment of a credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property." The debtor is governed by the principle that he may oppose to the assignee all defenses he could have set up against the assignor before he learned of the assignment. This is the rule underlying articles 1280, and 1626 of the new Code, formerly articles 1198 and 1527. The discharge of the debtor depends upon his knowledge of the assignment, not upon the form in which the assignment is made. Article 1358 of the new Code, formerly article 1280, in providing that "the cession of actions or rights proceeding from an act appearing in a public document" should appear in a public document, does not invalidate the assignment if it is not in a public instrument. Hence "regardless of the manner how he obtains information about the assignment, the debtor is obligated to pay the assignee, and is bound by the assignment, from the time he learns of it."

Where an assignable credit has been transferred before action is brought, the proceeding ought to be instituted in the name of the assignee as the real party in interest.[233]

BARTER.

WHEN BARTER IS PERFECTED.

Where paintiff offered to exchange his sawmill equipment and spare parts for some surplus tractors belonging to defendant, and defendant replied that it was "willing to accept the proposition" and

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[232] G.R. Nos. L-7038-39, Aug. 31, 1955.
[233] Oria v. Gutierrez, 52 Phil. 163 (1928).

referred plaintiff to defendant's property department "for a possible arrangement," it was held that the contract of barter was not perfected thereby. It was noted that other matters remained to be done before the contract could be perfected and that before definitely agreeing to the barter or exchange, defendants would want first to examine the sawmill equipment, especially since it was second-hand.[234]

Exchange is equivalent to purchase. The only difference is that, instead of paying money for the price or consideration, property is given in lieu thereof.[235]

WHEN TRANSACTION WAS REGARDED AS A SALE, NOT BARTER.

In *Ramos v. Ramos*,[236] it appears that the deceased was survived by his seven children. He left as hereditary estate a hacienda. In the partition of the hacienda, it was agreed among the seven heirs that the said property should be assigned to one of the heirs, who would pay cash to the others for their respective shares in the hacienda. It was held that this transaction was a sale and not an exchange.

LEASE.

STIPULATION AS TO RENTALS SHOULD BE ENFORCED.

The case of *Cacho Hermanos, Inc. v. Prieto*,[237] involves the interpretation of a lease contract executed in 1946 which provided that the annual rental would be equivalent to 12% of the annual net assessed value of the leased land. The trial court interpreted this stipulation as meaning that the annual rental should be computed on the net assessed value of the land in 1946 alone. This interpretation was rejected by the Supreme Court which held that the evident intention of the parties was to base the rental on the assessed value from year to year, whether the same was increased or reduced.

NO DEFAULT.

The lessee cannot be considered in default in the payment of rentals if the lessor has not fulfilled his obligations under the lease contract. This is the ruling in *Price, Inc. v. Rilloraza* [238] and it is sanc-

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[234] Mead v. Land Settlement and Development Corp., G.R. No. L-7824, Dec. 20, 1955; 52 O.G. 208 (1956).

[235] De Navarra v. People, G.R. No. L-6469, April 29, 1955; 51 O.G. 2392 (1955).

[236] G.R. No. L-7546, June 30, 1955.

[237] G.R. No. L-7551, July 30, 1955.

[238] G.R. No. L-8253, May 25, 1955.

tioned by article 1169 of the new Civil Code, formerly article 1100, which provides that "in reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him."

LABORERS' LIEN IS ON GOODS, NOT ON REALTY.

In *Bautista v. Auditor General*[239] it was held that article 1707 of the new Civil Code, which provides that "the laborer's wages shall be a lien on the goods manufactured or the work done" seems to refer to chattels, as may be implied from article 2241 of the same Code, and not to immovable property. It is not applicable to a case where the laborers were hired by a contractor. If the contractor, who undertook to construct a bridge for the Government, did not pay the wages of his laborers, the latter cannot claim a lien on the bridge.

CARRIER IS EXEMPT FROM LIABILITY FOR ACTS OF EMPLOYEE NOT DONE IN LINE OF DUTY.

In the case of *Gillaco v. Manila Railroad Company*[240] it was held that where a train guard, who had no duties to discharge in connection with the transportation of passengers, killed a passenger inside a train, the crime stands on the same footing as if committed by a stranger or co-passenger, since the killing was not done in line of duty.

It was further ruled in the *Gillaco* case that, while a passenger is entitled to protection from personal violence by the carrier or its agents or employees, since the contract of transportation obligates the carrier to transport a passenger safely to his destination, the responsibility of the carrier extends only to those acts that the carrier could foresee or avoid through the exercise of the degree of care and diligence required of it. The old Civil Code did not impose upon carriers absolute liability for assaults perpetrated by their employees upon the passenger.

The undisputed facts of the *Gillaco* case are that at around 7:30 one morning in April 1946, Tomas Gillaco was a passenger in a train of the Manila Railroad Company; that when the train reached the Paco station, Emilio Devesa, a train guard, whose tour of duty commenced at 9 a.m. boarded the train and he saw Gillaco; that Devesa and Gillaco had a long standing personal grudge dating back to the Japanese occupation; that because of this grudge Devesa shot to death Gillaco inside the train, using a carbine furnished to him by

[239] G.R. No. L-6799, June 29, 1955.
[240] G.R. No. L-8034, Nov. 18, 1955; 51 O.G. 5596 (1955).

the company as guard; and that he was convicted of homicide. Gillaco's heirs sued the company for the recovery of ₱4,000 as damages.

The case was decided under the old Civil Code. The Supreme Court, relying on article 1105 of the old Code and *Lasam v. Smith*,[241] ruled that the company was not liable because it could not have foreseen the killing of Gillaco by Devesa. The shooting was a *caso fortuito*. The Court said: "No doubt that a common carrier is held to a very high degree of care and diligence in the protection of its passengers; but, considering the vast and complex activities of modern rail transportation, to require of appellant (company) that it should guard against all possible misunderstanding between each and everyone of its employees and every passenger that might chance to ride in its conveyance at anytime, strikes us as demanding diligence beyond what human foresight can provide." It was noted that under the old Code the liability of a carrier as an insurer was not recognized in this jurisdiction.[242] Moreover, the killing was not perpetrated by Devesa in line of duty.

Apparently because the case arose under the old Code, the Supreme Court did not cite article 1759 of the new Code which provides that "common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers" and the rule in article 1763 that "a common carrier is responsible for injuries suffered by a passenger on account of the wilful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission."

LABOR LAW.

WHEN CERTIFICATION ELECTION IS NECESSARY TO DETERMINE EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE.

The view that law exists for the purpose of resolving conflicts of interests between individuals or groups is vividly illustrated in the recurrent clashes between capital and labor. The aggressive moves of labor leaders for better wages and wholesome working conditions have inevitably resulted in clashes calling for the intervention of the courts and the application of labor laws. Article 1700

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[241] 45 Phil. 657 (1924).

[242] Government v. Inchausti & Co., 40 Phil. 219 (1919); Oriental Commercial Co. v. Naviera Filipina, (C.A.) 38 O.G. 1020 (1939).

of the new Civil Code states that the relations between capital and labor are not merely contractual but are affected with public interest and that labor contracts must yield to the public good and for that reason such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects. Article 1700 is in keeping with the spirit of social justice.[243] It was cited in the case of *PLDT Employees' Union v. Philippine Long Distance Telephone Company*.[244]

In that case the petitioner, PLDT Employees' Union, formalized with the company a collective bargaining agreement which was to expire on September 14, 1954. Before the arrival of this expiration date, or, to be exact, on September 30, 1953, the company asked the Court of Industrial Relations to determine the exclusive bargaining representative of the company's workers, in view of the fact that another union, the Free Telephone Workers' Union, had served notice on the company of its desire to bargain collectively. On August 9, 1954 the Court of Industrial Relations ordered one of its judges to determine the appropriate collective bargaining unit, which should represent the company's workers and to hold, if necessary, a certification election.

That certification election is provided for in section 12 of the Republic Act No. 875, otherwise known as Industrial Peace Act or Magna Charta of Labor, and is usually held whenever there is any "reasonable doubt as to whom the employees have chosen as their representative for the purposes of collective bargaining." Petitioner union objected to the holding of a certification election on the ground that it constituted an impairment of its collective bargaining agreement, which allegedly would be automatically renewed from September 14, 1954.

The Supreme Court found that the agreement in question would be automatically renewed if neither the company nor the union denounced it before September 14, 1954, and the company, by asking the Court to ascertain the proper collective bargaining agency of the workers, had in effect manifested its intention to terminate the contract with petitioner union, if and when it should be found that the petitioner no longer represented the majority of the company's employees.

Petitioner union cannot complain of impairment of its contract with the company, since such contract is subject to the provisions

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[243] Macleod & Co. v. Progressive Federation of Labor, 51 O.G. 2907 (1955).
[244] G.R. No. L-8183, Aug. 20, 1955; 51 O.G. 4519 (1955).

of the Industrial Peace Act on the holding of a certification election whenever necessary.

NON-WORKER AND NON-UNION MEMBER CANNOT BE ELECTED UNION PRESIDENT.

In *Larap Labor Union v. Victoriano*[245] it appears that Pedro Venida, who claimed to have been elected president of a union of the laborers and employees of the Philippine Iron Mines, sued for an injunction to restrain the respondents from holding another election of the union's officers. Venida was not an employee of the Philippine Iron Mines, Inc. and was not a member of the union. He could not therefore be elected an officer of the union and he could not complain against the election of the respondents as officers of the union. If he could be named "representative" of the union, as contemplated in section 2(h) of Republic Act No. 875, it would not follow that he could be chosen as an officer thereof because "representative" of the union and "officer" thereof are not the same.

DISMISSAL OF EMPLOYEE FOR CAUSE.

There is a salutary rule that "an employer cannot legally be compelled to continue the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer."[246] This rule was applied in the case of *San Miguel Brewery v. National Labor Union*,[247] where the Supreme Court upheld the action of the San Miguel Brewery in dismissing from its security force a guard who was found to have left his post at least on two occasions without the permission of his superior officer, and who, in one instance, carried outside the company's compound the pistol supplied to him, an act which was in violation of the company's regulations. He was also found guilty of leading an immoral life by keeping two paramours and allowing them to stage a scandalous scene in the very premises of the company. These were regarded as sufficient grounds for the employee's dismissal.

OTHER RULINGS ON LABOR LAW.

1. The purpose of vacation leave is to afford a laborer a chance to get much needed rest to replenish his worn out energies and ac-

[245] G.R. No. L-7761, April 26, 1955.
[246] Manila Trading & Supply Co. v. Zulueta, 69 Phil. 485 (1940).
[247] G.R. No. L-7905, July 30, 1955; 51 O.G. 4032 (1955).

quire a new vitality to enable him to efficiently perform his duties, and not merely to give him additional salary or bounty. This privilege must be demanded at the opportune time and if he allows the years to go by without claiming the privilege, he waives it. The leave becomes a mere concession or act of grace of the employer. The only case where vacation pay may take the form of a bonus is when there is an agreement whereby that option is given to the laborer. Where it appears that a labor union in 1952 filed in the Court of Industrial Relations a petition against the Sun-Ripe Coconut Products, Inc. containing a demand for 14 days vacation leave with pay, it was error for the Court of Industrial Relations to hold that the members of the union were entitled to vacation leave with pay for the years 1947 and 1950.[248]

2. The persons working in educational institutions operated not for profit but for the sole purpose of educating young men are not industrial employees. Any controversy or dispute which they may have with the management of the institution in connection with or arising out of their employment does not fall within the jurisdiction of the Court of Industrial Relations. This is the ruling in *San Beda College v. Court of Industrial Relation*.[249] It is based on the previous ruling in *U.S.T. Hospital Employees Association v. Sto. Tomas University Hospital*.[250] and is similar to the ruling of the Court of Appeals that a hospital is not engaged in industry within the meaning of article 103 of the Revised Penal Code.[251]

3. A week of labor is understood to embrace the ordinary number of six labor days, in the absence of a contrary agreement.[252]

4. The rule that "if the laborers resorted to a strike to enforce their demands, instead of resorting first to the legal processes provided by law, they do so at their own risk, because the dispute will necessarily reach the court and, if the latter should find that the strike was unjustified, the strikers would suffer the adverse consequences," one of which is the loss of their jobs,[253] was applied in the case of *Almeda v. Court of Industrial Relations*.[254]

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[248] Sun Ripe Coconut Products, Inc. v. National Labor Union, G.R. No. L-7964, Oct. 18, 1955; 51 O.G. 5138 (1955).

[249] G.R. No. L-7649, Oct. 29, 1955; 51 O.G. 5636 (1955).

[250] G.R. No. L-6988, May 24, 1954.

[251] Clemente v. Foreign Mission Sisters, 38 O.G. 1549 (1939).

[252] Lee Tay & Lee Chay, Inc. v. Kaisahan Ng Mga Manggagawa sa Kahoy, et al., G.R. No. L-7791, April 19, 1955; 51 O.G. 1829 (1955).

[253] National Labor Union v. Philippine Match Factory, 70 Phil. 300 (1940); Luzon Marine Department Union v. Roldan, 47 O.G. Dec. Supp. 146 (1951).

[254] G.R. No. L-7425, July 21, 1955.

5. The freedom of the employer to employ whomever he may wish and to prescribe the terms upon which he will consent to the relationship of employer and employee is limited after the relation of labor and capital has been established. The laborer cannot be deprived of his work by the employer without due process of law. A strike declared by a union as a protest against the illegal laying off of certain employees affiliated with the union is a legal strike.[255]

6. The rule that "strikers may not collect their wages during the days they did not go to work" because of the age-old rule governing the relation of labor and capital epitomized in the "fair day's wage for a fair day's labor" does not apply in a case where the laborers did not voluntarily strike but were practically locked out, leaving the laborers no alternative but to walk out.[256]

7. "Closed-shop" agreement is an agreement whereby an employee binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. Republic Act No. 875 authorizes closed shop agreements.[257]

DIGEST OF RULINGS INVOLVING THE WORKMEN'S COMPENSATION LAW.

1. The case of *Asia Steel Corporation v. Workmen's Compensation Commission*[258] lays down the rule that where a laborer was hired as an apprentice in a factory by the person-in-charge with the knowledge of the manager thereof, the injury to the apprentice while working in the factory is compensable under the Workmen's Compensation Law.

In the *Asia Steel Corporation* case, one Ismael Carbajosa was allowed by the manager of a nail factory to work as an apprentice. Barely a week after Carbajosa started working, his hand was caught accidentally by the running belt of a machine; he stumbled and his two feet were so seriously injured that they had to be amputated at the hospital. The corporation paid for his hospitalization. He asked for compensation under the Workmen's Compensation Law. He was awarded ₱2,246.

The award was based on the rule that an agent or manager of a factory who with authority, express, implied, apparent, or actual, employs help for the benefit of his principal's business, creates thereby the relationship of employer and employee between such help and

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[255] Philippine Education Co. v. CIR, G.R. No. L-7156, May 31, 1955.
[256] Macleod v. Progressive Federation of Labor, G.R. No. L-7887, May 31, 1955.
[257] G.R. No. L-7358, May 31, 1955; 51 O.G. 2899 (1955).
[258] G.R. No. L-7636, June 27, 1955.

his principal. It was also based on a ruling that "where a driver, employed to solicit sales of beer and make delivery, was permitted to employ helpers, a helper who was injured while in the performance of his duty was entitled to compensation from the brewery; that an expert, hired by a factory owner to supervise the installation of machinery, who hired assistants, paid by the owner, one of his assistants being injured while so engaged, was entitled to compensation from the factory owner; that workmen hired by an agent of a company, which took over the logging work of an independent contractor, became the employees of the company."

The Supreme Court stressed that if the object of the law is to be accomplished with liberal construction, the creation of the relationship between employer and employee should not be adjudged strictly in accordance with technical legal rules, but rather according to the actualities of industrial or business practices.

2. In *Genio de Chavez v. A. L. Ammen Transportation Co., Inc.*,[259] it appears that a mechanic employed by a land transportation company was killed while doing a repair job on a private car. The repair job was accepted by the company's branch manager allegedly in violation of a company regulation that only the company's motor vehicles may be repaired in its shop. The repair was being performed within the company's premises and death occurred therein. *Held:* As the repair work assigned by the branch manager to the mechanic was strictly within the scope of the latter's employment, the heirs of the mechanic may recover compensation under the workmen's Compensation Act.

3. The killing of an employee who was on duty, by another employee, while the latter was toying with a shot-gun, is a compensable accident under the Workmen's Compensation Law. "The nonparticipating victim of horseplay" may recover compensation.[260]

4. In *Afable v. Loyola*[261] one Teofilo Loyola was employed by a sawmill as a mechanic. The sawmill obtained its logs from one Rivera. While Loyola was repairing the truck of an agent of the sawmill, which truck was used in hauling the logs of Rivera, the truck went out of control and Loyola was killed. *Held:* The owner of the sawmill is liable to pay workmen's compensation to Loyola's heirs on account of his death, which occurred in the course of employment.

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[259] G.R. No. L-7318, April 20, 1955; 51 O.G. 1832 (1955).

[260] Hawaiian-Philippine Company v. Workmen's Compensation Comm'r, G.R. No. L-8114, May 25, 1955.

[261] G.R. No. L-7789, May 27, 1955.

5. Charitable institutions, like the Quezon Institute, Inc., are not established for gain and are not therefore subject to the operation of the Workmen's Compensation Law.[262]

AGENCY.

AGENT IS NOT PERSONALLY LIABLE FOR ACTS DONE WITHIN THE SCOPE OF HIS AUTHORITY.

Article 1897 of the new Civil Code, which provides that "the agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority," and article 1910 of the same Code, which provides that "the principal must comply with all the obligations which the agent may have contracted within the scope of his authority" were applied in the case of *Zialcita v. Simmons*.[263] In this case one Hortensia Zialcita was employed in June 1952 by the National City Bank of New York acting through its general manager, defendant William Simmons. It was stipulated in the contract of employment that the same may be terminated in case the employee should get married. Hortensia contracted marriage on July 13, 1952 and pursuant to the said stipulation she resigned, effective August 15, 1952. She later sued Simmons for damages amounting to ₱15,000 on the theory that she was forced to sign the letter of resignation.

It was held that she had no cause of action against Simmons. Her cause of action, if any, would be against the bank itself. Simmons had authority to hire plaintiff and to accept or require her resignation.[264] Under the rules of agency, the bank was bound by the acts of Simmons.[265]

CIVIL LIABILITY OF ABSCONDING AGENT.

The agent entrusted to sell a piece of jewelry is civilly liable to the principal if he entrusted the jewelry to a subagent who absconded with the same. The civil liability exists although the agent was acquitted of estafa on the ground that he did not misappropriate the jewelry.[266]

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[262] Quezon Institute, Inc. v. Velasco and Paraso, G.R. Nos. L-7742-43, Nov. 23, 1955.

[263] G.R. No. L-7912, Aug. 30, 1955.

[264] Nepomuceno v. Parlatone, 40 O.G. 119 (1941).

[265] Macias v. Warner, Barnes & Co., 43 Phil. 155 (1922).

[266] Laperal de Guzman v. Alvia, G.R. No. L-6207, Feb. 21, 1955; 51 O.G. 1311 (1955).

AGENT ACTING IN HIS OWN NAME.

If the agent had acted in his own name and the transaction involved things belonging to his principal, the person dealing with the agent can sue, not only the principal but also the agent "when the rights and obligations which are the subject-matter of the litigation cannot be legally and juridically determined without hearing both of them," as for instance, when the principal denies the agent's authority, in which case the agent should be given a chance to prove his authority. If there was no such authority, then the agent would be personally liable to the third persons with whom he contracted.[267]

LOANS.

INTERESTS FOUND NOT TO BE USURIOUS.

In *Verzosa v. Bucag*,[268] it was noted that where the loan amounts to ₱1,620 and the creditor, who was placed in possession of the land given as security, received therefrom annually as net share of the fruits the sum of ₱215, which is less than 14% of the capital of ₱1,620, it cannot be said that the interest charged is usurious.

It was further held in the *Verzosa* case that even if the fruits received by the creditor exceeded 14% of the principal of the loan, the excess, if not very palpable, would not constitute usury, as held in *Toquero v. Villegas*,[269] where the court said that "a creditor's return need not be limited to the statutory rate when it is affected by a contingency putting the whole of it at hazard," unless the excess is so palpable as to show a corrupt intent to violate the usury laws, or unless the contract is made for the purpose of such violation or evasion. "So, an agreement that instead of interest the lender of money would receive the rents and profits of certain land for a term of years, is not usurious where no intention to evade the statute is shown; and the fact that such rents and profits happen to amount to more than lawful interest does not render the contract usurious."

USURY, IF NOT DENIED, MUST BE PROVED.

In *Matel v. Rosal*,[270] plaintiffs sued defendants for the recovery of a mortgage loan. Defendants alleged usury in their answer. Plaintiffs countered with the peculiar reply "that it (sic) denies the allegations of usury adduced as a special defense in defendants' amended answer, the truth being that the true loan

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[267] Pajota v. Jante, G.R. No. L-6014, Feb. 8, 1955, citing Beaumont v. Prieto, 41 Phil. 670 (1921).

[268] G.R. No. L-8301, Oct. 29, 1955.

[269] (C.A.) 40 O.G. 10 (1941).

[270] G.R. No. L-7095, April 25, 1955.

is ₱3,000.00 and not ₱2,000.00 as alleged in said amended answer." This reply was sworn to by plaintiffs' lawyer, not by plaintiffs.

Defendants did not appear at the trial and did not prove their allegation of usury. Judgment was rendered against them for the amount of the debt. They appealed, contending that, since their allegation of usury was not denied by plaintiffs themselves, it should be regarded as having been admitted. This contention was not sustained. Rule 9 of the Rules of Court does not specify who is going to make the denial, whether the creditor or his counsel. Of course, the denial can only be made by the person having personal knowledge. The denial in this case was couched in general terms. It can be presumed that counsel's denial was based on his personal knowledge. Defendants should have presented evidence to prove their allefation of usury.

EXCESS INTEREST SHOULD BE RETURNED.

In connection with the rule in article 1413 of the new Civil Code, that "interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor," it was held in *Palileo v. Cosio* [271] that where in 1951 the debtor borrowed ₱12,000 from the creditor and the debtor paid ₱2,250 as interest for nine months, the creditor was entitled to collect only ₱1,440 as 12% interest for one year. The creditor was ordered to return to the debtor the sum of ₱810 as the excess interest for one year.

Although in the *Palileo* case the loan was contracted when the new Civil Code was already in force, the court's attention was not probably called to article 1413 which was not referred to in the opinion. It should be noted that under article 1413 there is a controversy as to whether the excess interest to be returned should be computed on the basis of the legal rate of 6% or the maximum lawful rate of 12%, in case of loans secured by a mortgaged on registered land, or 14% in case of unsecured loans or loans not secured by a mortgage on registered land. In the *Palileo* case the excess interest was determined by using as basis the maximum rate of 12%, not the lawful rate of 6%.

LOAN SHOULD BE RECOVERED IN SEPARATE ACTION.

Under article 1161 of the new Civil Code "civil obligations arising from criminal offenses shall be governed by penal laws." This provision assumes that there is a crime of which an accused had been duly convicted. Where the accused was acquitted of estafa

[271] G.R. No. L-7667, Nov. 28, 1955; 51 O.G. 6181 (1955).

because the court found that the amount which he received from the offended party was a loan, it is error for the court to sentence the accused to return the amount loaned to the complainant. The same should be recovered in a separate civil action.[272]

COMPROMISES.

OFFER OF COMPROMISE MUST BE PROVED.

The suspension of a civil action or proceeding due to the willingness of one party to discuss a possible compromise, as provided for in article 2030 of the new Civil Code, presupposes that there was an offer of compromise. If such offer was not proved, the trial court did not abuse its discretion in denying the motion for the postponement of the hearing of the case which motion was grounded on the unproved offer of compromise. This is the ruling in *Gayon v. Ubaldo*.[273]

JUDICIAL APPROVAL OF COMPROMISE.

Under article 2032 of the new Civil Code, the court's approval is required for a compromise entered into by parents in behalf of their minor children. Article 2032 is different from article 1810 of the old Code because under article 1810 the court's approval is required only if the amount involved was in excess of 2,000 pesetas. At present, court approval is required regardless of the amount involved.[274]

Where the widow compromised with a homesteader on the repurchase of the homestead, which was purchased by said widow and her deceased husband during his lifetime, said compromise, although approved by the court, did not bind the minor children, who were heirs of the deceased husband and who had a ½ interest in the homestead. The minor children were not parties to the compromise nor to the case wherein such compromise was entered into.[274a]

In *Escarilla v. Ibañez*,[275] an alleged mutual release and quitclaim deed, executed during the pendency of a litigation, but which was not sumitted to the court for approval, was not given any effect.

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[272] People v. Pantig, G.R. No. L-8325, Oct. 25, 1955; 51 O.G. 5627 (1955).
[273] G.R. No. L-7650, Dec. 28, 1955.
[274] Visayas v. Suguitan, G.R. No. L-8300, Nov. 18, 1955.
[274a] *Ibid.*
[275] G.R. No. L-7710, June 30, 1955; 51 O.G. 3457 (1955).

REAL MORTGAGES.

INDIVISIBILITY OF A MORTGAGE.

The principle of indivisibility of a mortgage found in article 2089 of the new Code, formerly article 1860, was used to justify the sale of two mortgaged lots jointly, instead of separately. It was held that the rule that real property, consisting of several lots, should be sold separately, applies to sales on execution (Rule 39, sec. 19) and not to foreclosure of mortgages. This was the holding in the cases of *Villar v. Javier de Paderanga* [276] and *Aquino v. Macondray & Co., Inc.*[277]

RIGHT OF REDEMPTION.

Another holding in the *Villar* case is that after the confirmation of the sale of mortgaged properties in a judicial foreclosure, the mortgagor has no right of redemption.[278] There is only the equity of redemption given to the mortgagor consisting in the right to redeem the mortgaged property within the ninety-day period fixed in the order of foreclosure [279] or even thereafter but before the confirmation of the sale;[280] and when the foreclosure sale is validly confirmed by the court, title vests upon the purchaser in the foreclosure sale, and the confirmation retroacts to the date of the sale.[281] Only foreclosures of mortgages in favor of banking institutions, including the Rehabilitation Finance Corporation, and those made extrajudicially are subject to legal redemption within one year after the sale, according to section 78 of the General Banking Act (Republic Act No. 337) and section 6 of Act No. 3135.

MORTGAGEE'S RIGHT TO INSURANCE INDEMNITY.

In *Palileo v. Cosio* [282] it was ruled that where a mortgagee, independently of the mortgagor, insures the mortgaged property in his own name and for his own interest, he is entitled to the insurance proceeds in case of loss, but in such a case, he is not allowed to retain his claim against the mortgagor, but it passes by subrogation to the insurer to the extent of the insurance money paid.[283] This

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[276] G.R. No. L-7689, Sept. 28, 1955; 51 O.G. 5162 (1955).

[277] G.R. No. L-5976, Oct. 25, 1955; 51 O.G. 5615 (1955).

[278] Raymundo v. Sunico, 25 Phil. 365 (1913); Benedicto v. Yulo, 26 Phil. 160 (1913).

[279] Rule 70, § 2; Sun Life Assurance Co. of Canada v. Gonzales Diez, 53 Phil. 271 (1929).

[280] Anderson v. Reyes, 54 Phil. 944 (1930); Grimalt v. Velasquez, 36 Phil. 271 (1917).

[281] Binalbagan Estate, Inc. v. Gatuslao, 74 Phil. 128 (1943).

[282] G.R. No. L-7667, Nov. 28, 1955; 51 O.G. 6181 (1955).

[283] VANCE, INSURANCE 654 (2d ed.).

is similar to the rule laid down in *San Miguel Brewery v. Law Union and Rock Insurance Co.*[284]

In the *Palileo* case, the debtor borrowed ₱12,000 from the creditor. As security the debtor mortgaged a residential building to the creditor, who insured the building for ₱15,000. When the building was partly destroyed, the creditor-mortgagee recovered ₱13,107 from the insurance company. The debtor contended that said amount of ₱13,107 should be applied to the principl of the loan amounting to ₱12,000 and that the difference of ₱1,107 should be turned over to the debtor by the mortgagee. This contention was not sustained.

It was held that the mortgagee could retain the proceeds of the insurance amounting to ₱13,107 but that the mortgagee's claim against the mortgagor should be considered assigned to the insurance company which is deemed subrogated to the rights of the mortgagee to the extent of the insurance indemnity.

ANTICHRESIS.

CONTRACT HELD TO BE MORTGAGE, NOT ANTICHRESIS.

In *Legaspi v. Celestial*[285] it was held that "when a contract with security does not stipulate for the payment of interest but provides for the delivery to the creditor by the debtor of the real property constituted as security for the payment thereof, in order that the creditor may administer the same and avail himself of its fruits, without stating that said fruits are to be applied to the payment of interest, if any, and afterwards to that of the principal of the credit, the contract shall be considered to be one of mortgage and not of antichresis."

It should be noted that in the *Legaspi* case, the contract was regarded as mortgage, although the mortgagee was in possession of the mortgaged property and he enjoyed the fruits thereof. The reason was that there was no stipulation that said fruits would be applied to the interest of the loan. In fact there was no interest stipulation at all. The rule in the *Legaspi* case was applied in *Verzosa v. Bucag*,[286] a case with facts similar to those found in the *Legaspi* case.

In the *Verzosa* case the debtors acknowledged that they were indebted to the creditor in the sum of ₱1,620 and that they were delivering a parcel of land to the creditor so that he would enjoy its fruits and that the creditor would not pay any rental in considera-

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[284] 40 Phil. 674 (1920).
[285] 66 Phil. 372 (1938).
[286] G.R. No. L-8031, Oct. 29, 1955.

tion of the fact that the debtor would not pay interest. It was held that the contract between the parties was a mortgage and not antichresis, as shown by the fact that before the debtor could get back the land, it was his obligation to pay the sum of ₱1,620 to the creditor; that it was not stipulated that the loan would be paid out of the fruits of the land; that the instrument evidencing the obligation repeatedly uses the word "hipoteca"; and that the creditor did not pay interest.

The essence of antichresis lies in the stipulation that the fruits of the debtor's immovable property would be applied to the payment of the interest, if owing, and thereafter to the principal of the loan secured. This distinguishing feature of antichresis is sometimes not accorded due importance in some of the cases involving mortgage and antichresis. The confusion stems from the stipulation that no interest would be charged because the creditor in possession would enjoy the fruits, or from the stipulation that the interest would be compensated by the fruits received by the creditor in possession of the property. In the first case, the contract is a mortgage; in the second, antichresis.

In *Trillana v. Manansala*,[287] it was summarily ruled that "a mortgage, coupled with delivery of possession of the land to the creditor, is antichresis." The rule was not qualified by any statement that in such a case, the fruits of the property would be applied to the interest or to the principal of the loan or that the fruits would offset the interest due. It is evident from the *Legaspi* and *Bucag* cases that the mortgagee may be in possession of the realty given as security, enjoying the fruits thereof and yet the contract is still a mortgage as long as there is no stipulation as to interest and no understanding that the fruits would be applied to the payment of the principal of the loan.

In holding that a mortgage, coupled with delivery of the possession of the land to the creditor, is antichresis, reliance was placed on *Barreto v. Barretto*[288] and *Valencia v. Alcala*.[289] In these two cases, however, it was stipulated that the fruits of the property would be applied to the interest. If there is any case to sustain the holding in the *Trillana* case, it would be that of *Macapinlac v. Gutierrez Repide*,[290] not cited in the *Trillana* case, where it was ruled that "when a mortgagee of real property acquires possession with the consent of

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[287] G.R. No. L-6752, April 29, 1955; 51 O.G. 2911 (1955).
[288] 37 Phil. 234 (1917).
[289] 42 Phil. 177 (1921).
[290] 43 Phil. 770 (1922).

the mortgagor, the rights of the parties are to be determined by the rules applicable to the contract of antichresis," and that in such a case, the mortgagee "is under obligation to apply the fruits derived from the estate in satisfaction, first, of the interest on the debt, if any, and, secondly, to the payment of the principal."

In the *Trillana* case, it appears that Marcos Bernardo in 1934 mortgaged (*isinangla*) to the spouses Faustino Manansala and Maria Lopez a parcel of land as security for the payment of ₱1,070. Manansala was placed in possession of the land. The record does not disclose if there was any stipulation for the payment of interest. Neither was it stipulated that the fruits of the land would be applied by the creditor to the payment of the interest or the principal of the loan. The period of redemption was 10 years or up to 1944. In 1948, before the land had been redeemed, Bernardo's sole heir, sold the land to plaintiff Nazario Trillana. In 1950 Trillana sued Manansala and his wife for the recovery of the land.

It was held that the contract between Bernardo and the Manansala spouses was antichresis; that said contract did not divest Bernardo of his ownership of the land; that after his death his heir could sell the land to Trillana; and that Trillana could redeem the land from the Manansala spouses by paying ₱1,070 without interest "because the fruits gathered by the Manansala spouses are considered as interest."

DAMAGES.

INJURED PARTY MUST MINIMIZE RESULTING DAMAGES.

The rule in article 2203 that "the party suffering loss or injury must exercise the diligence of a good father of a family (*diligentissimi patris familias*) to minimize the damages resulting from the act or omission in question" was applied in *Potenciano v. Estefani*,[291] a tenancy case. In this case the tenant was illegally ejected from the land where he was working and the lower court granted him damages for the years during which he was not able to work on the land. The damages were fixed at 70% of the net harvests of rice produced from the land, pursuant to Act No. 4054. However, during the years in question, he was able to work on another land. It was held that, as a matter of equity, his share of the net harvests of the other land, which he received during the said years, should be deducted from the damages which he is entitled to receive from the landowner who ejected him. This holding is supported by the doctrine laid down in *Garcia Palomar v. Hotel de France Co.*,[292] and *Sotelo v. Behn, Meyer*

[291] G.R. No. L-7690, July 27, 1955.
[292] 42 Phil. 60 (1921).

& Co.,[293] relative to the damages which a dismissed employee could recover from his employer.

Where the vendee claimed damages from the vendor in consequence of the alleged nondelivery of scrap metals, the vendee should have exercised diligent efforts to minimize the resulting damages. The vendee should have procured the scrap metals in the open market, in view of the vendor's breach of the contract of sale.[294]

STIPULATED INTEREST IS DUE EVEN AFTER DEBTOR'S DEATH.

A loan contracted in 1919 with interest at twelve percent (12%) a year continues to draw interest at the same amount even after the debtor's death in 1929. Should the estate of the deceased debtor be required to pay the loan because the period of prescription was interrupted by the written acknowledgment of the debt made by the deceased debtor's heirs and by payment, the amount due should bear the same rate of interest or 12%. This is the holding in *Mina v. Favis Vda. de Rivero*.[295] The contention that the loan should not draw interest after the lapse of two years from the death of the debtor "is not supported by any legal provision."

OTHER RULINGS.

1. An action for damages under articles 2176 and 2180 of the new Civil Code, the allegation being that the son of the plaintiff was killed due to the negligence of defendant employer's employees, is not a workmen's compensation case. The Court of First Instance has, therefore, jurisdiction over the case.[296]

2. Moral damages not alleged and proved cannot be recovered.[297]

3. Acquittal in a criminal case for negligence is not a bar to a tort action under article 2176.[298]

4. Where satisfaction of a judgment was enjoined at the instance of the debtor and while the injunction was in force the debtor became insolvent and the judgment became uncollectible, the surety of the debtor on the bond for the issuance of the injunction is liable to pay the damages resulting from the fact that the judgment can no longer be enforced. Article 2209, which provides that in obligations to pay money the indemnity for damages shall consist in the payment of interest where "the debtor incurs in delay" or *mora*,

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[293] 57 Phil. 775 (1932).
[294] Mollers' (Hongkong) Ltd. v. Sarile, G.R. Nos. L-7038-39, Aug. 31, 1955.
[295] G.R. No. L-7534, Sept. 27, 1955.
[296] Belandres v. Lopez Sugar Cenetal, 51 O.G. 2881 (1955).
[297] Imperial v. PAL, G.R. No. L-4923, Jan. 10, 1955.
[298] Ibañez v. North Negros Sugar Co., G.R. No. L-6790, March 28, 1955, citing Barredo v. Garcia, 73 Phil. 607 (1942).

does not apply to that situation, because article 2209 presupposes that the principal debt remains collectible.[299]

PREFERENCE OF CREDITS.

CHARGES ACCRUING TO GOVERNMENT ARE PREFERRED.

In *Velayo v. Republic*,[300] involving preference of credits under section 50 of the Insolvency Law, the question was whether the liability of the insolvent Commercial Airlines, Inc. for charges for the use of Government airfields and air navigation facilities should be regarded as an obligation to the National Government and, therefore, preferred, or an obligation to a Government instrumentality only, and, as such, not preferred, following the doctrine laid down in *Government of the P.I. v. China Banking Corporation*.[301]

It was held that the charges are civil fruits accruing to the National Government as owner of the airfields and air navigation facilities and that it was immaterial that those properties are administered by a Government agency and that the charges are collected by said agency. They are preferred claims under section 50 of the Insolvency Law. The case was distinguished from the *China Banning Corporation* case, where the obligation involved was owed to the Postal Savings Bank, lending money for profit and not for the purpose of discharging a governmental function.

TRANSITIONAL PROVISIONS.

NO IMPAIRMENT OF VESTED RIGHTS.

1. The rule in article 2253 of the new Civil Code, that new rights created by the Code shall be effective at once, provided that they do not prejudice or impair any vested or acquired right, was applied in *Mendoza v. Cayas*,[302] a case involving recognition of a natural child who was born in 1893, whose putative father died in 1929, and who sought recognition only in 1953. The evidence of recognition relied upon consisted of a private document, indicating paternity, and acts showing possession of status as a natural child of the deceased.

After ruling that such evidence was not sufficient for purposes of voluntary recognition under the old Code and that, on the other hand, the action for compulsory recognition had already prescribed, the Supreme Court said that "the new Civil Code of 1950 cannot be retroactively applied to disturb the vested rights" of the decedent's

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[299] Lay v. Roces Hermanos, G.R. No. L-8040, May 28, 1955.
[300] G.R. No. L-7915, July 30, 1955.
[301] 54 Phil. 845 (1930).
[302] G.R. No. L-8562, Dec. 17, 1955; 52 O.G. 200 (1956).

widow and legitimate son who had held the decedent's property "as owners for the last fifteen years."

The decision does not state what provision of the new Civil Code could possibly apply to the case. The Court probably had in mind article 278 of the new Code, which provides that voluntary recognition may be made in "any authentic writing," in lieu of the "public document" required in article 131 of the old Code. The private document, indicating claimant's filiation as to the decedent, may be regarded as an "authentic writing," within the meaning of article 278.

The decision does not cite article 2260 of the new Code, which provides that "the voluntary recognition of a natural child shall take place according to this Code, even if the child was born before the effectivity of this body of law." It seems obvious that the Court studiedly refrained from discussing the scope of article 2260.

2. A new right, whose retroactive application would impair vested rights, is illustrated in the case of *Uson v. Del Rosario* [303] where it was ruled that the successional rights granted by the new Code to spurious children cannot be given retroactive effect, if, in doing so, the successional rights of the decedent's surviving spouse, which had already vested prior to the effectivity of the new Code, would be impaired.

Where all the acts and transactions involved in the case took place prior to the new Civil Code, there is no reason for applying the new Civil Code, especially if to do so would impair rights vested under the old Code. This is the ruling in *Claridad v. Benares*.[304]

In the *Claridad* case there is a dictum that, supposing that by applying the prescriptive period in the new Civil Code an action to recover a parcel of land had not yet prescribed, but under the old law, said action had prescribed and title over the land had been vested in the defendant, the new prescriptive period cannot be given retroactive effect because such a procedure would be prohibited by articles 2252 and 2253 of the new Civil Code, which do not allow the retroactive application of its new provisions and rules to the detriment of rights vested and acquired under the prior legislation.

However, article 2253 was applied to justify the application of article 1606 of the new Civil Code to a *pacto de retro* sale executed before the new Code.[305]

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[303] G.R. No. L-4963, Jan. 29, 1953.

[304] G.R. No. L-6438, June 30, 1955, citing Rone v. Claro, G.R. No. L-4472, May 8, 1952.

[305] Arambulo v. Ayson, G.R. No. L-6501, May 31, 1955.

TRANSITIONAL PROVISIONS APPLY TO CASES NOT ELSEWHERE SPECIFIED IN THE NEW CIVIL CODE.

According to article 2252 of the new Civil Code, the transitional provisions of said Code apply only to "cases which are not specified elsewhere in this Code." This provision was applied in *Osorio v. Tan Jongko*,[306] a case involving prescription of an action to recover a parcel of land, which period of prescription was already running when the new Civil Code took effect, and which is covered by article 1116 of the new Code, providing that prescription already running when the new Code took effect is governed by the old law.

Since article 1116 covers the situation, then the provision of article 2258 of the new Civil Code (found in the Transitional Provisions), that actions and rights which came into being but were not exercised before the effectivity of the new Code, shall remain in full force in conformity with the old legislation, but shall be regulated by the new Code as to their exercise, duration and procedure, has no application to the case. The application of article 2258 presupposes that there is no other provision in the new Code which is applicable.

In the *Osorio* case, it was further noted that article 2253 of the new Code, providing that the old Code and prior laws shall govern rights originating under said laws, from acts done or events which took place under their regime, refers to acts or events occurring before the effectivity of the new Code. Article 2253 cannot be invoked with respect to an event which took place in December, 1950 because the new Code was already in force at that time.

But in another case, it was ruled that, if the sale of the land took place before the new Civil Code became effective, the statute of limitations applicable is that contained in the Code of Civil Procedure, according to article 2258 of the new Civil Code.[307]

There is thus no perfect consistency in the application and construction of the transitional provisions of the new Code. Later decisions, it is hoped, will eliminate the incongruities in interpretation and state with more certainty and clarity the meaning of said provisions.

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[306] G.R. No. L-8262, Nov. 29, 1955; 51 O.G. 6221 (1955).
[307] Peralta v. Alipio, G.R. No. L-8273, Oct. 24, 1955.