ANNUAL SURVEY IN CIVIL LAW—1956

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The law, as Lord Chief Justice Mansfield observed, does not consist of particular instances but rather of principles governing individual cases. A study of decided cases, therefore, means the ascertainment of the principles which they formulate and illustrate. A master jurist said that every effort to reduce a case to a rule is an effort in jurisprudence. Recent cases must be studied and reduced to rules so that the latest doctrinal affirmations and innovations may be readily known.

It is now an axiom of legal history that "the law must be stable but it cannot stand still." This aphorism finds vivid illustration in the field of civil law, which, dealing as it does with private rights and duties, is constantly being applied and interpreted by the courts to reconcile and resolve the ever recurring conflicts in private interests. Such constant application involves the strengthening or modification of old rules, or the enunciation of new doctrines. It is no wonder then that the decisional rules, which have been shaped by means of the "hammer and anvil of litigation," are, in Cardozo's phrase, in a state of Heraclitean flux.

In this survey of the 1956 decisions of the Supreme Court in civil law, the pertinent rulings and dicta are correlated with the corresponding codal provisions and with past decisions for the convenience of the student of civil law.

EFFECT AND APPLICATION OF LAWS

Prospective operation of statutes.—

(1) Since Republic Act No. 1199, otherwise known as the Agricultural Tenancy Act, took effect on August 30, 1954 and it has no retroactive effect, said law cannot apply to a petition to lay off certain tenants, which was filed on August 12, 1954. Article 3 of the new Civil Code provides that "laws have no retroactive effect, unless the contrary is provided", and "a statute operates prospectively and never retroactively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication."[1]

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[1] Tolentino v. Alzate, G.R. No. L-9267, April 11, 1956; Segovia v. Noel, 47 Phil. 543.

Section 50 of Republic Act No. 1199, which prescribes the requirement to be followed by the landlord in case he wants to mechanize his farm, is not procedural in nature. It is substantive in nature and it cannot be given retroactive effect unless so clearly expressed by law. The rule in *People v. Sumilang*[2] that remedial statutes may be given retroactive effect to pending actions, has no application to that provision of the Agricultural Tenancy Act.[3]

(2) Section 306 of the National Internal Revenue Code allows interest on tax refunds, while section 1579 of the Revised Administrative Code, the old law, does not allow interest on tax refunds. Section 306 is substantive in nature and cannot be given retroactive effect to a case instituted when section 1579 was in force, in the absence of an express provision making it applicable to pending cases.[4]

(3) The rule on prospectivity of laws was applied to the interpretation of Republic Act No. 361, which took effect on June 9, 1949 and which provides that no compensating tax should be paid on vessels purchased or received before or after the effectivity of said law. In the case of *Robertson Co. v. Collector of Internal Revenue*,[5] it appears that compensating tax was paid in September 1947 on a vessel purchased in 1946. The tax was legally due at the time payment was made, but it was contended that, in view of Republic Act No. 361, said tax should be refunded. In other words, it was argued that the exemption of vessels from the compensating tax should be given a retroactive effect because Republic Act No. 361 includes vessels purchased *before* its effectivity in 1949.

Held: Republic Act No. 361 cannot be given retroactive application in the absence of express provision to that effect. That law did not intend that compensating taxes already assessed or collected on vessels should be nullified. Moreover, the suit for the recovery of the tax was filed after the 2-year period provided for in section 308 of the Tax Code, which was not affected by Republic Act No. 361.

(4) Regulations of the Urban Planning Commission, prescribing a minimum area of 180 square meters for subdivided lots of expropriated estates, should not be given a retroactive effect to a subdivision plan for an urban area approved by the Director of Lands prior to the adoption of the Subdivision Regulations of said

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2 77 Phil. 764 (1946).
3 Tolentino case, *supra* note 1.
4 Insular Lumber Co. v. Collector of Internal Revenue, G.R. No. L-7190, April 28, 1956.
5 G.R. No. L-9352, Nov. 29, 1956, 53 O.G. 671.

Commission, as to do so would be unjust to the occupants of the subdivided lots.[6]

But a general circular of the Bureau of Internal Revenue, which revokes a previous circular erroneously interpreting the law, can be given retroactive effect. Such retroactive effect will not impair any vested right because no vested right can spring from a wrong interpretation of the law. Thus article 2254 of the new Civil Code provides that "no vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others."[7]

Meaning of "void" in art. 5.—

Article 5 of the new Civil Code provides that "acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Article 5 was taken from article 4 of the old Code. The difference between the two articles is that article 4 uses the term "law" only whereas article 5 uses the words "mandatory or prohibitory laws". In *Municipality of Camiling v. Lopez*[8] the word "void" in article 4 of the old Code was interpreted as embracing two kinds of acts: those which are *ipso facto* void and those which are merely *voidable.* In the *Lopez* case a lease contract was entered into between the Municipality of Camiling and Diego Lopez for the lease of certain fisheries for a period of three years. The lessee paid the rental for two years and a part of the rental for the third year. The municipality sued the lessee for the recovery of the balance of the unpaid rental for the third year. The defense of Lopez was that the lease was *void* because it was not approved by the provincial governor as required in section 2196 of the Revised Administrative Code. The question was whether the lease was void or voidable and whether the municipality could recover the unpaid balance of the rental. The trial court declared that the lease was void and it dismissed the municipality's complaint, following the doctrine laid down in *Municipality of Hagonoy v. Evangelista.*[9]

Held: The lease was only *voidable.* The requirement that the lease should be approved by the provincial governor "is part of the system of supervision that the provincial government exercises over the municipal government." It is not a prohibition against municipal councils entering into contracts regarding municipal properties

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[6] Javillonar v. National Planning Commission, G.R. No. L-8698, Dec. 14, 1956, 53 O.G. 607.

[7] Hilado v. Collector of Internal Revenue, G.R. No. L-9408, Oct. 31, 1956. *But see* Tan Chong v. Secretary of Labor, 79 Phil. 249.

[8] G.R. No. L-8945, May 23, 1956, 53 O.G. 112.

[9] 73 Phil. 586.

subject of municipal administration or control. In the instant case, except for the absence of such approval, the lease was perfectly legitimate. Its subject matter belonged to and was under the administration of the municipality. There was nothing in the lease "which would taint it with illegality, like a violation of public order or public morality, or a breach of a declared national policy." It was not *ipso facto* void. After its execution it could have been ratified in the ordinary course of administration. It was merely voidable at the instance of the party who in law was granted the right to invoke its invalidity. The municipality was allowed to recover the unpaid rental.

When waiver of rights cannot be allowed.—

Article 6 of the new Civil Code, formerly article 4, provides that "rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law". Waiver of a right, which was not allowed, is illustrated in *Padilla v. Dizon.*[10] In this case plaintiff secured a judgment granting the alternative prayer of her complaint (a) that the sale of a parcel of land in her favor be rescinded and that the price be returned to her; or (b) that the sale be maintained and that the price be proportionately reduced. It was held that, after the said judgment had become final and after defendant seller had elected to rescind the sale and to return the price, plaintiff purchaser could not waive her right to said judgment and ask that the status quo prior to the litigation be maintained. Such waiver would prejudice a right of defendant recognized in the judgment. It may also be said that plaintiff's complaint contained an offer for rescission or reduction in price, which, when approved by the court and accepted by defendant, became binding and precluded plaintiff from withdrawing it. "Acceptance of an offer gives the offeree a right to compel the offeror to comply with the offer". Moreover, when the court rescinded the sale and its judgment became final and was acted upon by defendant, the sale ceased to exist, and "there was nothing that the plaintiff could do about it."

Generalia specialibus non derogant.—

The case of *Baga v. Philippine National Bank,*[11] reiterates the rule that, because repeals by implication are not favored, a special law must be taken as intended to constitute an exception to the general law, in the absence of special circumstances forcing a contrary

[10] G.R. No. L-8026, April 20, 1956.
[11] G.R. No. L-9695, Sept. 10, 1956, 52 O.G. 6140.

conclusion.[12] Following this rule, the provisions on guardianship of minor beneficiaries of the Veterans Administration, found in Republic Act No. 390, which is a special law, are not affected by article 399 of the new Civil Code, a general law. It should be noted that both Republic Act 390 and the new Civil Code (Republic Act No. 386) were approved on the same date, June 18, 1949, but Republic Act No. 390 took effect on the said date, whereas, the new Code took effect later, or on August 30, 1950.

Status of aliens is governed by their national law.—

Article 9 of the old Civil Code, now article 15, which provides that "laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad" was cited in *Recto v. Harden*,[13] to support the opinion that the status of an American couple, including the dissolution of their marriage, is governed by their national law and not by Philippine law. It was held in the *Harden* case that a contract whereby the wife bound herself to pay to her lawyer 20% of her share of the conjugal partnership upon divorce or judicial separation, is not contrary to law, morals, good customs, public order and public policy.

HUMAN RELATIONS

Unfair business practice.—

Articles 19, 21 and 23 of the new Civil Code found in the Title on Human Relations were cited in *Velayo v. Shell Company of the P.I. Ltd.*[14] to support the holding that defendant company is liable for damages for having perpetrated an oppressive and unfair business practice to the detriment of the Government and local businesses. In that case defendant company was a creditor of the Commercial Air Lines, Inc. (CALI). When it learned that the CALI was insolvent and was intending to institute insolvency proceedings, it transferred its credit to its sister corporation in the U.S., which lost no time in instituting an action against the CALI in California and attaching a CALI plane allegedly worth ₱330,000. The assignee in insolvency of the CALI later sued defendant company for damages. Defendant was sentenced to pay the assignee damages in a sum double the value of the attached plane.

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[12] Lichauco & Co. v. Apostol, 44 Phil. 138; Motor Alcohol Corp. v. Mapa, 64 Phil. 715; Leyte Asphalt Co. v. Block, 52 Phil. 429; Visayan Electric Co. v. David, 49 O.G. 1385.

[13] G.R. No. L-6897, Nov. 29, 1956.

[14] G.R. No. L-7817, Oct. 31, 1956.

Civil liability may be recovered if accused was acquitted on the ground of reasonable doubt.—

(1) The rule in article 29 that "when the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted", was construed in *Philippine National Bank v. Catipon*[15] as embracing a case where the acquittal of the accused in an estafa case was predicated on the conclusion "that the guilt of the defendant has not been satisfactorily established." This was regarded as equivalent to acquittal on the ground of reasonable doubt. The judgment of acquittal did not finally determine nor expressly declare that the fact from which the civil action might arise did not exist. So, notwithstanding the acquittal, a suit to enforce the civil liability for the same act or omission may be instituted under article 29.

Moreover, in the *Catipon* case the statement of the court in the criminal case, that "if any responsibility was incurred by the accused — that is civil in nature and not criminal", amounts to a reservation of the civil action in favor of the offended party. Besides, the civil liability in that case was grounded on the trust receipt executed by the accused. He is liable *ex contractu* for its breach, whether he did or did not "misappropriate, misapply or convert the said merchandise", as charged in the criminal case.

(2) Where the trial court in its decision in the estafa case stated that defendant's acquittal was for the reason that "the evidence presented is not sufficient to establish his guilt beyond reasonable doubt", the offended party in the estafa case may bring civil action to recover the civil liability of defendant. This is the holding in *Machinery & Engineering-Supplies, Inc. v. Quijano.*[16]

Where acquittal was not based on reasonable doubt.—

In *Racela v. Albornoz*[17] it appears that Elias Racela charged Perpetua Vda. de Albornoz with estafa. He alleged that she sold two parcels of land to him, which she later sold to another person. Mrs. Albornoz was acquitted of estafa. The trial court found that she did not sell any land to Racela. After her death, Racela filed a claim against her estate. He wanted to recover the sum of ₱2,000 representing the supposed price of the two lots which she sold to him. *Held*: The claim had no merit. It was found in the criminal action that the alleged sales to Racela were fictitious and that he

[15] G.R. No. L-662, Jan. 31, 1956, 52 O.G. 5503.
[16] G.R. No. L-8142, April 27, 1956.
[17] G.R. No. L-7801, April 13, 1956, 53 O.G. 1087.

never paid the price of the lots to Mrs. Albornoz. Since there was a declaration in the criminal action, that the fact from which the civil action might arise did not exist, the civil action cannot prosper. Mrs. Albornoz was acquitted not on the ground of reasonable doubt but on the ground that she had not committed any offense.

Action based on culpa contractual may be brought independently of criminal action.—

Article 31 of the new Civil Code, which provides that "when the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter," was invoked as justification for the rule that "civil actions specifically based upon an alleged breach of the contractual relation between the owner and operator of a vehicle and its passengers are governed by the Civil Code" and "are entirely separate and distinct from the criminal action that may be brought by the injured party and should proceed independently of the criminal proceedings and regardless of the result of the latter." This rule was laid down in *Bisaya Land Transportation Company, Inc. v. Mejia.*[18]

In the *Bisaya Land Transportation* case, it appears that Tan Sim's cargo truck and a passenger truck of the Bisaya Land Transportation Co., Inc. collided and as a consequence the passengers of the latter truck sustained physical injuries and some of them died. The drivers of both trucks were charged with multiple homicide with physical injuries. The heirs of the deceased passengers instituted four civil actions for damages against the transportation company. The company moved for the suspension of the trial of said civil cases until the rendition of final judgment in the criminal case. The question was whether the four civil actions should await the outcome of the criminal action.

Held: Since the civil actions against the company were based on its alleged breach of the contract of carriage, governed by articles 1755 to 1763 of the new Civil Code, said actions are independent of the criminal action. They can be tried independently of the criminal action. Reliance was placed on the same holding in several cases.[19]

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[18] G.R. No. L-8830, 37-39, May 11, 1956, 52 O.G. 4241. See Dizon v. Sacoposo, CA 53 O.G. 729 (1956).

[19] Rakes v. Atlantic Gulf & Pacific Co., 7 Phil. 359, 362-63 365; Barredo v. Garcia and Almario, 73 Phil. 607; Ramcar v. De Leon, 78 Phil. 449 (1947); Castro v. Acro Taxicab Co., 46 O.G. 2023; San Pedro Bus Line v. Navarro, G.R. No. L-6291, April 29, 1954; Son v. Autobus Co. G.R. No. L-6155, April 30, 1954; Ibañez v. North Negros Sugar Co., G. R. No. L-6790, March 28, 1955; Carandang v. Santiago, G.R. No. L-8238, May 25, 1955.

Independent civil action is allowed in cases of physical injuries.—

Article 33 of the new Civil Code, which provides that "in cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party", was applied in *Reyes v. Santos*,[20] where it was held that in order to institute an action for damages in case of defamation and physical injuries, it is not necessary that the civil action be reserved in the criminal action.

In that case defendant Betty Santos, wife of Jaime de la Rosa, was convicted of physical injuries by the Pasay City Municipal Court for having hit Aurora Reyes with a handbag in the Riviera nightclub. She was fined ₱50. Aurora filed a civic action for damages against Betty, but it was dismissed. *Held*: The dismissal was erroneous because the act of hitting plaintiff, whether viewed as slander by deed or physical injuries, falls under article 33.

Article 33 was also cited in *Gorospe v. Gatmaitan*,[21] to support the ruling that, if a civil action for the recovery of damages arising from the offense of estafa has already been institute by the offended party, the private prosecutor in the estafa case cannot be allowed, over the objection of the defendant, to handle the prosecution. The reason is that if the offended party has waived or reserved his right to recover his civil liability his interest in the criminal case disappears and its prosecution becomes the sole function of the public prosecutor. Same holding in *Espanola v. Singson*.[22]

CITIZENSHIP AND NATURALIZATION

Digest of rulings.—

(1) The case of *Villa-Abrille Lim v. Republic*[23] reaffirms the rule that a petition for declaratory relief is not the remedy for determining whether or not the petitioner is a Filipino citizen.[24]

(1a) The statement in the marriage contract, residence certificate and income tax returns that the applicant was a resident of Manila is not conclusive and cannot prevail over his positive testimony, corroborated by his witnesses, that his residence is in Los Baños, especially considering that there is absolutely no showing

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[20] G.R. No. L-9398, Sept. 28, 1956, 52 O.G. 6548.
[21] G.R. No. L-9609, March 9, 1956, 52 O.G. 2526.
[22] G.R. No. L-8724, April 13, 1956, 53 O.G. 1090. *See* Dizon v. Sacoposo, CA 53 O.G. 724 (1956).
[23] G.R. No. L-7096, May 31, 1956.
[24] Sen v. Republic, G.R. No. L-6868, April 30 1955; De Azajar v. Ardales, G.R. No. L-6913, Oct. 31, 1955, 51 O.G. 5640; Obiles v. Republic, 49 O.G. 1932 (1953); Delumen v. Republic, 50 O.G. 578 (1954).

that he owns or is renting a residential house in Manila. A residence certificate is not conclusive evidence of one's domicile.[25]

(2) Petitioner's amendment to his petition for naturalization in the sense that the annual income alleged therein was net and not gross, as actually shown by the evidence, should have been allowed under the Rules of Court. The bank balances in favor of the petitioner and his wife are not a correct index of the annual income.[26]

(3) The uncontroverted testimony of the petitioner that he has never been convicted of any crime involving moral turpitude is sufficient, even without the usual clearances from the proper authorities.[27]

(4) In *Chua Chian v. Concepcion*,[28] it appears that on November 28, 1941 a decision was rendered granting Philippine citizenship to Ng Yoc Siu. Before he could take the oath, the war broke out. He died in 1944 without being able to take the oath. He was survived by his widow and 2 minor children. The widow filed a petition that she be allowed to take oath in behalf of her deceased husband and that the corresponding certificate of naturalization be issued for the benefit of the widow and her two children. *Held*: The petition cannot be granted. "The taking of an oath is a personal matter. It is one of those things which by their very nature cannot be done by one person for another. As the one required to take oath is already dead, it would be absurd to allow any other person to take it for him." In the oath prescribed in section 12 of the law, the candidate for naturalization solemnly declares that he renounces his allegiance and fidelity to his former sovereign, accepts the supreme authority of the Philippine Government and promises to support and defend its Constitution and observe its laws. It should be noted that in the *Chua Chian* case the Supreme Court did not discuss the applicability to the case of section 16 of the Naturalization Law, which provides that "in case a petitioner should die before the final decision has been rendered, his widow and minor children may continue the proceedings. The decision rendered in the case shall, so far as the widow and minor children are concerned, produce the same legal effect as if it had been rendered during the lifetime of the petitioner." In the *Chua Chian* case the death of the petitioner occurred *after* the trial court's decision was rendered. Apparently this circumstance made a lot of difference and removed the case from the purview of section 16.

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[25] Li Kwung v. Republic, G.R. No. L-7956, June 27, 1956, 52 O.G. 5169.
[26] *Ibid.*
[27] *Ibid.*
[28] G.R. No. L-8697, May 31, 1956.

(5) The conduct of petitioner in refusing to accept dollar coins as payment for admission to one of his theaters or to allow some policemen to enter the theater to enable them to arrest a person whom they suspected to be a pickpocket, cannot be considered as a reflection on his character. Nor can his conviction for having driven a car without a license or the suspension of his license for a minor traffic violation be considered a serious act which renders him unfit to become a Filipino citizen, for they are minor incidents in one's life that may happen to any other Filipino citizen. Such an act may be given a liberal treatment considering that petitioner has complied with all the other requirements of the law to become a Filipino citizen.[28a]

(6) The petition for naturalization cannot be granted if one of the petitioner's children is in China and has never been to the Philippines and has not therefore been enrolled in any of the public or private schools recognized by the Government. Since petitioner has not given primary and secondary education to all of his minor children in any of the public or private schools recognized by the Government and not limited to any race or nationality, he is not exempt from making a declaration of intention.[28b]

(7) Where the decree granting the application for naturalization was issued on January 27, 1953, and in 1953, or within the 2-year period, the applicant went to Saigon and remained there for two weeks to settle the estate of his father, who had died in Paris, it was held that he could not take the oath after the expiration of the 2-year period. Strict compliance with the conditions laid down by Republic Act No. 530 is essential "if the purpose of the law is to be achieved, so that a violation of them bars applicant's admission to Philippine citizenship." Relaxation of the requirement, that the applicant should not leave the Philippines within the 2-year period, made "in deference to private need or convenience should be avoided so as not to open the door to evasions and render the law ineffective."[29]

(8) An applicant for naturalization becomes a Filipino only upon the taking of his oath of allegiance and not before. He does

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[28a] Yu Kong Eng v. Republic, G.R. No. L-8780, Oct. 19, 1956, 52 O.G. 6511 (1956).

[28b] Yu Hiang v. Republic, G.R. No. L-8378, March 23, 1956; Chu Tiao v. Republic, G.R. No. L-6430, Aug. 31, 1954; Hao Lian Chu v. Republic, 48 O.G. 1780; 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-3470, Nov. 27, 1951; Ang Yee Koe Sengkee v. Republic, G.R. No. L-3683, Dec. 27, 1951; Bangon Du v. Republic, G.R. No. L-3683, Jan. 28, 1953; Yu v. Republic, G.R. No. L-5471, Dec. 17, 1953; Quing Ku Chay v. Republic, G.R. No. L-5477, April 12, 1954.

[29] Dee Sam v. Republic, G.R. No. L-9097, Feb. 29, 1956, 53 O.G. 144.

not acquire Philippine nationality by reason of the fact that the decision granting his application for naturalization has become final. Children, who were minors when the decision granting the application for naturalization of their father was rendered and became final, but, who were of age when the father took his oath of allegiance, over two years later, are not entitled to share the benefits of said decision.[30]

(9) The enrollment of the applicant's minor children of school age in a school recognized by the Government is one of the most important conditions for the grant of the privilege of naturalization. Where the applicant has a child in Hongkong, who was born in Amoy, China in 1936, who has never been enrolled in any public or private schools recognized by the Philippine Government and whom applicant has never seen, his application for naturalization should be denied. It appears that the applicant made an effort to bring said child to the Philippines only in February 1951, many years after the Chinese mainland had fallen under the control of the communists, an event which took place a few years after Japan's surrender in 1945. The applicant had over 10 years within which to bring his child to the Philippines, and yet he did not even try to do so. He tried to bring his child to the Philippines after the international situation had become unfavorable to his entry in the Philippines. Under similar conditions the application for naturalization was denied.[31]

(10) Where petitioner, who resided in the Philippines since 1919, had two children in China one born in 1931 and the other 1948 and both children died in 1953 and 1954, but without having been brought to the Philippines and they therefore did not have any primary and secondary education in any school recognized by the Philippine Government, he was not exempted from filing a declaration of intention. His petition for naturalization cannot be granted. His failure to bring his children to the Philippines was not excusable. He had opportunities for bringing his children, including an adopted child, to the Philippines before the communists occupied Amoy, his hometown.[32]

(11) It is premature for applicant to apply for naturalization where there is a dispute as to whether or not he was born in the Philippines, as shown by the fact that the name appearing in his

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[30] Tiu Peng Hong v. Republic, G.R. No. L-8550, Jan. 25, 1956, 52 O.G. 782.

[31] Chan Ho Lay v. Republic, G.R. No. L-5666, March 30, 1954; Chua Pien v. Republic, G.R. No. L-4032, Oct. 25, 1952; Sy Kiap v. Republic, 48 O.G. 3362; Bangon Du v. Republic, G.R. No. L-3683, Jan. 28, 1953; Amado Abadilla Co Cai v. Republic, G.R. No. L-5461, Dec. 17, 1953; Lim Lian Hong v. Republic, G.R. No. L-3575, Dec. 26, 1950; Tan Hi v. Republic, 3554, Jan. 25, 1951; Francisco Chan Su Hok v. Republic, G.R. No. L-3470, Nov. 27, 1951.

[32] Chua Kang v. Republic, G.R. No. L-8875, July 31, 1956.

supposed birth certificate is different from the name being used by him. The final decision in his petition for correction of the name appearing in his birth certificate should be awaited.[33]

(12) The rule that the findings of the trial court on the credibility of witnesses will not be disturbed on appeal, unless the court failed to consider some material fact or circumstance presented to it for consideration, was followed in a naturalization case, *Tiu Bon Hui v. Republic.*[34]

(13) It has been held that the two credible persons who signed the affidavit attached to the application, stating that they know the petitioner to be a resident of the Philippines and to be of good repute should testify at the hearing and failure of one of them to do so justifies the denial of the application.[35] However, it was held in *Raymundo and Fortunato Pe v. Republic,*[36] that the death of one of the witnesses is a valid excuse for his nonpresentation and the offer of another witness, to substitute for the deceased affiant, constitutes substantial compliance with the law.[37] Same holding in *Esteban Lui Kiong v. Republic.*[38] The maxim is: *ad impossibilia lex non cogit.*

(14) The judgment of the trial court in a naturalization case, declaring that the petitioner is for all legal purposes a Filipino citizen by naturalization, is erroneous because the court should have stated that the petitioner would be naturalized only upon compliance with the requirements contained in Republic Act No. 530. The trial court erred in ignoring Republic Act No. 530.[39]

CIVIL PERSONALITY

Institution for public interest or purpose.—

In connection with article 44 of the new Civil Code, which provides that "corporations, institutions and entities for public interest or purpose, created by law" are juridical persons, it was held that the Philippine Normal College is a juridical person, which can be sued by its employee, because Republic Act No. 416 converted the old normal school into a college and endowed it with the "general powers set out in section 13" of the Corporation Law. One of such powers is to sue and be sued in any court. Since the law provides

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[33] Ramon Cheng Quioc Too v. Republic, G.R. No. 9341, Dec. 14, 1956, 53 O.G. 1041.
[34] G.R. No. L-8730, Nov. 19, 1956.
[35] Awad v. Republic, G.R. No. L-7685, Sept. 23, 1955; Singh v. Republic, 51 O.G. 5172; Cabrales Cu v. Republic, 51 O.G. 5625.
[36] G.R. No. L-7872-73, July 20, 1956, 52 O.G. 5855.
[37] Leon Pe v. Republic, G.R. No. L-7871, Oct. 29, 1955.
[38] G.R. No. L-9108, Oct. 31, 1956, 53 O.G. 379.
[39] Chan v. Republic, G.R. No. L-8913, July 24, 1956.

that the College can be sued, it is not correct to say that it cannot be sued without the consent of the State.[40]

DOMICILE

Residence as meaning domicile.—

Residence, as used in section 1, Rule 5, Rules of Court, regarding the venue of actions in the Court of First Instance means domicile, according to the case of *Corre v. Tan Corre.*[41] Article 50 of the new Civil Code provides that "for the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence". Domicile is also defined as one's permanent home, the place to which, whenever absent for business or pleasure, one intends to return, and depends on facts and circumstances, in the sense that they disclose intent.[42] In the *Corre* case it was held that an American citizen residing at Las Vegas, Nevada and temporarily residing in Manila is not domiciled in Manila and cannot therefore sue in the Manila Court of First Instance. It should be noted that in election, suffrage, and naturalization laws, the term residence has been held to mean domicile.[43]

Change of domicile.—

The question of domicile was raised in *Eusebio v. Eusebio,*[44] a case involving the venue of a proceeding for the settlement of the decedent's estate. Section 1, Rule 75 of the Rules of Court provides that the proceeding should be instituted in the "Court of First Instance in the province where he (the decedent) resides at the time of his death." It was assumed that this rule refers to domicile at the time of death.

In ascertaining the decedent's domicile, it should be remembered that a domicile once acquired is retained until a new domicile is gained. To establish a domicile of choice, the following conditions are essential: capacity to choose and freedom of choice, physical presence at the place chosen, and intention to stay there permanently (*animus semper manendi*). Domicile is not usually changed by presence in a place merely for one's own health, even if coupled with the knowledge that one will never again be able, on account of illness, to return home.

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[40] Bermoy v. Philippine Normal College, 53 O.G. 642. G.R. No. L-8670, May 18, 1956.

[41] G.R. No. L-10128, Nov. 13, 1956, 53 O.G. 642.

[42] Evangelista v. Santos, G.R. No. L-1721, May 10, 1950.

[43] Nuval v. Guray, 52 Phil. 645; Larena v. Teves, 61 Phil. 39; Gallego v. Verra, 73 Phil. 453; Zuellig v. Republic, 46 O.G. Nov. Supp. 220; Avelino v. Rosales, CA 48 OG 5308; Faypon v. Quirino,, 51 O.G. 126.

[44] G.R. No. L-8409, Dec. 28, 1956.

These rules were applied in the *Eusebio* case. There it appears that the decedent was domiciled for more than 70 years in San Fernando, Pampanga, his domicile of origin. On October 29, 1952 he bought a house and lot in Quezon City presumably in order to be near his son, a doctor, who was treating him. The deceased had a heart ailment. While transferring his belongings to his new house, he suffered a stroke. He was taken to the hospital sometime before November 26, 1952. On this date he married his common law wife in *articulo mortis*. Two days later he died. He had never stayed in his new house. When he bought said lot, it was stated in the deed of sale that his residence was San Fernando. He never sold his residential house in San Fernando. His residence certificates were issued in San Fernando. The marriage contract issued two days before he died stated that his residence was San Fernando. Since the presumption is in favor of the retention of the old domicile, especially if it is the domicile of origin, it was held that the decedent's domicile was San Fernando. Hence, the proceedings for the settlement of his estate should be instituted in Pampanga and not in Quezon City.

MARRIAGE AND LEGAL SEPARATION

Lawyer who subverted the institution of marriage may be disbarred.—

The precept in article 52 of the new Civil Code, that marriage is an inviolable social institution, was invoked in *Mortel v. Aspiras*,[45] a disbarment proceeding. In this case, respondent Anacleto Aspiras, a lawyer and married man, courted complainant Josefina Mortel, a 21-year old girl, and succeeded in having illicit relations with her by pretending that he was single and that he would marry her. In one of his love letters to her he said: "Through thick and thin, for better or for worse, in life or death, my Josephine you will always be the first, middle and the last in my life." After cohabiting with her, he arranged her marriage to his minor son, Cesar Aspiras. Cesar and Josefina never lived together. Instead respondent continued cohabiting with Josefina, who later gave birth to a baby boy. *Held*: Respondent's moral delinquency, having been aggravated by a mockery of the inviolable social institution of marriage and by corruption of his minor son or destruction of the latter's honor, his name should be stricken from the Roll of Attorneys.[46]

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[45] Adm. Case No. 145, Dec. 28, 1956, 53 O.G. 627.

[46] For similar cases, see Balinon v. De Leon, 58 Phil. 367; Biton v. Momongan, 61 Phil. 7; In re Basa, 41 Phil. 275; In re Isada, 60 Phil. 915.

Case where Chinese marriage was not proved.—

Now and then there comes up before the courts the issue of whether a deceased person had contracted a Chinese marriage. Such a question arose in the well known cases of *Adong v. Cheong Seng Gee,*[47] *Sy Joc Lieng v. Sy Quia,*[48] *Son Cui v. Guepangco,*[49] and *Lao v. Dee Tim.*[50]

In the recent cases of *Litam v. Espiritu,*[51] and *Dy Tam v. Espiritu,*[52] one question was whether the deceased Rafael Litam contracted a marriage with Sia Khin in China in 1911 and whether he had children with said woman. The Supreme Court affirmed the trial court's finding that no Chinese marriage was proved. Such finding was based on the fact that when the deceased was married to Marcosa Rivera in 1922, he stated that he was single. He stated also in various documents that he was childless. The birth certificates of the persons claiming to be children of the deceased Rafael Litam showed that their father was not said decedent.

Condonation in legal saparation.—

The case of *Bugayong v. Ginez*[53] illustrates condonation as a defense to an action for legal separation. According to that case, "condonation is the forgiveness of a marital offense constituting a ground for legal separation", or as defined in Bouvier's Law Dictionary, it is "the conditional forgiveness or remission, by a husband or wife of a matrimonial offense which the other has committed." In the *Bugayong* case, it appears that, although the husband suspected his wife of having committed adultery, he cohabited with her, living with her for two nights and 1 day. It was held that his acts amounted to a condonation and he cannot sue for legal separation. "Single and voluntary acts of marital intercourse between the parties ordinarily is sufficient to constitute condonation, and where the parties live in the same house, it is presumed that they live on terms of matrimonial cohabitation."[54] A d ivorce suit will not be granted for adultery where the parties continue to live together after it was known,[55] or there is sexual intercourse after knowledge of the adultery,[56] or sleeping together for a single night.[57]

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47 43 Phil. 43.
48 16 Phil. 137.
49 22 Phil. 216.
50 45 Phil. 739.
51 G.R. No. L-7644, Nov. 27, 1956.
52 Dy Tam v. Espiritu, G.R. No. L-7645, Nov. 27, 1956.
53 G.R. No. L-10033, Dec. 28, 1956, 53 O.G. 1050.
54 27 C.J.S., §6-d.
55 Land v. Martin, 15 So. 657; Day v. Day, 80 Pac. 974.
56 Rogers v. Rogers, 67 N. J. Eq. 534.
57 Toulson v. Toulson, 50 Atl. 401; Collins v. Collins, 193 So. 702.

The resumption of marital cohabitation as a basis of condonation will generally be inferred, nothing appearing to the contrary, from the fact of the living together as husband and wife, especially as against the husband.[58]

Alimony and custody of children may be determined during 6-month "cooling off" period.—

In *Araneta v. Concepcion*[59] it was held that the 6-month period in article 103 of the new Civil Code, which provides that "an action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition", is evidently intended as a cooling off period to make a possible reconciliation between the spouses. But this practical expedient, says Justice Labrador, does not have the effect of overriding the provisions of articles 105 and 292 of the new Code, relative to determination of the custody of the children and the granting of alimony and support *pendente lite* according to the circumstances. The law expressly enjoins that these matters should be determined by the court and if they are ignored or the courts close their eyes to actual facts, rank injustice may be caused.

In the *Araneta* case, it appears that Luis Araneta filed against his wife, Emma Benitez, an action for legal separation on the ground of adultery. She in turn filed an omnibus petition for custody of the children and for monthly support. The trial court, without receiving evidence, granted her the custody of the couple's three minor children, a monthly allowance of ₱2,300 for the support of herself and the three children, ₱300 for a house and ₱2,000 as attorney's fees. Plaintiff husband moved for the reconsideration of the order, insisting that before the petition for support and custody of the children should be resolved, evidence must first be presented. The trial court refused to receive evidence on the issues raised by the petition on the theory that during the six-month period, following the filing of the petition, no evidence can be introduced on the merits of the case or "on any incident" thereof.

Held: The trial court misinterpreted article 103. "The determination of the custody and alimony should be given effect and force provided it does not go to the extent of violating the policy of the cooling off period. That is, evidence not affecting the causes of the separation, like the actual custody of the children, the means conducive to their welfare and convenience during the pendency of the case, these should be allowed that the court may determine which is best for their custody."

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[58] Marsh v. Marsh, 14 N. J. Eq. 315.
[59] G.R. No. L-9667, July 31, 1956, 52 O.G. 5165.

Enforcement of award of custody of children.—

In granting a decree of legal separation the court has to decide incidentally who would have custody of the minor children. In *Matute v. Macadaeg*[60] it appears that Armando Medel secured from the Manila Court of First Instance a decree of legal separation from his wife Rosario Matute on the ground of adultery committed with his brother or her brother-in-law, Ernesto Medel. The custody of the couple's four minor children, three of whom were above 7 years age and one aged four years, was awarded to Armando. In April 1955, while Armando and the children were in Cebu, Rosario secured his permission to take the children to Manila to attend her father's funeral. Armando said that he consented only on condition that the children would be returned to him within two weeks. Rosario did not return the children. She filed a motion in the legal separation case praying that she be given the custody of the children and that Armando be ordered to give them support. She alleged that the three of the children did not want to go back to their father because he was living with another woman.

Judge Macadaeg denied the motion and ordered Rosario to deliver the children to Armando within 24 hours upon receipt of a copy of the order. The wife appealed. *Held*: The order of denial was proper. Respondent judge was merely enforcing the previous order awarding the custody of the children to the innocent husband. Said award had not been modified. Until modified, it should be enforced. The wife's possession of the children was only "precarious", that is, in behalf and by authority of Armando. However, since the order granting custody of the children is interlocutory and never becomes final, she is free to seek a review of said order.

HUSBAND AND WIFE

When husband need not be joined in suit against wife.—

Article 113 of the new Civil Code, which provides that the husband need not be joined when the action against the wife "is upon the civil liability arising from a criminal offense," was applied in *Reyes v. Santos*[61] where the wife Betty Santos was sued for having allegedly inflicted physical injuries upon the plaintiff and slandered the latter in the Riviera nightclub. Betty was convicted of physical injuries. It was held that in the action against her for the recovery of civil liability it was not necessary to join her husband, Jaime de la Rosa.

[60] G.R. No. L-9325, May 30, 1956.
[61] G.R. No .L-9398, Sept. 28, 1956, 52 O.G. 6548.

No prohibited donation.—

The husband's admission in a public instrument that certain properties of the marriage are his wife's paraphernal properties would not amount to a prohibited donation between husband and wife, as contemplated in article 133 of the new Civil Code.[62]

CONJUGAL PARTNERSHIP

Presumption that properties of the marriage are conjugal.—

The case of *Joaquin v. Navarro*[63] adheres to the well known presumption in article 160 of the new Civil Code, formerly article 1407, that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." The *Joaquin* case is particularly interesting because it clarifies the effect of the presumption on the rule that a Torrens title is generally a conclusive and indefeasible evidence of ownership. Act 496 itself in effect recognizes that Torrens titles are subject to the presumption in article 160 when its section 70 provides that "nothing contained in this Act (496) shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife."

As restated in the *Joaquin* case, the rule is that "properties acquired during coverture are deemed conjugal no matter in whose name they are registered under the Torrens system, unless it be shown that such properties were acquired with funds or property belonging exclusively to one of the spouses." This rule is found in previous cases.[63a]

So, in the *Joaquin* case, it was held that land originally registered under the Torrens system during the marriage in the name of "Angela Joaquin, the wife of Joaquin Navarro" was conjugal, there being no evidence that it was paraphernal.

It should be noted that in *Seva v. Nolan and Arimas*[64] land registered in the name of the wife under the Torrens system and conveyed by her to her lawyers who defended her in an adultery case instituted by the husband, was considered paraphernal because a "purchaser in good faith has acquired" the land and said purchaser, by relying on the title, "did not need to inquire whether said lot had been acquired by her with money exclusively belonging to her,

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[62] De Guzman v. Calma, G.R. No. L-6800, Nov. 29, 1956.

[63] G.R. No. L-7544, May 31, 1956. 52 O.G. 3943.

[63a] Marigsa v. Macabuntoc, 17 Phil. 107; Guinguing v. Abuton, 48 Phil. 144; Flores v. Flores, 48 Phil. 288; Commonwealth v. Sandiko, 72 Phil. 258; Padilla v. Padilla, 74 Phil. 377.

[64] 64 Phil. 374 (1937).

or at the expense of the common fund of her conjugal partnership" with her husband. The *Seva* ruling disregarded the general rule because of the circumstance that a third person acting in good faith had relied on the certificate of title.

A recent case decided by the Court of Appeals, *Alejandrino v. Matamorosa*,[65] goes even farther than the general rule already stated. Justice Sanchez in the *Matamorosa* case says that the registration of land in the wife's name followed by the words "married to the (name of husband)" "is a cautionary notice to the whole world that the said property was conjugal in nature" unless the title itself declares that the land is paraphernal. He adds that "purchasers of the property are thereby charged with notice that the land is conjugal and cannot be disposed of by the wife and that courts should take judicial notice of the fact that "a good number of Torrens titles to property of the conjugal partnership are recorded indiscriminately in the name of the wife or of the husband with the addendum 'married to' ". Justice Sanchez distinguished the *Matamorosa* case from *Aguado v Carreon*,[66] a previous case decided by the Court of Appeals, where it was held that, if the land is registered under the Torrens system in the wife's name, the words "married to husband" should be considered merely as descriptive of the wife's civil status and the property should be considered paraphernal. He said that the *Aguado* ruling was revoked in *Ramos v. Ramos*.[67]

The presumption in article 160 of the new Civil Code was applied to a war profits tax case, *Republic v. Oasan Vda. de Fernandez*,[68] where it appears that the spouses acquired assets during the Japanese occupation and had also property at the outbreak of the war. Said assets were presumed to be conjugal, in the absence of contrary proof, and were held suspect to war profits tax, even if the husband died on February 11, 1945, before the passage of the War Profits Tax Law, which considers husband and wife as a single taxable unit. It was held that assets thus acquired "cannot be considered as properties belonging to two individuals, each of whom shall be subject to the tax independently of the other."

Tacit consent of husband to wife's transaction regarding conjugal asset.—

In connection with article 172 of the new Civil Code, formerly article 1416, which provides that "the wife cannot bind the con-

65 CA-G.R. No. 9106-R, Nov. 29, 1955, 52 O.G. 2031.
66 35 O.G. 2034 (1937).
67 G.R. No. L-7546, June 30, 1955; Napiza v. Agus, 45 O.G. 5020; De Guinoo v. Court of Appeals, G.R. No.L-5541, June 25, 1955.
68 G.R. No. L-9141, Sept. 25, 1956, 52 O.G. 6158.

jugal partnership without the husband's consent, except in the cases provided by law," it has been held that the husband's consent may be implied from his conduct.[69] The cases of *Bautista v Montilla* and *Pascual v. Lovina*[70] illustrate implied consent of the husband to the acts of the wife. In said cases, it appears that the wife Nelly Montilla acquired a fishpond during the marriage. It was registered in her name. On November 23, 1944 she executed a document leasing the fishpond to Mariano Flores and giving him an option to purchase the same "within the period of eighteen (18) months after six (6) months subsequent to the cessation of hostilities between the Empire of Japan and the United States of America." Primitivo Lovina, the husband of Montilla, did not expressly consent to the said lease and option.

On December 28, 1945 Flores assigned his option to the Manila Surety & Fidelity Co., Inc., represented by Lovina, its president. In the deed of assignment Flores expressly stated that his option to purchase the fishpond of Montilla would expire on September 2, 1947. *Held*: Although Lovina signed the assignment as president of said corporation, he thereby implicitly sanctioned, in his individual capacity, the contract between his wife and Flores. By that act, he was precluded from questioning her authority to execute the contract with Flores.

Wife's contract for attorney's fees.—

The contract entered into by the wife with her lawyer, wherein she bound herself to pay to the latter a contingent fee, based on her share of the conjugal assets, is not illegal. Said contract does not seek to bind the conjugal partnership without the husband's consent. It merely uses the wife's share in the conjugal assets as a basis for the computation of the attorney's fee.[71]

Surviving spouse may impugn fictitious alienations made by the deceased spouse without awaiting the liquidation of the conjugal partnership.—

Article 173 of the new Civil Code provides that "the wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership

[69] La Urbana v. Villasor, 59 Phil. 644; Montederanos v. Ynonoy, 56 Phil. 547; Alejandrino v. Reyes, 53 Phil. 973.
[70] G.R. No. L-6569 and No. L-6576, April 18, 1956.
[71] Recto v. Harden, G.R. No. L-6897, Nov. 29, 1956.

property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband." This is a new provision intended to protect the wife's interest in the conjugal partnership. Article 221 complements article 173 by providing that "any simulated alienation of property with intent to deprive the compulsory heirs of their legitime" shall be void. The wife is a compulsary heir.

The important innovation introduced by article 173 is the right given to the wife to impugn *during the marriage and before the liquidation of the conjugal partnership* any transaction entered into by the husband without her consent or in fraud of her rights. Article 1413 of the old Code provides that no alienation or agreement which the husband may make with respect to the conjugal assets in contravention of said Code or in fraud of the wife shall prejudice her or her heirs but such prejudice can only be determined *during the liquidation of the conjugal partnership,* when, under article 1419 of the old Code, "the value of any gifts or alienations which, in accordance with article 1413, are to be deemed illegal or fraudulent, shall also be collated."

Under the old Code, there were two lines of cases regarding the annulment of fraudulent transfers made by the husband. One line of cases holds that the annulment can only be made by the wife or her heirs after the liquidation of the conjugal assets and it is found that the wife is prejudiced. Thus in the leading case of *Baello v. Villanueva,*[72] it was ruled that a donation of conjugal land made by the husband, without his wife's consent, in favor of his grandnephews, "is illegal and subject to nullification, according to the result of the liquidation of the conjugal property" of the spouses. This rule was followed by the Court of Appeals in *Layson v. Oliquino,*[73] *Obliosca v. Obliosca,*[74] and *Parsons Hardware v. Acosta.*[75] The Supreme Court in the cases of *De la Cruz v. Buenaventura,*[76] *Uy Coque v. Navas L. Sioca,* [77] *Tang Ho v. Court of Appeals,*[78] and *Hofer v. Borromeo*[79] applied the same rule.[80]

Another line of cases holds that the annulment of fraudulent transfers made by the husband need not await the liquidation of

[72] 54 Phil. 213.
[73] 47 O.G. 4216.
[74] 47 O.G. 4276.
[75] 39 O.G. 1014.
[76] 46 O.G. 6032.
[77] 43 Phil. 405.
[78] 51 O.G. 5600.
[79] 51 O.G. 5145 (1955).
[80] In the Hofer case, it was held that it is doubtful if a joint deposit in a bank made by the husband and his brother "could deprive the wife of her share of the conjugal assets."

the conjugal partnership. Thus, in another case of *Hofer v. Borromeo* [81] it was held that "where the sale of conjugal property was fictitious and therefore nonexistent, the widow who has an interest in the property subject of the sale, may be allowed to contest the sale, even before the liquidation of the conjugal partnership" making as party defendant the executor of the deceased husband's estate, if he refuses to institute the suit for annulment. In justifying this ruling, Justice Labrador said that article 1413 of the old Code refers to the alienations made by the husband with *onerous* title or for valuable consideration; that is, to contracts containing all the essential requisities. They should be distinguished from conveyances without consideration, which are fictitious or inexistent. Such conveyances may be impugned by the wife without awaiting the outcome of the liquidation of the conjugal partnership.

The justification for the ruling in the *Hofer* case was stated in an old case, *Gallion v Gayares,*[82] where it was held that a simulated transfer of property made without consideration and with intent to defraud the creditors of the grantor may be treated as nonexistent[83] and a wife who is damnified by a fraudulent conveyance of property, effected by her husband, is substantially in the position of a creditor who is defrauded by a fictitious transfer by his debtor. Other cases adhering to the rule in the *Gallion* case are *Escutin v. Escutin*[84] and *Rivera v. Batallones.*[85]

In the *Hofer* case, Justice Labrador mistakenly relied upon the case of *Pascual v. Pascual.*[86] He said that in the *Pascual* case "the sale sought to be annulled by the wife was made by the husband during his lifetime without consideration" and that it was held that the sale was inexistent. He further noted that in the *Pascual* case the wife, who had an interest in the conjugal property, the subject of the sale, was allowed to bring the action for annulment, making the executor a party defendant because of his refusal to institute the suit.

However, an examination of the *Pascual* case does not bear out the above observations of Justice Labrador. It is true that the Pascual case involved a fictitious sale, but the sale was not made by the husband and it was not the wife who brought the action for annulment. The common feature of the *Hofer* and *Pascual* cases is that in both cases the action to declare the fictitious contract

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[81] G.R. No. L-7548, Feb. 27, 1956, 52 O.G. 1392.
[82] 53 Phil. 43 (1929).
[83] De Belen v. Collector of Customs, 46 Phil. 241.
[84] 60 Phil. 922.
[85] CA 40 O.G. 2090.
[86] 73 Phil. 561.

void was brought by a person other than the executor or administrator of the estate of the deceased transferor.

In the 1956 *Hofer* case,[87] it appears that the widow filed a complaint wherein she alleged that her husband Maximo Borromeo died in 1948; that during his lifetime he bought a piece of real property; that shortly before his death, when he was seriously ill and bedridden, her husband was made to sign a fictitious deed of sale for said realty in favor of Venustiano and Jose Borromeo, purporting to convey to them the property for ₱3,000; and that the said property was assessed at ₱42,480, had a market value of ₱80,000 and was mortgaged to the Rehabilitation Finance Corporation to secure a debt of ₱125,000. She prayed that the sale be declared void. The trial court dismissed the complaint. *Held*: The dismissal was erroneous. The wife had the right to bring such action.

Wife may impugn fictitious mortgage executed by husband to avoid his obligation to support her.—

The 1956 *Hofer* case, where the right of the wife to impugn a fictitious alienation of conjugal land made by the husband was grounded on the circumstance that such a conveyance is inexistent, is in principle similar to *Vasquez v. Porta*,[88] where the husband, to evade his obligation to support his wife, pursuant to a court judgment, executed a fictitious mortgage on his own properties. The right of the wife to impugn the foreclosure sale after her husband's death was sustained because the mortgage was void *ab initio* and therefore inexistent and, moreover, the widow, as the administratrix of the husband's estate and the liquidator of the conjugal partnership, "had the right to sue for the recovery of said lands, in consonance with her duty to marshall his assets."

Sale by surviving spouse of conjugal asset is void as to 1/2 pertaining to heirs of deceased spouse.—

The case of *Corpuz v. Geronimo* [89] reiterates the rule in *Talag v. Tankengco*,[90] that "a sale by a woman of property which pertained to the conjugal partnership of herself and her deceased spouse, who is survived by a legitimate child, is void as the half pertaining to the husband passed by operation of law to the said

[87] *Supra* see note 81.
[88] G.R. No. L-6767, Feb. 28, 1956, 52 O.G. 7615.
[89] G.R. No. L-6780, March 21, 1956, 52 O.G. 2528.
[90] G.R. No. L-4623, Oct. 24, 1952.

child upon the husband's demise." This rule complements the holding in the 1955 case of *Corpuz v. Corpuz*[91] that "the death of either husband or wife does not make the surviving spouse the de facto administrator of the conjugal estate or invest him or her with power to dispose of the same. The sale of conjugal property by the surviving spouse without the formalities established for the sale of property of deceased persons, shall be null and void, except as to the portion that may correspond to the vendor in the partition."

The basic rule on the point was first laid down in the early leading case of *Coronel v. Ona*,[92] where it was held that "after the dissolution of a conjugal partnership by the death of one of the partners the survivor cannot dispose of the deceased partner's share of the community property, because by law it passes to the legal heirs of the deceased partner." The rule in the *Ona* case later became a statutory rule, when Act No. 3176 was enacted in 1924. This law provides that after the dissolution of the conjugal partnership by the death of a spouse any "sale, transfer, alienation or disposition" of community property without the formalities established by law for the sale of property of deceased persons shall be valid only "as regards the portion that belonged to the vendor at the time the liquidation and partition was made."

In the 1956 *Corpuz* case, it appears that in 1936 Domingo Geronimo sold a parcel of land to the spouses Domingo Corpuz and Eugenia Regal. In 1939 Eugenia thumbmarked a document acknowledging that she received ₱100 from Geronimo and reciting that Geronimo could repurchase the land within four years. Isabelo Corpuz, a child of Domingo Corpus and Eugenia, was a witness in said document. Domingo was not able to sign the document because he was then in Manila. Domingo Corpuz died in 1943. In 1946 Eugenia thumbmarked a document wherein she resold to Geronimo the said land for ₱550. One of the witnesses to this document was Susana Corpuz, the wife of Isabelo. Eugenia and Isabelo both died also in 1946. In 1947 Susana Corpuz, as guardian of her minor children had with Isabelo, extrajudicially adjudicated the said land to the said minors, as heirs of their grandparents, Eugenia Regal and Domingo Corpuz, and a new transfer certificate of title for said land was issued in the minors' names. Susana, then, in behalf of her minor children, sued Geronimo for the recovery of possession of the land. The question was whether the Corpuz minors or Geronimo were the owners of the land.

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[91] G.R. No. L-7495, Sept. 30, 1955, 51 O.G. 5185.
[92] 34 Phil. 456.

Held: Eugenia in 1946, or after her husband's death could not validly convey the whole land to Geronimo. Said land was conjugal property of the spouses Eugenia and Domingo Corpuz. The 1939 agreement did not bind the husband because he did not sign the same. The conveyance in 1946 was made beyond the 4-year period agreed upon. The mere fact that Isabelo was a witness in the 1939 document would not prejudice his children because the land then still belonged to his father Domingo. Neither would Susana's acting as a witness in the 1946 document prejudice her children since Eugenia had no right to sell the share of Isabelo in the land. Moreover, Susana was not the legal guardian of her children's property. The Corpuz minors were declared the owners of 1/2 of the land. Their mother was ordered to pay ₱275 to Geronimo as 1/2 of the redemption price paid to Eugenia.

In *Anteojo v. Court of Appeals*[93] it was held that "a sale with a right to repurchase of the entire conjugal partnership property by a surviving spouse is valid only as to 1/2 thereof, and with respect to the other half which belongs to the children it is invalid." Other cases have adhered to the same rule.[94]

While in the 1956 *Corpuz* case the Supreme Court held that the sale of conjugal land by the surviving widow was valid to the extent of her 1/2 share and void as to the other half pertaining to the heirs of the deceased husband, on the other hand, the Court of Appeals in *Bautista v. Abalos*[95] ruled that before partition and liquidation of the conjugal partnership it is premature to pass upon the validity of such a kind of sale since, before such partition, it could not be determined what portion would correspond to the surviving spouse who made the sale. This ruling is based on the provision of Act 3176 that such a kind of sale is void "except as regards the portion that belonged to the vendor *at the time the liquidation and partition was made.*" The provision implies that before liquidation and partition of the conjugal partnership, the validity of the sale cannot be determined.

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[93] 48 O.G. 597 (1950).

[94] Flores v. Escudero, G.R. No. L-5302, March 11, 1953; Roque v. Songco, 46 O.G. 6025; De Guinoo v. Court of Appeals, G.R. No. L-5541, June 25, 1955; Ocampo v. Potenciano, G.R. No. L-2263, May 30, 1951; Velasquez v. Teodoro, 46 Phil. 757; Santiago v. Cruz, 19 Phil. 144.

[95] Bautista v. Abalos, G.R. No. L-8890, Jan. 31, 1956, 52 O.G. 2600. See, however, *Fiel v. Wagas*, 48 O.G. 195, decided by the Court of Appeals also on Jan. 9, 1950, wherein said court invalidated the sale of a conjugal homestead made by the surviving spouse as to the 1/2 share pertaining to the heirs of the deceased wife. The Court did not require the liquidation of the conjugal partnership before determining the invalidity of the sale made by the husband. In other words, the Court did not follow its ruling in the *Nicolas* case. Same holding in *Amol v. Arroyo*, CA 53 O.G. 1804.

The *Bautista* case follows the doctrine of the Court of Appeals in *Nicolas v. Mangahas,* [96] that a sale of conjugal asset by the surviving spouse without the requisite formalities is not void *ab initio;* that it is only subject to be nullified when, after partition and liquidation of the conjugal partnership, it is found that the property sold exceeds the portion corresponding to the seller and that *"mientras no se verifique la liquidacion y particion de los bienes de la sociedad de gananciales, es prematuro tildarlos de nulos."*

In the *Bautista* case, it appears that Leoncio Bautista died in 1935, survived by his widow Manuela Dominguez and his descendants. He left conjugal lands. In 1938 Manuela exchanged a parcel of conjugal land for another parcel belonging to Gregorio Borja. The heirs of Bautista did not consent to the exchange, but two of the children of Leoncio and Manuela signed as witnesses in the deed of exchange. Manuela died in 1942. The question was whether the contract of barter between Manuela and Borja could be annulled at the instance of the heirs of Leoncio Bautista to the extent of his 1/2 interest therein.

Held: Under Act 3176 it would be premature to annul the exchange because before liquidation and partition of the conjugal partnership the portion that would pertain to Manuela cannot be determined. The action was dismissed "without prejudice to the rights of the plaintiffs-appellees (the heirs of Leoncio) to bring another action of similar nature if and after the liquidation and partition of the community property in question it should result that the transaction at bar disposes of a portion of the lot which is the subject matter thereof that did not belong to the surviving spouse Manuela Dominguez." There seems to be an inconsistency between the Supreme Court's interpretation of Act 3176 and that of the Court of Appeals.

PATERNITY AND FILIATION

Case where legitimate filiation was not proved.—

In order that a person may have hereditary rights as a child of the deceased, it is necessary that he prove his filiation if the other interested parties contest it. "The claims of strangers who cannot show, allege, or justify any right originating from a marriage legally contracted in this country or in any other country as well as the filiation arising from such legitimate marriages can in no manner prevail over the rights of the legitimate" child.[97]

[96] 40 O.G. 11th Supp. 296.
[97] Dusepec v. Torres, 39 Phil. 760 (1919).

There are cases where a person claimed to be a legitimate child of the deceased and to be thus entitled to hereditary rights, but, upon scrutiny of the evidence, the claim of filiation proved to be unfounded.[98]

A recent case on the point is that of *Barretto v. Reyes*.[99] In this case the husband Bibiano Barretto, who died in 1936, instituted as heirs in his will his alleged two daughters, Salud and Milagros Barretto. His properties were distributed between his two daughters Salud and Milagros in accordance with his will.[100] Later Maria Gerardo, widow of Bibiano Barretto, executed two wills, one in 1939 and the other in 1944, wherein she recognized Salud Barretto as her legitimate child. However in her last will, executed in 1946, Maria Gerardo made it appear that only Milagros was her child. The court found that Salud was only an "adopted" child of the spouses Bibiano Barretto and Maria Gerardo and that, inasmuch as in 1946 Salud was already dead, Maria Gerardo rectified the recital in the previous wills that Salud was her child. The case is similar to that of *Remigio v. Ortiga*.[101]

Adulterous child is not a natural child.—

The child of a single woman and a married man is an adulterous child. Not being a natural child he cannot be recognized.[102] Article 269 of the new Civil Code provides that "children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural." Adulterous children are spurious children, or "other illegitimate children," as contemplated in article 287 of the New Civil Code.

Acknowledgement of minor child for purposes of legitimation does not require judicial approval.—

The case of *Obispo v. Obispo*[103] settles an important point regarding legitimation. Article 271 of the new Civil Code, formerly article 121, provides that only acknowledged natural children may be legitimated, and article 281 of the same Code, formerly article 133, provides that the recognition of a minor in an authentic instru-

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98 Rodriguez v. Reyes, G.R. No. L-7760, Sept. 30, 1955; Baltazar v. Alberto, 33 Phil. 336; Ferrer v. De Inchausti, 38 Phil. 905; Basa v. Arquiza, 5 Phil. 137; Adriano v. De Jesus, 23 Phil. 350.

99 G.R. Nos. L-5830 and 5831, Jan. 31, 1956.

100 Reyes v. Banetto, G.R. No. L-5549, Feb. 26, 1954.

101 Remigio v. Ortiga, 33 Phil. 614.

102 Olivete v. Mata, G.R. No. L-8606, Dec. 27, 1956, 53 O.G. 621. Note that in this case the question of whether the paternity could be investigated was not raised. See Arts. 277 and 280 and Borres v. Municipality of Panay.

103 G.R. No. L-7210, Sept. 26, 1956, 52 O.G. 6520.

ment needs judicial approval. In the *Obispo* case it was ruled that the aknowledgement of a minor in a notarial instrument made by the father, for purposes of legitimation, does not require judicial approval, because the acknowledgement required in article 271 is different from the acknowledgement under article 281.

In the *Obispo* case, it appears that Remedios Obispo was born out of wedlock in 1921. Her parents were free to marry at the time of her conception and in fact they contracted a civil marriage in 1924. In 1940 when Remedios was still a minor, her father executed an instrument before the justice of the peace, wherein he stated under oath that he was acknowledging Remedios as his natural child. It was held that said acknowledgement did not require juidicial approval and that Remedios acquired the status of a legitimated child.

Judicial approval of voluntary recognition of a minor.—

In connection with article 281 of the new Civil Code, which provides that judicial approval is necessary for the recognition of a minor, not effected in a record of birth or in a will, it was held in *Brown v. Republic*[104] that, where the natural father wants the birth certificate of his natural daughter amended in such a way that his name should be inserted therein, in lieu of the words "father unknown," the proper remedy is not a mere petition for the correction of the birth certificate but a petition for judicial approval of his recognition of the child.

In the *Brown* case, it appears that on October 15, 1935 Matea Piconada gave birth to a baby girl who was named Henrietta Piconada. It was indicated in her birth certificate that her father was unknown. On June 6, 1955 or more than 20 years after the child's birth, William Brown filed a petition wherein he alleged that he was the father of Henrietta; that since she began attending school, she had always been known as Henrietta Brown; and that he had her under his custody and was supporting her with her mother's consent. He prayed that her birth certificate be corrected by changing her name therein from Henrietta Piconada to Henrietta Brown, changing her nationality from Filipino to American; and inserting his name William Brown in lieu of the words "father unknown."

Held: The petition was improper. Brown's remedy would be to petition for the judicial approval of his recognition of Henrietta. Her birth certificate correctly stated that her father was unknown

[104] G.R. No. L-9526, Aug. 30, 1956, 52 O.G. 6564.

because under article 132 of the old Civil Code, now article 280, when the recognition is separately made by the mother, she is not supposed to disclose the name of the father.

Natural child has 10 years from father's death within which to secure judicial declaration of his status.—

The 1956 case of *Lajom v. Viola*[105] reaffirms the rule laid down in the same case with the same title decided in 1942,[106] that, whether under the Laws of Toro, the old Civil Code or the Code of Civil Procedure, "the period for bringing an action by a natural child voluntarily recognized under Law 11 of Toro, for declaration of the status of a natural child, should be 10 years from the death of the natural father," in accordance with section 44 of the Code of Civil Procedure, which provides that "an action for relief not herein provided for can only be brought within ten years after the cause of action accrues." Section 44 is now found in article 1149 of the new Civil Code and the period fixed therein is five years. (Quaere if article 1149 applies to the action for declaration of status of the natural child voluntarily acknowledged.) It should be noted that the ruling in the *Viola* case overrules the dictum in *Larena v. Rubio*,[107] that voluntary acknowledgement "could be established by the ordinary means of evidence *without any limitation as to time.*"

In the *Viola* case, the natural father died in 1933. The action of the natural child to establish his status and for the assertion of his hereditary rights was brought in 1939. It was held that the action had not prescribed.

Evidence of voluntary recognition under Law 11 of Toro.—

Under Law 11 of Toro voluntary recognition may be *tacitly* made. Under the old and new Civil Codes, voluntary recognition must be *expressly* made. The case of *Lajom v. Viola*[108] concerns a child born in 1882 or when Law 11 of Toro was in force. The child, Donato Lajom, was born in the house of Pedro Viola. His parents, Maximo Viola and Filomena Lajom, were competent to contract a valid marriage at the time of his birth. Donato stayed in the house of Pedro Viola (father of Maximo) until he was 6 or 7 years old. He called Maximo father and no member of the

105 G.R. No. L-6457, May 30, 1956.
106 Lajom v. Viola, 73 Phil. 563.
107 43 Phil. 1017.
108 *Supra* note 105.

Viola family objected to his doing so. Maximo called Donato's godfather "compadre." He used to kiss Donato when he was a child and he instructed his sister, Maria Viola, to take care of Donato. When Maximo arrived from Spain, Donato, who was still a boy, held Maximo's legs and Pedro, Maximo's father, remarked: "How that boy recognized his father!" Maximo lifted Donato and kissed him, saying: "Open that trunk, there is a dress for the boy." Donato called Pedro Viola "Ingkong" or grandfather. There were other proofs showing that the members of the Viola family treated Donato as the child of Maximo. Maximo married Juana Roura in 1890, from which it could be implied that he was single when Donato was born.

Held: Donato Lajom was voluntarily recognized as a natural child, in spite of the fact that the name of Maximo was not shown in his baptismal certificate; that Donato was not mentioned in Maximo's will; and that Donato did not use the surname "Viola." Said circumstances may be of some aid in proving acknowledgment, but they are not absolutely indispensable. The facts already mentioned are sufficient to prove voluntary recognition.[109] In fact, there is already a statement in the previous *Lajom* case that plaintiff Donato Lajom "is entitled to be considered and declared a natural child of Dr. Maximo Viola, voluntarily acknowledged by him through his own acts."

Spurious child can bring action to establish his status.—

In *Edades v. Edades*[110] it was held that, although there is no provision in the new Civil Code, which prescribes the procedure that may be taken by a spurious child to establish his status, as in the case of a natural child under article 285 of the Code, nevertheless, such an action may be brought by the spurious child under similar circumstances, considering that a spurious child has successional rights and it is necessary to establish his status before he can assert and enforce his rights against his alleged father. The right to bring such action is impliedly sanctioned by article 289 of the new Civil Code, which permits the investigation of the paternity or maternity of a spurious child under the circumstances specified in articles 283 and 284 of the new Code for natural children. In the *Edades* case, the action of the spurious child against his alleged father and the latter's legitimate children, although styled as an action for declaratory relief, was regarded as an action

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109 De Gala v. De Gala, 42 Phil. 771; Larena v. Rubio, *supra*, note 107; Llorente v. Rodriguez, 3 Phil. 697.

110 Edades v. Edades, G.R. No. L-8964, July 31, 1956, 52 O.G. 5149.

to establish his status as spurious child. In this connection, it should be noted that article 887 of the new Code, which enumerates the compulsory heirs, provides that "in all cases of illegitimate children, their filiation must be duly proved."

SUPPORT

Reduction and condonation of support.—

In *De la Cruz v. Beronilla,*[111] it was held that the reduction of the allowance for support, as authorized by article 297 of the new Civil Code, should not be made retroactive as to affect a vested interest of the recipient or pensioner. It was also held in that case that, where the obligor asked the court for the condonation of the back support and the recipient did not object to the condonation, the order of the court condoning the back support is valid, since under article 301 of the new Civil Code past support may be renounced.

In the *Beronilla* case, the trial court on November 17, 1953 issued an order requiring respondent husband to pay his wife alimony *pendente lite* of ₱100 a month beginning March 9, 1953. Upon motion of respondent without any objection on the part of the wife, the court condoned the back support from March 9 to December 31, 1953 and ordered the obligor to pay the support from January 1, 1954. After his arrest the obligor paid the back support from January 1 to June 30, 1954. The question was whether the court validly condoned the back support for 1953. *Held:* The order was valid because the recipient impliedly acquiesced to the condonation by not seasonably objecting to it.

PARENTAL AUTHORITY

Right of mother to have custody of unemancipated minor daughter.—

A writ of habeas corpus will lie, at the mother's instance, to recover custody of her unemancipated minor daughter, even if the daughter voluntarily decides to stay in a house other than her mother's residence and refuses to live with the mother. The denial of the writ in such a case would amount to a deprivation of parental authority, which cannot be countenanced, except in the instances mentioned in articles 327 to 332 of the new Civil Code, and such a case is not one of them. This is the rule laid down in *Flores v. Cruz*[112] which adheres to the doctrine of decided cases.[113] The par-

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111 G.R. No. L-8753, July 24, 1956, 52 O.G. 4664.

112 G.R. No. L-8622, Aug. 15, 1956, 52 O.G. 5112.

113 Reyes v. Alvarez, 8 Phil. 723; Salvaña v. Gaela, 55 Phil. 680; Canua v. Vda. da Zalameda, 70 Phil. 640; Celis v. Cafuir, 47 O.G. Dec. Supp. 12; Aguirre v. Nolasco, 71 Phil. 275; Chu Tian v. Tan Niu, G.R. No. L-7509, Aug. 25, 1954; Banzon v. Alviar, G.R. No. L-8806, May 25, 1955.

ents' right of keeping their minor children in their company is also a duty.[114]

In the *Flores* case, it appears that Asuncion Cruz was born out of wedlock in 1939. Since birth she lived continuously with her mother Nita Flores. In 1954 Asuncion was sent by her mother to stay with Felisa Cruz, Asuncion's paternal grandmother, in order to avoid a certain suitor. Felisa Cruz later refused to surrender custody to Nita Flores. So the mother Nita instituted habeas corpus proceedings. Felisa contended that habeas corpus would not lie because she had not imposed any restraint upon Asuncion. *Held*: Habeas corpus lies for the recovery of the custody of Asuncion. The fact that Nita Flores wants Asuncion to be a maid of Doctor Mario Silva, for whom Nita is also working as a maid, is not a ground for denying the writ.

Old law: *Parents were not the guardian of their minor children's property.*—

Under articles 316, 320 and 326 of the new Civil Code the parents may represent their unemancipated children in all actions which may redound to their benefit and act as legal administrator and guardian of their property. These provisions are similar to those found in the old Civil Code, which were however repealed by the provisions of the Code of Civil Procedure on guardianship.

Under the Code of Civil Procedure and the Rules of Court or prior to the effectivity of the new Civil Code, the father, or in case of his death or legal disqualification, the mother, was the natural guardian of their minor children, but not of their property. To be able to represent their minor children and to dispose of their property, the father or mother must be appointed by the court as guardian of their property.[115]

Following the above rule, it was held in *Esquivel v. Frias*[116] that the widow could not legally represent her minor children in the partition of hereditary estate, effected in 1946. The children were interested in the partition because what was partitioned was the estate of their grandparents, the parents of their deceased father.

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[114] Garcia v. Pongan, G.R. No. L-4362, Aug. 31, 1951.

[115] §553, Code of Civil Procedure; Tuason v. Orozco, 5 Phil. 596; Boydon v. Felix, 9 Phil. 597; Palet v. Aldecoa & Co., 15 Phil. 232; Pobre v. Blanco, 17 Phil. 156; Ibañez v. Aldecoa v. Hongkong & Shanghai Banking Corporation, 30 Phil. 238, 31 Phil. 339, 42 Phil. 990, 1,000; Palarca v. Baguisi, 38 Phil. 177; Siman v. Leus, 37 Phil. 967; Nable Jose v. Nable Jose, 41 Phil. 713; Gayondato v. Treasurer of the P.I., 49 Phil. 244; U.S. Veterans Adm. v. Bustos, 48 O.G. 5240; Centeno v. Ergino, CA 46 O.G. 106; Sison v. Gonzalez, 50 O.G. 4756; Anteojo v. Court of Appeals, 49 O.G. 596; Guantia v. Tatoy, G.R. No. L-341, March 3, 1952.

[116] G.R. No. L-8825, April 20, 1956.

"The partition insofar as said minors are concerned is of no validity and should not be allowed to stand to their prejudice." The subsequent sale of the partitioned property would not bind the minors' interest therein.

Under the old law, the father could not represent his minor children in the partition of an inheritance if he was not their judicial guardian.[117]

Guardian ad litem for minor child.—

In connection with article 317 of the new Civil Code, which provides that "the courts may appoint a guardian *ad litem* when the best interests of the child so require," it was held in *Gonzales v. Alegarbes*,[118] that in an action for the recovery of damages as a consequence of the death of a person, who was run over by a bus and was survived by his minor child, whose mother, though alive, has been living separately for 15 years from the deceased, the court should appoint a guardian *ad litem* for the child so that the suit for damages can be maintained.

Where custody of illegitimate child was awarded to paternal grandfather rather than the child's mother who had remarried.—

Article 329 of the new Civil Code provides that "when the mother of an illegitimate child marries a man other than its father, the court may appoint a guardian for the child." This provision was applied in *Balatbat v. Balatbat*[119] where it appears that in 1945 a child named Helen was born to Lily Balatbat. The father of the child was Lucas Naranjo, whom Lily thought was single, but who, it turned out, was already very much married. Naranjo abandoned Lily before the birth of the child. Lily, with her child Helen, stayed with her parents, Mr. and Mrs. Ceferino Balatbat, who helped much in taking care of Helen.

In 1950 Lily left her child and her father, then a widower, and eloped with Arcadio Dairocas, whom she later married. In 1953 Lily and Arcadio petitioned for a writ of habeas corpus to recover custody of Helen from her father, who contracted a second marriage and had a child with his second wife. Lily has a child with Arcadio. During the trial the child Helen (already over 7 years old) signified her preference to live with her grandfather Ceferino.

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[117] Barcelona v. Barcelona, G.R. No. L-9014, Oct. 31, 1956.
[118] G.R. No. L-7821, May 25, 1956.
[119] G.R. No. L-7733, Feb. 13, 1956.

Held: The child should remain with the paternal grandfather. The petition for habeas corpus was denied. The case was distinguished from *Celis v. Cafuir*,[120] where the mother had a child by a GI soldier who later abandoned her and her child. Her father, disgusted and furious at the disgrace which she had brought upon herself and the family, practically disowned her. He forbade her to bring the child to his home and so she had to entrust its care to a friend for the time being with the understanding that said friend could keep the child provisionally and in the meantime until she, the mother, could take care of the child. During all that time the mother visited the child and gave such support as her meager means would permit. Later the mother married and she and her husband asked for the custody of the child. Their petition was granted. It was noted that she had not abandon the child and the person to whom she had entrusted the child was not related to the child.

The court in the *Balatbat* case made the caveat that "sometime in the future when Helen is older and better acquainted with her mother and if and when the latter shall have shown through her conduct and deeds, more maternal affection for her daughter", perhaps she may make another bid for the custody of Helen and persuade the courts and Helen that the latter would be better off and happier by living with her own mother.

Acknowledged natural children may be adopted.—

Under article 338 of the new Civil Code, which provides that the natural child may be adopted by the natural parent, doubt has been expressed as to whether the provision applies to acknowledged natural children or only to unacknowledged natural children. This doubt has arisen because of Manresa's opinion that acknowledged natural children need not be adopted.[121] The leading case of *Prasnik v. Republic*[122] has dissipated the doubt on that score. The *Prasnik* case lays down the rule that the natural father may adopt his acknowledged natural children and that article 338 "evidently intends to allow adoption of a natural child whether the child be recognized or not".

It was noted in the *Prasnik* case that article 335 of the new Code "merely refers to the adoption of a minor by a person who has already an acknowledged natural child and does not refer to the adoption of his own children even if he has acknowledged them as his natural children." Another reason for allowing adoption of acknowledged natural children by the acknowledging parent is that

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120 47 O.G. Dec. Supp. 179.
121 2 CODIGO CIVIL 6th Ed. 105.
122 G.R. No. L-8639, March 23, 1956, 52 O.G. 1942.

the rights of an acknowledged natural child are much less than those of a legitimate child and it is indeed to the great advantage of the latter if he be given, even through legal fiction, a legitimate status. This view is in keeping with the modern trend of adoption statutes which encourage adoption and which regard adoption "not merely as an act to establish the relation of paternity and filiation but one which may give the child a legitimate status". In this sense adoption is defined as "a juridical act which creates between two persons a relationship similar to that which results from legitimate paternity and filiation."[122a]

In the *Prasnik* case, it appears that Leopoldo Prasnik was divorced from his wife by virtue of a divorce decree issued in 1947 by a Florida circuit court. Thereafter he and Paz Vasquez lived together without benefit of marriage and in consequence of their relations, four children were born. He alleged that he would marry Paz Vasquez as soon as he had acquired Philippine citizenship and that he had no child by his former marriage. He wanted to adopt his four natural children so that no one of his relatives abroad could share in his estate. The adoption was allowed. The *Prasnik* case shows that under the new Civil Code more than one person can be adopted, as in *Sanchez de Strong v. Beisher*.[123]

Order in the exercise of substitute parental authority.—

Article 355 of the new Civil Code, which provides that substitute parental authority shall be exercised, first, by the paternal grandparents and then by the maternal grandparents, was construed in *Murdock v. Chuidian*,[124] where it was held that the order of preference provided for in said article "is mandatory when there is no special circumstances that would require the exercise of substitute parental authority different from that provided for" therein. Where the welfare of the minor children would be best served by having their custody left in the hands of the maternal grandfather, the substitute parental authority by the latter should prevail over that by the paternal grandparents. The paramount aim is the welfare of the minor children.

In the *Murdock* case, it appears that the spouses Neil Murdock Sr. and Lilian Murdock, residents of the U.S., filed a petition for habeas corpus for the purpose of obtaining custody of Robert and Elizabeth Murdock, their minor grandchildren, whose parents Neil Murdock, Jr. and Belen Chuidian, died on the occasion of a fire which gutted their residence. The petition was opposed by Horacio Chui-

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122a 4 VALVERDE, CODIGO CIVIL 473.
123 53 Phil. 331.
124 G.R. No. L-10544, 52 O.G. 5833.

dian, the maternal grandfather, who had brought the children to his house immediately after the death of the parents of the minors. The petition for habeas corpus was denied. The trial court's holding, that the welfare of the minors would be best subserved by allowing their maternal grandfather to take care of them, was affirmed.

Custody of children whose parents are legally separated.—

According to article 363 of the new Civil Code, "in all questions on the care, custody, education and property of children, the latter's welfare shall be paramount." This idea is also found in article 106 of the new Code, which provides that in case of legal separation, the interest of the minors shall be the controlling consideration in determining who should have their custody. The same principle is found in the decided cases.[125] It was applied in *Matute v. Macadaeg*[126] where the custody of the children in a legal separation case was awarded to the husband, the innocent spouse. Although the three children in that case were over ten years old and preferred to stay with their mother, the guilty spouse, it was held that, until the order awarding the custody of the children is reversed or modified, the trial court did not abuse its discretion in enforcing its order granting the custody of the children to the husband, considering that the mother had no means of livelihood and was living on the charity of her brothers. Poverty, as contemplated in section 6, Rule 100 of the Rules of Court, rendered the mother unfit to take charge of the children.

USE OF SURNAME

Satisfactory proof is sufficient for change of surname.—

In *Juan Ching Ing King v. Republic*[127] the petitioner's petition for change of surname was opposed by the Government on the ground that there was no investigation by the authorities of the merits of the petition and that the evidence was insufficient to justify it. It was held that, as the petitioner, who was an illegitimate child, merely wanted to use his mother's surname, instead of his deceased father's surname, and he had presented satisfactory proof of his filiation, his petition was properly granted by the trial court. It was not incumbent upon him to present the best evidence available.

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[125] Lozano v. Martinez and Vega, 36 Phil. 976; Pelayo v. Lavin Aedo, 40 Phil. 501; Slade Perkins v. Perkins, 57 Phil. 217; Pizarro v. Vasquez, CA 36 O.G. 449.

[126] G.R. No. L-9325, May 30, 1956.

[127] G.R. No. L-8301, April 28, 1956.

ABSENCE

No judicial declaration that a person is presumed dead.—

The case of *Lukban v. Republic*[128] reiterates the rule in *In re Szatraw*[129] and *Jones v. Hortiguela*[130] that a petition for a judicial declaration that petitioner's husband is presumed to be dead cannot be entertained because it is not authorized by law, and if such declaration cannot be made in a special proceeding, much less can the court determine the status of the petitioner as a widow since this matter must of necessity depend upon the fact of death of the husband. The court may upon proper evidence declare as a fact that a person is dead, but it will not make a declaration that a person is *presumed dead.* This ruling is an interpretation of article 390 of the new Civil Code which provides that "after an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except those of succession."

EMANCIPATION

Guardianship under Republic Act No. 390.—

Article 399 of the new Civil Code, which provides for the effects of emancipation on a married minor, does not terminate a minor's guardianship as constituted under Republic Act No. 390. This law deals with "the guardianship of incompetent veterans, other incompetents and minor beneficiaries of the Veterans Administration". Republic Act 390, being a special law limited in its operation to money benefits granted by Veterans' Acts, must control as against the provisions of the new Civil Code, which is a general statute. This is the holding in *Baga v. Philippine National Bank.*[131] It is sanctioned by the maxim of statutory construction:

Specialibus generalia non derogant.—

In the *Baga* case, it appears that in 1953 upon petition of the U.S. Veterans Administration the Philippine National Bank was appointed by the court as guardian of the estate of the minor Petronila Baga, who was born on May 30, 1938. Her property consisted of cash amounting to ₱4,281 awarded to her by the U.S. Veterans Administration. In 1954 the minor filed a petition alleging that she had contracted a marriage on February 5, 1953 and asking for the termination of the guardianship and the delivery to her of the

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128 G.R. No. L-8492, Feb. 29, 1956, 52 O.G. 1441.
129 81 Phil. 461 (1948).
130 64 Phil. 179 (1937).
131 G.R. No. L-9695, Sept. 10, 1956, 52 O.G. 6140.

remainder of her estate, since under article 399 of the new Civil Code she is empowered to administer her property. The bank and the Veterans Administration opposed the petition.

Held: The guardianship cannot be terminated. It was made pursuant to the Uniform Veterans Guardianship Act, Republic Act No. 390, and under said law guardianship terminates only when the ward reaches the age of majority. The intent of said law is to safeguard the ward's funds against "faulty or improvident disbursements and to thwart embezzlement". Moreover the law itself provides that it should apply "notwithstanding any other provisions of law relating to judicial restoration and discharge of guardians."

CIVIL REGISTRY

Correction of clerical errors is contemplated.—

There is a rule that article 412 of the new Civil Code, providing that "no entry in a civil register shall be changed or corrected, without a judicial order", applies only to correction of clerical errors.[132] This rule was reiterated in *Brown v. Republic*,[133] where it was held that a mere petition for correction filed by the natural father is not sufficient for the purpose of correcting the birth certificate of a natural child, whose father is designated therein as "unknown". The proper remedy would be a petition for approval of the voluntary recognition of a natural child.

Petition for change of name is remedy in case of discrepancy between name in birth certificate and name actually used.—

The rule under article 412 of the new Civil Code, that correction of entries in the civil register, upon order of the court, applies only to clerical errors, as laid down in the *Ty Kong Tin* and *Brown* cases, was also applied in *Chomi v. Local Civil Registrar of Manila*.[134] In this case it appears that the birth certificate of the petitioner shows that his name is Apolinario Arellano and that his father's name is Celerino Arellano. The data appearing in his birth certificate were given by the hospital physician. However, when he was baptized, he was given the name Alberto and he has been using for many years the name Alberto Chomi. Petitioner claimed that his real name was Alberto Chomi and that his name in the birth certificate is erroneous.

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[132] Ty Kong Tin v. Republic, 50 O.G. 1976 (1954).
[133] G.R. No. L-9526, Aug. 30, 1956, 52 O.G. 6565.
[134] G.R. No. L-9203, Sept. 28, 1956, 52 O.G. 6541.

Held: Petitioner's name in the birth certificate is merely incomplete. The error, if any, was due to the fact that he was given a different name when he was baptized. His remedy is to petition for a change of name under Rule 103 of the Rules of Court. A mere petition for correction of his birth certificate would not be proper.

CLASSIFICATION OF PROPERTY

House is realty for purposes of execution.—

The case of *Manarang v. Ofilada*[185] clarifies the nature of a house as property. It was ruled in this case that, while for purposes of the Chattel Mortgage Law, a house may be treated by the parties as personal property,[186] nevertheless, for purposes of the execution sale under Rule 39 of the Rules of Court, it should be treated as real property since it is a permanent fixture on the land.[187]

In the *Manarang* case, it appears that Lucia Manarang executed a chattel mortgage over a house in favor of Ernesto Esteban as security for the payment of a loan of ₱200. As Manarang did not pay the loan, Esteban sued her in the municipal court for its recovery. Judgment was rendered in Esteban's favor and execution was issued against the same mortgaged house. Before the house could be sold, Manarang offered to pay ₱277, to be applied to the judgment amounting to ₱250, plus interests, costs and sheriff's fees. But the sheriff refused the tender unless Manarang paid the additional sum of ₱260, representing the cost of publishing the notice of sale in two newspapers. Manarang brought this action to compel the sheriff to accept the sum of ₱277.

Paragraph (c), section 16, Rule 39 of the Rules of Court provides that if the real property to be sold on execution has an assessed value exceeding ₱400, the notice of sale must be published once a week, for 20 days, in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in both the English and Spanish languages, then a like publication for a like period shall be made in one newspaper published in the English language, and in one published in the Spanish language.

The question was whether the house in question should be treated as personalty by the sheriff for purposes of execution sale, considering that the parties treated it as such in their contract. It

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185 G.R. No. L-8133, May 18, 1956, 52 O.G. 3954.

186 Standard Oil Co. v. Jaramillo, 44 Phil. 630 (1923); De Jesus v. Guan Bee Co., Inc., 72 Phil. 464 (1941; Luna v. Encarnacion, 48 O.G. 2664 (1952).

187 42 AM. JUR. 199-200. Leung Yee v. Strong Machinery Co., 37 Phil. 644; Republic v. Ceniza, G.R. No. L-4169, Dec. 17, 1951; Ladera v. Hodges, CA 48 OF 5374.

should be noted that the basis of Esteban's action in the municipal court was the chattel mortgage. He prayed that the house be sold at public auction and he pointed to the sheriff said house as the property to be levied upon to satisfy the judgment in his favor.

Held: The house in question should be treated as real property for purposes of execution (it was not stated in the opinion whether the assessed value of the house exceeded ₱400 but it seemed to have been assumed that its assessed value was more than that amount).

The ruling in the *Manarang* case should be considered in relation to the other rulings on the point of whether a house is realty or personalty. Under paragraph 1 of article 415 of the new Civil Code, formerly article 334, which provides that buildings and constructions of all kinds adhered to the soil are real property, it is clear that a house is realty. However, article 416 of the new Civil Code provides that "real property which by any special provision of the law is considered as personalty" may be deemed personal property. This new provision applies particularly to "growing crops" which are treated as personalty by the Chattel Mortgage Law, whereas paragraph 2, article 415 of the new Code regards "trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable" as real property. It should be noted that for purposes of attachment and execution under section 7, Rule 59 in relation to section 14, Rule 39, Rules of Court growing crops are regarded as real property, a rule which revokes the doctrine of *Sibal v. Valdez*[138] that for the purpose of attachment and execution ungathered products" have the nature of personality.

The Chattel Mortgage Law does not expressly provide that a house may be treated as personalty, but several decisions, noted in the *Manarang* case, have ruled that a house may be treated as personal property for purposes of the Chattel Mortgage Law.

In the *Leung Yee* case,[139] the earliest case on the point, it was held that "a factory building is real property, and the mere fact that it is mortgaged and sold, apart from the land on which it stands, in nowise changes its character as real property." In that case a debtor executed in favor of a machinery company a chattel mortgage covering a building of strong materials and the rice-mill installed therein. The mortgage was registered in the chattel mortgage registry. As the mortgage debt was not paid, the mortgaged building and machinery were sold at public auction by the sheriff, pursuant to the terms of the chattel mortgage, and they were bought by the mortgagee to satisfy the debt. The auction sale was registered in

[138] 50 Phil. 512.
[139] *Supra* note 137.

the chattel mortgage registry. It was held that, as the building was real property, "neither the original registry in a chattel mortgage registry of an instrument purporting to be a chattel mortgage of a building and the machinery installed therein, nor the annotation in that registry of the sale of the mortgaged property, had any effect whatever so far as the building is concerned." In other words, the *Leung Yee* case ruled in effect that no chattel mortgage could be constituted over a building because it is realty and the "sole purpose and object of the chattel mortgage registry is to provide for the registry of mortgages of *personal property.*" The *Leung Yee* case sticks to the rule in article 334 of the old Code, now article 415, that a building is realty.

The *Leung Yee* case was decided in 1918. Five years later, or in 1923, the *Jaramillo* case[140] was decided. This later case, far from strengthening the ruling of the *Leung Yee* case, deviated from it and announced the dictum that, while the classification of property in articles 334 and 335 of the old Code, now articles 415 and 416, considered as general doctrine, is law in this jurisdiction, yet *"it must not be forgotten that under given conditions property may have character different from that imputed to it in said articles".* Said the court in the Jaramillo case:

> "It is undeniable that the parties to a contract may by agreement treat as personal property that which by nature would be real property; and it is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property. Other situations are constantly arising, and from time to time are presented to this court, in which the proper classification of one thing or another as real or personal property may be said to be doubtful."

The above dictum in the *Jaramillo* case is consistent with the rulings in 42 American Jurisprudence, pages 199-200 and 209-210, cited in the *Manarang* case, that a building built on the land of another may remain personalty pursuant to an express or implied understanding between the builder and the landowner and that "personal property may retain its character as such where it is so agreed by the parties interested even though annexed to the realty, or where it is affixed in the soil to be used for a particular purpose for a short period and then removed as soon as it has served its purpose."

In the *Jaramillo* case, however, the specific point decided is that the register of deeds has no right to deny the registration of a chattel mortgage covering a building and leasehold interest in a lot, which mortgage was executed by the lessee of the lot. The register's function is ministerial. He cannot deny the registration on the alleged

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[140] *Supra* note 136.

ground that the interests mortgaged are not personal property under the Chattel Mortgage Law. The court, in the *Jaramillo* case, noted that the *Leung Yee* case was not relevant because the issue involved in the *Jaramillo* case had "reference to the function of the register of deeds in placing the document on record."

That a building built by the lessee on the land leased may be the object of a chattel mortgage was squarely decided in *De Jesus v. Guan Bee Co., Inc.*[141] It was pointed out that in the *Leung Yee* case the chattel mortgage over a building was impugned by the third person (not a party to the mortgage), whereas in the *De Jesus* case, the validity of the chattel mortgage was being impugned by the mortgagor who was able to borrow ₱66,000 from the mortgagee because of the chattel mortgage over the building. It was also noted in the *De Jesus* case that the lease over the land in that case had expired and, consequently, the lessor could order the removal of the building. Reliance was also placed upon the dictum in the *Jaramillo* case that the classification of property in articles 334 and 336 of the old Code is not binding in all cases.

The Court of Appeals in *Evangelista v. Abad*[142] and *Tomines v. San Juan*[143] followed the rule that a building built on leased land may be the object of a chattel mortgage. But the same Court in the case of *Ladera v. Hodges*[144] anticipated the ruling in the *Manarang* case when it ruled that for purposes of execution a building should be considered realty. The *Ladera* case went farther. It categorically ruled that, following the plain terms of paragraph 1 of article 334 of the old Code, now article 415, and the *Leung Yee* case, "a true building (not one merely superposed on the soil) is immovable or real property, whether it is erected by the owner of the land or by a usufructuary or lessee."

Justice J. B. L. Reyes in the *Ladera* case cited the rulings of French courts that a railroad built on land rented for a limited time is nevertheless immovable property and that a building built on leased land might be the object of a real estate mortgage by the lessee. He cited Manresa's opinion that the only possible doubt would be in the case of a house sold for immediate demolition. He noted that in the case of immovable by destination, such as statues, paintings and reliefs, machinery and implements and animal houses, the Code requires that they be placed by the owner of the tenement in order to acquire the nature of a real property, but in the cases of immovables by incorporation, such as houses, trees, and plants,

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141 *Supra* note 136.
142 36 O.G. 2913.
143 Tomines v. San Juan, 45 O.G. 2935.
144 *Supra* note 137.

the Code nowhere requires that the attachment or incorporation be made by the owner.

The rule of accession (*omne quod solo inaedificatur solo cedit*), that buildings are accessories of the land, also supports the view that building are realty regardless of whether they were built on one's own land or on that of another. Justice Reyes also pointed out that the *Jaramillo, De Jesus, Tomines* and *Evangelista* cases were decided from the viewpoint of estoppel, that is, the owner of the buildings in said cases treated the buildings as personalty and so were estopped to assail the chattel mortgages which they had executed.

The *Ladera* case shows that the dictum in the case of *Luna v. Encarnacion*,[145] that a house of mixed materials "by its very nature is considered as personal property", is wrong.

OWNERSHIP

Jus vindicandi.—

In connection with the *jus vindicandi*, which is one of the attributes of ownership, sanctioned by article 428 of the new Civil Code, it was held in *Belleza v. Zandaga*[146] that where the purchaser in the execution sale has already received the definitive deed of sale, he becomes the owner of the property bought. As absolute owner, he is entitled to its possession and cannot be excluded therefrom by one who merely claims to be a "successor in interest of the judgment debtor," unless it is adjudged that this alleged successor has a better right than the purchaser.

A person who bought a parcel of land on the installment plan and who was granted possession thereof by the vendor is entitled to eject the occupant of the land, who has failed to show a better right of possession.[147]

The owner has the right to recover his land from a trespasser.[148]

Just compensation in condemnation proceedings.—

Article 435 of the new Civil Code provides that "no person shall be deprived of his property except by competent authority and for public use and always upon payment of just compensation." This is similar to the rule contained in the Constitution.

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145 *Supra* note 136.
146 G.R. No. L-8080fi March 26, 1956, 52 O.G. 2542.
147 Garcia v. Manalang, G.R. No. L-7460, Nov. 29, 1956.
148 Argenio v. Mariano, G.R. No. L-9299, Dec. 18, 1956; J. M. Tuason & Co., Inc. v. De Guzman, G.R. No. L-6938, May 30, 1956, 53 O.G. 1082.

The prime consideration in determining just compensation in condemnation proceedings is the value to the owner, not to the condemnor.[149]

The rule in condemnation proceedings that the value of the land expropriated includes also that of the crops was reiterated in *Philippine Executive Commission v. Estacio.*[150]

In *Republic v. Narciso,*[151] a case involving expropriation by the Government of land located in Pampanga, it was contended by the Solicitor General that, because of the presence of dissident elements in the vicinity where the land is located, it should not be appraised at a high value. The Supreme Court disposed of this contention by stating that, if the deteriorating conditions of public safety in the locality should reduce the price of the land, then "all the Government has to do to bring down the price of property it wishes to condemn is to neglect its duty to maintain peace and order in that region."

The *Narciso* case reiterates certain settled rules, such as that the amount of rentals derived from the property is not determinative of its market value,[151a] that "the result of an award, a verdict or a settlement is inadmissible as it is not a sale in the open market and does not show market value[152]"; and that "the property is to be considered in its condition and situation at the time it is taken, and not as enhanced by the purpose for which it is taken.[153]

It was also held in the *Narciso* case that, since the landowners in their answer, demanded ₱2,000 per hectare as the rate at which they wanted their lands to be expropriated they are estopped to demand a higher price.

Road constructed on public land by private firm belongs to the State by accession.—

Articles 440 and 445 of the new Civil Code contain the rule on *accession continua,* that the ownership of property gives the right by accession to everything which is incorporated or attached thereto and that whatever is built on the land of another and the improvements made thereon belong to the landowner. This rule was successfully invoked in *Bislig Bay Lumber Company, Inc. v. Provincial*

149 Republic v. Deleste, G.R. No. L-7208, May 23, 1956.
150 G.R. No. L-7260, Jan. 21, 1956, 52 O.G. 773; Manila Railroad v. Attorney General, 41 Phil. 163.
151 G.R. No. L-6594, May 18, 1956.
151a City of Manila v. Corrales, 32 Phil. 85; Manila Railroad Co. v. Fabie, 17 Phil. 206.
152 29 C.J.S. 1267.
153 Provincial Government of Rizal v. Caro de Araullo, 58 Phil. 308; Manila Railroad Co. v. Caligsahan, 40 Phil. 326.

Government of Surigao,[154] where it was held that the road constructed on public land by a timber concessionaire is not an improvement subject to realty tax. It is not taxable because it "belongs to the government by right of accession," being inherently incorporated or attached to the timber land leased by the firm, and also because upon the expiration of the concession said road would ultimately pass to the national government. The road does not belong to the taxpayer, although it was constructed for its benefit. The Supreme Court cited the doctrine that the realty tax, being a burden upon the capital, should be paid by the landowner and not by the usufructuary, as provided in article 597 of the new Civil Code.[155]

Action to quiet title.—

The action to quiet title is illustrated in *J. M. Tuason & Co., Inc. v. Sanchez,*[156] where plaintiff sought to recover a parcel of land from persons possessing it by mere tolerance. Plaintiff had a Torrens title for the land. It was held that plaintiff as owner properly brought the action. The claim that the action should have been brought by the company entrusted with the administration of the land was not sustained.

COOWNERSHIP

Coowner of land claiming it by prescription must have possession.—

Article 494 of the new Civil Code provides that "no prescription shall run in favor of a coowner or coheir against his coowners or coheirs so long as he expressly or impliedly recognizes the coownership." This implies that if a coowner or coheir repudiates the coownership and claims adversely the whole property, he may acquire it by prescription. However, it is necessary that the coowner or coheir claiming prescription should be in possession of the property adversely claimed. If there is no possession there can be no prescription. This was the rule laid down in *Pancho v. Villanueva.*[157]

In the *Pancho* case, it appears that the spouses Flaviano Villanueva and Aniceta Limbugac acquired a parcel of land. Flaviano died in 1931. In 1937, Aniceta, as surviving spouse, adjudicated the said land to herself. She represented that she was the sole heir of Flaviano. Aniceta died in 1939. In 1948 Patricio

154 G.R. No. L-9023, Nov. 13, 1956.
155 Mercado v. Rizal, 67 Phil. 608.
156 G.R. No. L-6938, May 30, 1956, 53 O.G. 1082.
157 G.R. No. L-8604, July 25, 1956, 52 O.G. 5485.

Pancho, Aniceta's son by a previous marriage, adjudicated the said land to himself. However, it turned out that Flaviano Villanueva was survived by a brother and sister, Manuel and Marta. In 1951 Manuel and Marta Villanueva sued Patricio Pancho for the recovery of their 1/2 share of the said land, as heirs of Flaviano. *Held*: One-half of said land, as the conjugal share of Flaviano, was inherited by his brother and sister, Manuel and Marta. The action for partition has not prescribed. There was no acquisitive prescription because Aniceta and her son Pancho were never in possession of the land.

Other rulings.—

(1) Where the coowners agreed in court that the partition of a parcel of land should be based on the surveyor's report and where the court in partitioning the land took into consideration the location of the improvements made by the coowners, said partition cannot be disturbed, especially considering that there is no other feasible way of effecting it.[158]

(2) Coheirs and coowners are not privies *inter se*, each being deemed in law the owner of a separate estate. So a judgment in one case against a coowner cannot affect the other coowners.[159]

(3) Where a coheir took possession of the hereditary estate in the belief that the other heirs had validly renounced their share thereof, he is a possessor in good faith.[160]

POSSESSION

Concept of good faith.—

Under article 526 of the new Civil Code, formerly article 433, a possessor is in bad faith if he is aware of any flaw in his title or mode of acquisition which invalidates it and under article 1127 of the new Code, formerly article 1950, "the good faith of a possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership." The concept of good faith is discussed in the leading case of *Leung Yee v. F. L. Strong Machinery*,[161] where the following frequently cited ruling was formulated:

> "One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or an interest therein; and the same rule must be applied to one who has knowledge of facts

158 Maglalang v. Santiago, G.R. No. L-8946, Aug. 31, 1956.
159 Quetulio v. Ver, G.R. No. L-6831, June 29, 1956, 14 AM. JUR. 88, 169.
160 Barcelona v. Barcelona, G.R. No. L-9014, Oct. 31, 1956.
161 37 Phil. 644, 651-2.

> which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.

The above concept of good faith was applied in *Ozoa v. Montaño*[162] where the purchaser of a parcel of unregistered land, which purportedly contained 50 hectares but which in reality contained only 24 hectares, was held to be in bad faith because, by the exercise of reasonable diligence, he would have known from the changes in the boundaries contained in the tax declarations for the said land that the area of the land sold to him included the land of defendant. The sale was declared void with respect to the 24 hectares belonging to defendant and the purchaser, being in bad faith, was not allowed to recover the value of the improvements introduced by him on the land.

Rule of good faith applies to one claiming ownership.—

In connection with the concept of good faith, it was held in *Lopez Inc. v. Philippine Eastern & Theatrical Trading Co., Inc.*[163] that the rule regarding possessors in good faith refers only to a party who occupies or possesses property in the belief that he is the *owner* thereof and said good faith ends only when he discovers a flaw in his title so as to reasonably apprise him that after all he may not be the legal owner of said property. It cannot apply to a lessee because as such lessee he knows that he is not the owner of the leased premises. Neither can the lessee deny the ownership or title of his lessor. However, it should be noted that under article 1671 of the new Code a lessee is subject to the responsibilities of a person in bad faith if he retains possession of the leased premises, over the lessor's objection after the expiration of the contract.

In the *Lopez* case, it appears that in 1941 defendant was the lessee of two doors of the Lopez Building in Baguio. During the liberation the building was burned. Defendant rebuilt the two doors with the knowledge of the agent of Lopez Inc. Later, Lopez, Inc. and defendant agreed that defendant should pay a rental of ₱300

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[162] G.R. No. L-8621, Aug. 21, 1956.
[163] G.R. No. L-8010, Jan. 31, 1956, 52 O.G. 1452.

a month for the use of the premises. When defendant defaulted in the payment of rentals, Lopez, Inc. brought an ejectment suit against it in the Baguio Municipal Court, and later the case was appealed to the Baguio Court of First Instance, which sentenced defendant to pay the back rentals, but reserved to it the right to sue Lopez Inc. for the value of the improvements amounting to ₱14,583.45.

Held: The reservation is erroneous because it is based on the assumption that defendant's right to reimbursement for the value of the improvements is sanctioned by article 453 of the old Code, now article 546, which provides that a possessor in good faith may be reimbursed the useful expenditures made on the property possessed. However, article 453 does not apply to the lessee. The lessee could remove the improvements provided he causes no injury to the land. Under the new Code, the improvements on leased property are governed by article 1678.

Recovery of movable of which owner has been illegally deprived.—

Article 559 of the new Civil Code provides that "one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same" without reimbursing the price paid therefor by the possessor, unless the latter "acquired it in good faith at a public sale." This provision was applied in *Cruz v. Pahati*[164] where it appears that Jose Cruz bought a car from Jesusito Belizo. A year later Belizo volunteered to resell the car for Cruz. As the registration certificate for the car was missing, Cruz, upon Belizo's suggestion, wrote a letter to the Motor Vehicles Office requesting the issuance of a new registration certificate, alleging as reason the loss of the original certificate and stating that Cruz was going to sell the car. Belizo falsified this letter by making it appear that Cruz had sold the car to him. Belizo secured possession of the car on the pretext that he was going to show it to a buyer. He secured a new registration certificate for the car in his own name. He sold the car to Felixberto Bulahan. Cruz sued Bulahan for the recovery of the car.

Held: Cruz could recover the car from Bulahan. He was illegally deprived of the car. The court cited the rule in *U.S. v. Sotelo*[165] that "no man can be divested of his personal property without his consent and, consequently, even an honest purchaser, under a defective title, cannot resist the claim of the true owner." No man can transfer to another a better title than he has himself. It was also held that article 559 prevails over the common law

[164] G.R. No. L-8257, April 19, 1956, 52 O.G. 3053.
[165] 28 Phil. 147.

principle that "where one of two innocent parties must suffer by a fraud perpetrated by another, the law imposes the loss upon the party who, by his misplaced confidence, has enabled the fraud to be committed," a principle applied in *Blondeau v. Nano*.[166]

NUISANCE

Summary abatement of nuisance per se.—

A nuisance (*estorbo*) under article 694 of the new Civil Code "is any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; or (2) annoys or offends the senses; or (3) shocks, defies or disregards decency or morality; or (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property." Article 695 of the new Code classifies nuisances into public and private. "A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal." A private nuisance is one which is not public. The operation of a diesel engine may be a private nuisance.[167]

The new Code makes no reference to the time-honored classification of nuisance into *per se* and *per accidens*, the first being recognized as a nuisance under any and all circumstances because it constitutes a direct menace to public health or safety and being subject to summary abatement under the undefined law of necessity, whereas the second depends upon conditions and circumstances presenting a question of fact and is not subject to abatement without due hearing before a competent tribunal.[168]

Articles 699 to 707 provide for the extrajudicial abatement of a public or private nuisance by a *private person*. The requisites for the extrajudicial abatement of a nuisance by a private person are that demand be first made upon the owner or possessor of the property to abate the nuisance; that such demand has been rejected; that the abatement be approved by the district health officer and executed with the assistance of the local police; and that the value of the destruction does not exceed ₱3,000.[169] It is not clear whether a public officer can summarily abate a public or private nuisance without complying with said requisites.

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166 61 Phil. 625.
167 Tesorero v. Rodrigo, CA 51 O.G. 4625.
168 Salao and Lucas v. Santos and Gozon, 67 Phil. 547 (1939).
169 Article 704.

The provisions of the new Code, in failing to mention nuisances *per se* and *per accidens* and in not clarifying whether a public nuisance is the same as a nuisance *per se*, do not synchronize with existing Philippine jurisprudence on the subject, which is summarized hereunder.

In the *Salao* case, supra, it was ruled that a smoked fish (*umbuyan* or *tinapa*) factory is not a nuisance *per se*. It is a legitimate industry. If it be, in fact, a nuisance due to the manner of its operation, then it would be merely a nuisance *per accidens*. Consequently, the order of the municipal mayor and the health authorities issued with a view to the summary abatement of what they concluded, by their own findings, as a nuisance, is null and void, there having been no hearing in court for that purpose.

In *Monteverde v. Generoso*[170] it was held that a dam or a fishery constructed on a navigable stream is not a nuisance *per se*. A dam or a fishpond may be a nuisance *per accidens* where it endangers or impairs the health or depreciates property by causing water to become stagnant. The *Monteverde* case cited *Lawton v. Steele*[171] where it was held that "if the property were of great value, as, for instance, if it were a vessel employed for smuggling or other illegal purposes, it would be putting a dangerous power in the hands of a customs officer to permit him to sell or destroy it as a public nuisance, and the owner would have good reason to complain of such act, as depriving him of his property without due process of law. But where the property is of trifling value, and its destruction is necessary to effect the object of a certain statute, x x x it is within the power of the legislature to order its summary abatement. For instance, if the legislature should prohibit the killing of fish by explosive shells, and should order he cartridges used to be destroyed, it would seem like belittling the dignity of the judiciary to require such destruction to be preceded by a solemn condemnation in a court of justice. The same remark might be made of the cards, chips, and dice of a gambling game."

Another ruling is that "the keeping or storage of gasoline may constitute a nuisance, either private or public. Whether or not it becomes a nuisance depends upon the location, the quantity, and other surrounding circumstances."[172]

It has also been held that the storing and sale of lumber and the keeping of lumber stores in the thickly populated streets of a town, which business "necessarily disturbs and annoys passers-by

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[170] 52 Phil. 123 (1928).
[171] 119 N.Y. 226, 152 U.S. 133.
[172] 46 C.J. 710; Javier and Ozaeta v. Earnshaw, 64 Phil. 626, 633.

and the neighbors," constitutes "nuisance *per accidens* or *per se*," and an ordinance declaring such business a "public nuisance" was held valid as a legitimate exercise of the power of municipalities to regulate and abate public nuisances and to enact zoning ordinances[173]

However, the declaration of the municipal council that the thing or act is a nuisance is not conclusive. The owner of the alleged nuisance has the right to test the validity of the action of the council in a court of law. If no compelling necessity requires the summary abatement of a nuisance the municipal authorities, under their power to declare and abate nuisances, do not have the right to compel the abatement of a particular thing or act as a nuisance without reasonable notice to the person alleged to be maintaining or doing the same of the time and place of hearing before a tribunal authorized to decide whether such a thing or act does in law constitute a nuisance. A city cannot burden the property of a citizen with the cost of abating a nuisance *per accidens* without a judicial hearing and judgment as to its existence. Injunction lies to restrain a city from proceeding with the abatement of a nuisance *per accidens* before it has been judicially declared to be such.[174]

In the *Iloilo Cold Storage Co.*, case the company was operating an ice plant. Nearby residents complained that the smoke from the plant was very injurious to their health. The municipal council investigated the complaint and found the same to be well founded. It then passed a resolution ordering the company to elevate the smokestacks of the plant within one month and if it did not do so, the municipal mayor was authorized to close or suspend the operation of the plant. The company filed injunction proceedings against the council.

Held: The ice plant is not a nuisance *per se*. It is a legitimate industry beneficial to the people and conducive to their health and comfort. If it be in fact a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the municipal board. The company is entitled to a fair and impartial hearing before a judicial tribunal. The case was remanded to the lower court for trial. The lower court erred in dismissing the petition for an injunction upon motion to dismiss filed by the municipal council.

In one case, it was held that the stand pipe, pumping station and open reservoir for the storage of water, with three machines fueled by electricity, gasoline and crude oil, which were installed by

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[173] Tan Chat v. Municipality of Iloilo, 60 Phil. 465.
[174] Iloilo Cold Storage Co. v. Municipal Council, 24 Phil. 471.

the province of Pangasinan and which annoyed the owner of the adjacent lot and caused discomfort and danger to his health and that of his family, resulting from the noise, vibration, smoke, odor and sparks coming from the plant during its operation, was considered a nuisance. The province was ordered to pay the owner of the lot ₱3,000 as the value thereof, with the right to remove his house therefrom.[175]

But the operation of a combined brewery and ice plant in a place which has becomes a trading and manufacturing center cannot be enjoined as a nuisance.[176]

The construction by plaintiff of a dam, one of the wings of which rested upon the bank belonging to defendant and which resulted in the appropriation by the plaintiff of the land belonging to defendant and in the flooding of defendant's land, is a private nuisance. Defendant, in boring a hole in the dam abutting her property, to the extent necessary to free the water that had accumulated upon it, is not liable for damages to plaintiff.[177] It should be noted that defendant's action amounted to summary abatement.

The foregoing rulings rendered by the Supreme Coutr on nuisances serve as a background for the recent holding in *Sitchon v. Aquino*.[178]

In the Sitchon case it was held that houses constructed, without governmental authority, on public streets and river beds obstruct at all times the free use by the public of said places and, accordingly, constitute *nuisance per se aside from being public nuisances*, under articles 694 and 695 of the new Civil Code. As such, they may be removed without judicial proceedings, despite the due process clause. It was further held that articles 700 and 702 of the new Code, which empower the district health officer to determine whether or not abatement, without judicial proceedings is the best remedy against a public nuisance, are general provisions and have no application to the abatement of public nuisances in Manila, whose charter, being a special law, specifically entrusts to the city engineer the duty of abating nuisances. A city ordinance also authorizes the city engineer to remove, at the owner's expense, unauthorized obstructions, whenever the owner or person responsible therefor shall, after official notice, refuse or neglect to remove the same. The petition for injunction filed therefore by the squatters (who have constructed houses without permit on city streets)

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175 Bengzon v. Province of Pangasinan, 62 Phil. 816.
176 De Ayala v. Barretto, 33 Phil. 538.
177 Solis v. Pugeda, 42 Phil. 697 (1922).
178 G.R. No. L-8191, Feb. 27, 1956 and 6 other cases, 52 O.G. 1399.

against the city engineer to restrain him from demolishing their houses was denied.

In this connection, it should be noted that in *Carlos v. De los Reyes*[179] an ordinance which considered as abandoned those cars parked on public streets for more than eight hours and providing for their deposit in a public compound was held to be a valid exercise of the power of the City of Manila to abate nuisances. Obstructions on highways were considered as nuisances in *Bernardino v. Governor of Cavite*[180] and *Carroll v. Paredes.* [181]

The rule in the *Sitchon* case was followed in *Halili v. Lacson,*[182] where it appears that petitioners occupied the premises inside the Palomar compound without the knowledge, authority or consent of the City of Manila, although later two of them succeeded in securing from the city mayor written permission to occupy the premises subject to the condition that they would remove the structures they had erected and vacate the premises within such time as may be specified in a notice to be issued by the city engineer. Considering that said structures constitute an obstruction to the use by the public of the parks, plazas, streets, and sidewalks that are affected by them, they constituted a public nuisance, which can be ordered demolished by the authorities.

REGISTRY OF PROPERTY

Unregistered sale does not bind third persons.—

In *Betia v. Gabito* [183] it appears that in 1914 a parcel of land was registered under the Torrens system in the name of Dalmacia Natividad. In her will she bequeathed 1/2 of said land to Paulina Aungon and the other half to the children of Jose Igpuara. In 1920 a new title for the land was issued to Paulina and the Igpuaras. Through a series of transactions Paulina acquired the other half and she became the owner of the entire land in 1948. She died in 1950. Her husband and children claimed the land.

Respondents Claudio Poscabol and Leonardo Gabito averred that a portion of said land belonged to them because in 1919 Dalmacia Natividad sold said portion in a private instrument to their predecessors in interest. *Held*: The unregistered sale cannot prevail over the title of Paulina Aungon, who was a purchaser in good faith. Respondents slept on their rights by not requiring the execu-

179 69 Phil. 335.
180 17 Phil. 176.
181 Carroll v. Paredes, 17 Phil. 94.
182 G.R. No. L-8892, April 11, 1956, 52 O.G. 3049.
183 G.R. No. L-7677, Feb. 18, 1956.

tion of a deed of sale in a public instrument for the portion occupied by them.

Levy on execution is superior to unregistered sale.—

The case of *Defensor v. Brillo*[184] reiterates the doctrine that "a levy on execution duly registered takes preference over a prior unregistered sale"[185] and that even if the prior sale is subsequently registered, before the sale on execution but after the levy was duly made, the validity of the execution sale should be maintained, because it retroacts to the date of the levy;[186] otherwise, the preference created by the levy would be meaningless.[187]

This result is a necessary consequence of the fact that in the *Defensor* case the properties involved were registered under Act 496. It is a fundamental principle that registration is the operative act that conveys and binds lands covered by Torrens titles according to sections 50 and 51 of Act 496.

In the *Defensor* case it appears that on March 5, 1948 Pedro Defensor and Bienvenida Gayno sold two registered lots to Bibiana Defensor and Buenaventura Defensor. The sales were not registered. About three weeks after the sale, Vicente Brillo obtained a judgment for ₱1,000 in a case against Defensor and Gayno. The two lots were levied upon on August 3, 1949 to satisfy the judgment. They were sold at public auction to Brillo on December 13, 1949, after he had posted a bond, and when the sale became final, new titles were issued to him. Before the sale, Bibiana and Buenaventura Defensor filed a third-party claim with the sheriff and on November 3, 1949 they instituted this action against Brillo for the recovery of the lots. On November 5th they filed a notice of *lis pendens* in the Registry of Deeds and at the same time they tried to register the sales in their favor.

Held: The levy upon execution was superior to the unregistered sales.[188] The *Defensor* case was distinguished from *Potenciano v. Dineros*[189] and *Barrido v. Barretto*[190] where the conveyances by the registered owner were duly presented for registration before the land was levied upon by the creditor, while in the instant case

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184 G.R. No. L-7255, Feb. 21, 1956, 52 O.G. 7281.
185 Gomez v. Levy Hermanos, 67 Phil. 134.
186 Vargas v. Tancioco, 67 Phil. 308; Chan Lin & Co. v. Mercado, 67 Phil. 409.
187 Phil. Executive Commission v. Abadilla, 74 Phil. 69.
188 Landig v. U.S. Commercial Co., G.R. No. L-3597, July 31, 1951; Del Rosario v. Santos, 66 Phil. 254; Worcester v. Ocampo, 34 Phil. 646.
189 G.R. No. L-7614, May 31, 1955.
190 72 Phil. 187.

the reverse obtains. The sales were also found to be fictitious and executed merely to defraud Brillo.

Other rulings.—

(1) The case of *Blanco v. Bailon*[191] adheres to the rule laid down in *Galasinao v. Austria*[191a] that under section 50 of Act 496 an unregistered sale of registered land is valid and binding between the parties and that this rule applies to the sale of a homestead, so that the 5-year period for repurchasing the sold homestead should be counted from the date of the sale and not from the date of its registration. The children of the vendor are not considered third persons to the sale because there is privity of interest between them and the vendor.

But the unregistered deed of sale of registered land, while valid between the parties, is not binding against third persons.[192]

(2) Where at the time a purchaser bought registered land a supposed mortgage encumbering the land was not registered and was not known to said purchaser, the mortgage cannot be annotated on the new title issued to the purchaser.[193]

DONATIONS

Gratuity due from labor union to its members is not a donation.—

In *Pacia v. Kapisanang Ng Mga Manggagawa sa Manila Railroad Co.*,[194] defendant labor union bound itself to give its members a gratuity in case they should be separated from the service of the company. It was ruled that such gratuity is not a donation by the union because its members are required to pay dues, in consideration of the rights and privileges attached to their membership, which include the gratuity in question. Moreover, if said gratuity were regarded as a donation, it would be one with an onerous cause and it is therefore governed by the rules on contracts according to article 733 of the new Civil Code. At any rate, "even a pure and simple donation, or a promise to donate, for a valuable consideration, once accepted, is binding upon the donor or promisor, who may not revoke or withdraw it, at pleasure, either totally or partially."

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191 G.R. No. L-7342, April 28, 1956.
191a G.R. No. L-7918, May 25, 1955.
192 Barreto v. Arevalo, G.R. No. L-7748, Aug. 27, 1956, 52 O.G. 5818.
193 Lizardo v. Herrera, G.R. No. L-6401, March 14, 1956.
194 G.R. Nos. L-8787 & 8788, May 11, 1956, 52 O.G. 4273.

Conditional donation.—

Where in a contract for the sale of copra, the vendor originally agreed to supply the sacks, but, as he was unable to comply with this obligation, the vendee supplied the sacks worth ₱10,000, to expedite the delivery of the copra, and in spite of that, the vendor was not able to deliver the copra, it might be said that the donation of the sacks, made by the vendee, was conditioned on the vendor's delivery of the copra. In a suit by the vendee against the vendor for damages, the latter should pay to the vendee the said sum of ₱10,000 plus transportation expenses.[195]

Substantial compliance with conditions of the donation.—

In connection with article 764 of the new Civil Code, which provides that the donation shall be revoked at the donor's instance when the donee fails to comply with any of the conditions which the donor imposed upon the donee, it was held in *Vda. de Prieto v. Quezon City*[196] that substantial compliance with the conditions of the donation is sufficient to preclude revocation. In that case 40 lots were donated by plaintiff to Quezon City on condition that they be used as a site for public markets. Plaintiff brought an action to revoke the donation on the ground of noncompliance with the condition. At the trial it was proven that more than ₱100,000 worth of improvements were made on the said lots. Although the donee did not strictly follow the terms of the development plan, the deviation was made in good faith in order to adopt the market buildings to the new conditions and to meet the needs of the people using the market. The complaint for revocation was dismissed.

Other rulings.—

(1) In one case it was held that, inasmuch as a donation of realty must be made in a public instrument, according to article 633 of the old Code, now article 749, the claim of the City of Iloilo that certain lots were donated to it cannot be believed, there being no documentary evidence to support such a claim.[197]

(2) Since it must be presumed that the donor has reserved sufficient property for the payment of his obligations, as required by article 759 of the new Civil Code, formerly article 643, the donee may ask reimbursement from the donor in case the donee paid the

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[195] Rivera v. Matute, G.R. No. L-6998, Feb. 29, 1956, 52 O.G. 6905.
[196] G.R. No. L-8382, Aug. 21, 1956.
[197] Virto de Montinola v. City of Iloilo, G.R. No. L-8941, May 16, 1956.

donor's gift tax. The donor's gift tax is not deductible for purposes of computing the donee's gift tax.[198]

SUCCESSION

Successional rights are vested as of the moment of death.—

One important principle in the law of succession is found in article 777 of the new Civil Code, which provides that "the right to the succession are transmitted from the moment of the death of the decedent." From this basic principle, several subsidiary rules are derived, among which is that a judicial declaration of heirship is not a *sine qua non* in order that an heir may assert his right to the property of the deceased. The decedent's heirs may bring an action for the recovery of the hereditary estate. It would be erroneous to dismiss such action on the ground that there was no previous declaration of heirship. This is the holding in *Marabiles v. Quito*.[199]

Since successional rights are vested only as of the moment of death, "up to that moment the right to success is merely speculative for, in the meantime, the law may change, the will of the testator may vary, or the circumstances may be modified to such an extent that he who expects to receive property may be deprived of it. Indeed the moment of death is the determining point when an heir acquires a definite right to the inheritance". Therefore the action of an illegitimate child against his alleged father for the determination of his hereditary rights does not give rise to any justiciable controversy since his father is still alive.[200]

Rules regarding the probate of wills.—

(1) Where the credibility of witnesses is very much involved in the probate of a will, the findings of the trial judge will be respected in the absence of any showing that he overlooked some material fact.[201]

(2) Where the testatrix had no forced heirs, it would not be strange that she would bequeath her estate to her foster children, her nieces, whom she and her husband had brought up since they were infants.[202]

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198 Collector of Internal Revenue v. Soriano, G.R. No. L-8499, 8514, May 21, 1956; Kiene v. Collector of Internal Revenue, G.R. Nos. L-5794 & 5996, July 30, 1955.

199 G.R. No. L-10408, Oct. 18, 1956, 52 O.G. 6507; Cabuyao v. Caagbay, 50 O.G. 3541 (1954); Hernandez v. Padua, 14 Phil. 194; Suiliong & Co. v. Marine Insurance Co., Ltd., 12 Phil. 13.

200 Edades v. Edades, G.R. No. L-8964, July 31, 1956, 52 O.G. 5149.

201 Molo-Pekson v. Tanchoco, G.R. No. L-8744, Nov. 26, 1956, 53 O.G. 658.

202 Molo case, *supra* note 201; Pecson v. Coronel, 45 Phil. 220.

(3) The circumstance that two witness to a will were employees of one of the two instituted heirs would not destroy their competency as witnesses. They may be regarded as credible witnesses, meaning that their testimony is entitled to credence. Relatives of the testator or of the heirs or legatees are not barred from acting as attesting witnesses.[203]

(4) The failure of the notary to fill in the blank in the attestation clause intended for the date of the will's execution is not a fatal defect, where it appears that such date appears at the end of the will, a few lines above the attestation clause.[204]

(5) Article 806 of the new Civil Code requires that every will must be acknowledged before a notary. To acknowledge is to own as genuine, to assent to, to avow or admit. When a person affixes his signature to an instrument in the presence of a notary, undoubtedly he acknowledges it to be his own and there is no need for any hand-raising ceremony. Even in oath-taking, the hand-raising is a mere formality. If a person says "I swear" before the proper officer without raising his right hand, he nevertheless "swears".[205]

(6) Speculation as to the time when the will was signed, as shown in the diffusion of the ink in the signatures of the testator, cannot prevail over the positive declaration on that point of the attesting witnesses, whose testimony ought to prevail over expert opinions which cannot be mathematically precise but which, on the contrary, are subject to inherent infirmities.[206]

(7) The *Ozaeta* case[207] reiterates the settled rule that the object of the law in providing that the pages of a will shall be numbered correlatively in letters placed on the upper part of each sheet is to forestall suppression or substitution of pages,[208] or to make falsification difficult.[209] The placing of the paging at the bottom of the sheet would not defeat such a purpose. Paging a will at the bottom of the page does not render the will void for that reason. It has even been held that where the first page is not numbered but at the bottom thereof there is written the phrase "pase a la 2.a pagina", the will is not for that reason void.[210]

(8) The *Ozaeta* case also reiterates the rule regarding liberal interpretation of the requirements for the execution of wills and the rule that an attestation clause signed by the testator and the

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203 Molo case, *supra* note 201; Roxas v. Roxas, 48 O.G. 2177.
204 De Castro v. De Castro, G.R. No. L-8996, Oct. 31, 1956, 53 O.G. 365.
205 De Castro case, *supra* note 204.
206 Ozaeta v. Cuartero, G.R. No. L-5597, May 31, 1956.
207 Ozaeta case, *supra* note 206.
208 Martir v. Martir, 70 Phil. 89.
209 Aldaba v. Roque, 43 Phil. 378.
210 Mendoza v. Pilapil, 72 Phil. 546.

witnesses is valid although the statement of the facts recited therein appear to have been made by the testator himself.[211]

Case where undue influence was not proved.—

One of the grounds for disallowing a will, as provided in article 839 of the new Civil Code and section 9, Rule 77, Rules of Court is that it "was procured by undue and improper pressure and influence, on the part of the beneficiary or some other person." The Code and the Rules of Court do not define undue influence in the execution of wills but undue influence in contracts is defined in article 1337 which provides that "there is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering mental weakness, or was ignorant or in financial distress."

Justice Malcolm defines undue influence in the law of wills "as that which compels the testator to do that which is against the will from fear, the desire of peace, or from other feeling which he is unable to resist."[212] In the absence of fraud or imposition, mere affection, even if illegitimate, is not undue influence and does not invalidate a will. To avoid a will, the influence exerted must be of a kind that so overpowers and subjugates the mind of the testator as to destroy his free agency and make him express the will of another, rather than his own. Such influence must be actually exerted on the mind of the testator in regard to the execution of the will in question, either at the time of the execution of the will, or so near thereto as to be still operative, with the object of procuring a will in favor of particular parties, and it must result in the making of testamentary dispositions which the testator would not otherwise have made.[213]

The fact that a notary who assisted in the execution of a will was a brother of the principal beneficiary is not sufficient to show undue influence.[214] But if a party writes or prepares a will under which he takes a benefit, such a circumstance ought to excite the suspicion of the court, especially if the testatrix was old and infirm

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[211] Aldaba v. Roque, note 209; Cuevas v. Achacoso, G.R. No. L-3497, May 18, 1951; Gonzales v. Gonzales, G.R. Nos. L-3272-73, Nov. 29, 1951; Testate Estate of Carlos Gil, 49 O.G. 1459.

[212] Torres and Lopez de Bueno v. Lopez, 48 Phil. 772 (1926).

[213] Coso v. Fernandez Deza, 42 Phil. 596 (1921).

[214] Valera v. Purugganan, 4 Phil. 719. Cf. Pecson v. Coronel, 45 Phil. 216 (1923).

and her brother, sister and husband were not mentioned in the will.[215]

Neither the fact that the testatrix was given accommodation in a convent, nor the presence of the parish priest, nor a priest acting as a witness, constitutes undue influence sufficient to justify the annulment of a legacy in favor of a bishop of a diocese, made in her will by a testatrix 88 years of age, suffering from defective eyesight and hearing, while she was stopping in a convent within the diocese.[215a] The fact that the testatrix's two nephews were present during the execution of the will and one of these nephews was the principal heir named in the will is insufficient to prove that there was undue influence in its execution.[216]

A more recent case on undue influence in the execution of wills is *Barretto v. Reyes.*[217] In this case, there were alleged importunities made by a daughter upon her mother to change her will, by making her (the daughter) the sole heir and eliminating the provisions in the previous will in favor of the children of another alleged daughter, deceased, who turned out not to be a real daughter but was only an "adopted" child of the testatrix. The mother had executed two wills, the first in 1939 and the second in 1944. In the 1939 will she instituted as heirs her alleged two daughters Salud and Milagros Barretto. After Salud's death, she executed another will in 1944 wherein she instituted as heirs Milagros and Salud's three children, whom she called her grandchildren. In 1946, she revoked the two wills and executed another will, instituting Milagros as her sole heir. Salud's children attacked the 1946 will on the ground of alleged undue influence exerted by Milagros upon her mother. The court found that Salud was not really the child of the testatrix but was only an "adopted" child. It was held that the alleged importunities "merely constituted fair arguments, persuasion, appeal to emotions, and entreaties, which, without fraud or deceit or actual coercion, compulsion or restraint, do not constitute undue influence sufficient to invalidate a will.[218] It is natural for a daughter to exercise some influence over her mother.[219]

It is not enough that there was an opportunity to exercise undue influence or a possibility that it might have been exercised. There must be substantial proof that it was actually exercised. Where the will was signed in the office of a distinguished lawyer, who later became a Supreme Court Justice, and during the signing

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215 Perry v. Elio, 29 Phil. 134.
216 Cuyugan v. Baron, 69 Phil. 538 (1940); Cuyugan v. Baron, 62 Phil. 859 (1932).
217 G.R. No. L-5830, Jan. 31, 1956.
218 57 AM. JUR. 264-5.
219 68 C. J. 752.

of the will the beneficiaries named therein were not present, the imputation of undue influence is not credible. The failure of the testator to revoke the will after he had signed it is another circumstance negativing undue influence.[220]

No period of prescription for presenting a will for probate.—

The question of whether there is a period of prescription for presenting a will for probate, which was not squarely settled in *Suntay v. Suntay*[221] was set at rest in *Guevara v. Guevara*,[222] where it was held that "reason and precedent reject the applicability of the statute of limitations to probate proceedings, because the same are established not exclusively in the interest of the heirs, but primarily for the protection of the testator's expressed wishes, which are entitled to respect as a consequence of his ownership and the right of disposition. Inasmuch as the probate of wills is required by public policy, the State could not have intended to defeat the same by applying thereto the statute of limitations." The above rule is in consonance with the provision of section 1, Rule 77 of the Rules of Court, that the petition for probate may be filed *"at any time after the death of the testator,"* and the provision in article 838 of the new Civil Code, that the testator may, *"during his lifetime,* file a petition for the probate of his will. It is a corollary of the other rule laid down in a case between the same parties, that the presentation of the will for probate is mandatory.[223]

So in the *Guevara* case, it was ruled that where the testator died in 1933, a petition for the probate of his will, presented in 1945, or more than 12 years after his death, is not barred by prescription. It should be noted that the statute of limitations refers to *actions* and that testamentary proceedings are *special proceedings* which are distinct from actions. The provisions of sections 2 and 3, Rule 76 of the Rules of Court, to the effect that the custodian of the will "shall, within twenty days after he knows of the death of the testator deliver the will to the court having jurisdiction, or to the executor named in the will," and that "a person named as executor in a will shall, within twenty days after he knows of the death of the testator, or within twenty days after he knows that he is named executor if he obtained such knowledge after the death of the testator, present such will to the court having jurisdiction", are not statutes of limitation prescribing the period within which the petition for probate should be filed.

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220 Ozaeta v. Cuartero, *supra* note 206.
221 G.R. No. L-3087, July 31, 1954, 50 O.G. 5321.
222 G.R. No. L-5405, Jan. 31, 1956.
223 74 Phil. 479 (1943).

In *Lopez v. Garcia Lopez*[224] where the will was executed in 1892, and the testator died in 1901, the will was presented for probate in 1914. It was allowed.

Will may be probated even if attesting witnesses testify against its due execution.—

The provision of section 11, Rule 77 of the Rules of Court that "if all or some of the subscribing witnesses produced and examined testify against the due execution of the will, or do not remember having attested to it, or are otherwise of doubtful credibility, the will may be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law", was applied in *Butte v. Ramirez.*[225]

In the *Ramirez* case the three attesting witnesses to the will of the late Jose V. Ramirez testified that they did not recollect how the will was executed. But they admitted the genuineness of their signatures and those of the testator appearing on the face of the will. The court found that the attesting witnesses were biased in favor of the oppositors. Certain circumstances indicated that the will was really executed by the testator. The will was admitted to probate. The case is similar to *Tolentino v. Francisco,*[226] involving a will which was probated notwithstanding the hostility of the attesting witnesses.

It was also held in the *Ramirez* case that the testator had a perfect legal right to dispose of the free portion of his estate in favor of his "apreciada amiga", Mrs. Angela Montenegro Vda. de Butte.

Illustration of reserva troncal.—

Article 891 of the new Civil Code, which provides that "the ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came", creates what is known as the *reserva troncal.* This is illustrated in *Mondoñedo Vda. de Paz v. Buñag Vda. de Madrigal,*[227] where it appears that after the death of Regina Mondoñedo in 1926 a part of her estate was inherited by her son Salvador Madrigal. When Salvador died intestate and without issue in 1935,

[224] 40 Phil. 184.
[225] G.R. No. L-6601, Dec. 29, 1956, 53 O.G. 1407.
[226] 57 Phil. 742.
[227] G.R. No. L-8981, Oct. 23, 1956.

the property, which he had inherited from his mother, was in turn inherited by his father Antero Madrigal. Antero became a reservor of said property because the *propositus* had relatives within the third degree, namely, Maria and Josefa Mondoñedo, sisters of his mother Regina, and Maria and Elena Madrigal, children of Salvador's deceased brother Romeo. So it was held that when the reservor Antero Madrigal died in 1949, the said reservees "automatically became the owners of said estate of Salvador because they are the only relatives within the third degree belonging to the line from which the estate came."[228]

Child excludes collateral relatives.—

In legal succession the decedent's child excludes the brothers and sisters of the deceased. Therefore, only the child, but not the brothers and sisters of the deceased, can sue to recover damages as a consequence of the death of the deceased due to negligence of a bus driver.[229]

Partition inter vivos of inheritance.—

While under the old Code an extrajudicial partition *inter vivos* of a person's property is void if not made in the form of a will (since it is a contract regarding future inheritance), nevertheless, the share given to a compulsory heir under such void partition may be respected if the legitimes of the other compulsory heirs are not impaired.[230]

Renunciation as equivalent to partition.—

The renunciation of the inheritance made by one heir in favor of another may be regarded as in the nature of a partition among the heirs. Partition among heirs or renunciation of an inheritance by some of them is not exactly a conveyance of realty for the reason that it does not involve transfer of property from one to the other, but rather a confirmation of title or right to property by the heir renouncing in favor of another heir accepting the inheritance. Hence, it is not covered by the Statute of Frauds.[230a]

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[228] See Nono v. Nequia, G.R. No. L-5829, May 22, 1953; Edroso v. Sablan, 25 Phil. 295; Director of Lands v. Aguas, 63 Phil. 279.

[229] Gonzales v. Alegarbes, G.R. No. L-7821, May 25, 1956.

[230] Obispo v. Obispo, G.R. No. L-7210, Sept. 26, 1956, 52 O.G. 6520.

[230a] Barcelona v. Barcelon, G.R. No. L-9014, Oct. 31, 1956, 53 O.G. 373.

PRESCRIPTION

Prescription already running at the time new Civil Code became effective.—

Where the 10-year period for the enforcement of the judgment started to run in 1942 and later the records of the case were destroyed during the liberation in 1945, the interruption of the prescriptive period should be governed not by article 1155 of the new Civil Code, but rather by section 41 of Act No. 3110, a special law providing for the cessation of all terms fixed by law from the date of the destruction of the records. The special law prevails over the general law. *Generalia specialibus non derogant.* Furthermore, article 1116 of the new Civil Code provides that "prescription already running before the effectivity of this Code shall be governed by the laws previously in force."[231]

Vendor's possession is not generally adverse.—

"As a general rule a vendor remaining in possession of land after sale thereof does not hold adversely to his vendee unless and until he does something to indicate unequivocally that he claims or holds adversely, as by giving his vendee notice of intention not to convey, and the vendor's mere possession does not show a hostile intention, since a vendor after sale and before conveyance is in effect holding as a trustee of his vendee."[232]

This rule was followed in *Villanueva v. Protacio,*[233] where it appears that the land of Enrique Villanueva was sold at public auction to satisfy a judgment debt. A final certificate of sale was issued on April 19, 1933 to the vendee at the auction sale. In 1939 H. Protacio acquired the land from the vendee at the auction sale. Protacio tried to take possession of the land but Villanueva refused to vacate it. In March 1943 Villanueva abandoned the land and Protacio then occupied it. In 1949 Villanueva tried to recover possession but Protacio refused to give up the land. So Villanueva sued Protacio for its recovery. Villanueva's theory was that he acquired the land by prescription. This theory was not sustained. His adverse possession was supposed to commence in 1933, but, since he was the vendor, his possession beginning 1933 cannot be considered adverse. At most, his adverse possession commenced in 1939, when he refused to turn over the land to Protacio, and it was interrupted in 1943 before he had acquired the land by prescription.

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231 Francisco v. De Borja, G.R. No. L-7953, Feb. 27, 1956, 52 O.G. 6890.
232 2 C. J. S. 277.
233 G.R. No. L-9308, Dec. 27, 1956.

Void donation propter nuptias may be the basis of prescription.—

Article 127 of the new Civil Code provides that donations *propter nuptias* are governed as to form by the Statute of Frauds. This rule, which is different from the rule under articles 633 and 1328 of the old Code, that donations *propter nuptias* of immovable property, to be valid, must be in a public instrument and, if not embodied in a public instrument, the donation is void,[234] was affirmed in *Espique v. Espique*,[235] where a donation *propter nuptias* was executed in a private document in 1906. Such a void donation may be the basis of acquisition by prescription of the land donated.[236]

Moratorium laws suspended the running of statute of limitations.—

The case of *Manila Motor Co., Inc. v. Flores*[237] reiterates the rule in *Montilla v. Pacific Commercial Company*,[238] that the moratorium laws suspended the period of prescription, although they were declared unconstitutional in *Rutter v. Esteban*.[239] The actual existence of a statute prior to its invalidation is an operative fact and it may have consequences which cannot justly be ignored.[240]

Another case adhering to the same rule, and thus strengthening it, is *Manila Motor Co., Inc. v. Fernandez*[241] where it appears that in 1939 defendant purchased a car from plaintiff on the installment plan. Plaintiff sued defendant and judgment was rendered against defendant in March 1941 but there was no execution. Said case was not reconstituted and on February 19, 1954 plaintiff filed a complaint for the collection of defendant's debt. It was held that the action had not prescribed because the moratorium interrupted the running of the statute of limitations. The case of *Ma-ao Sugar Central Co. v. Barrios*[242] was cited.

The same ruling was followed in *Bartolome v. Ampil*.[243] However, there is a slight difference in the computation of the period of interruption. In the *Fernandez* case, it was noted that the "the debt moratorium lasted from November 18, 1944, when Executive Order No. 25 was promulgated, to July 26, 1948, when it was par-

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234 Solis v. Barroso, 53 Phil. 912; Camagay v. Lagera, 7 Phil. 397; Velasquez v. Biala, 18 Phil. 231.
235 Espique v. Espique, G.R. No. L-8029, June 28, 1956.
236 Pensader v. Pensader, 47 Phil. 959; Dimaliwat v. Dimaliwat, 55 Phil. 673.
237 G.R. No. L-9396, Aug. 16, 1956, 52 O.G. 5804.
238 G.R. No. L-8223, Dec. 20, 1955.
239 49 O.G. 1803 (1953).
240 Chicot County v. Baster, 308 U.S. 371.
241 G.R. No. L-8377, Aug. 28, 1956, 52 O.G. 6883.
242 Ma-ao Sugar Central Co. v. Barrios, 79 Phil. 666 (1947).
243 G.R. No. L-8436, Aug. 28, 1956.

tially lifted by Republic Act No. 342, or 3 years, 8 months and 8 days."

But in the *Ampil* case, it was stated that "in computing the period of suspension, we start not on November 18, 1944, when the moratorium was declared by virtue of Executive Order No. 25, because said order referred only to obligations contracted after December 31, 1941, while the promissory note involved herein was issued prior thereto, namely, December 17, 1941. So we begin on *March 10, 1945,* the date of the effectivity of Executive Order No. 32, which referred to all obligations, without distinction.

In *Alcantara v. Chico*[244] the Court of Appeals anticipated the ruling in the *Montilla* case, when it held, following the *Ma-ao* case, that "it is, therefore, obvious that from November 18, 1944, when the first moratorium was declared and imposed, until July 26, 1948, when Republic Act No. 342 was approved by Congress, or a period of three years and eight months, the running of the statutes of limitations for the enforcement of prewar mortgage obligation under consideration should be deemed suspended...." The *Flores* case[245] cites the *Chico* case for the statement that the period of suspension is 3 years and 8 months.

Case where period of interruption lasted from issuance of moratorium order up to the rendition of the decision in the Rutter case.—

All the foregoing cases of *Montilla, Flores, Fernandez* and *Ampil* assume that the period of interruption of the statute of limitations should be computed from the time the moratorium order was issued up to July 26, 1948, when Republic Act No. 342 became effective. This law provides for the lifting of the debt moratorium as regards prewar debtors who had no war damage claims.

On the other hand, it should be noted that in *Rio y Compañia v. Sandoval*[246] the computation of the period of interruption was made from *March 10, 1945,* when Executive Order No. 32 was issued, up to *May 18 1953,* when the decision in the Rutter case was promulgated. Although not so stated in the decision in the *Rio* case, it would seem that the debtor therein was a war sufferer, as to whom the moratorium was not lifted by Republic Act No. 342. Consequently, instead of computing the period of interruption only up to *July 26, 1948,* the date of effectivity of Republic Act No. 342, the interruption was deemed to have extended up to the promulgation of the *Rutter* decision on *May 18, 1953.*

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244 49 O.G. 150 (1952).
245 See *supra* note 237.
246 G.R. No. L-9391, Nov. 28, 1956.

In the *Rio* case, the obligations involved arose from an oral contract of agency and an oral loan. The period for bringing an action on said contracts is six years. The obligation arising from the oral agency was due and demandable on December 31, 1940. From this date to March 10, 1945, there is a period of 4 years, 2 months and 10 days, which should be added to the span extending from May 18, 1953, to September 15, 1953, when the action was filed, or an additional period of 3 months and 28 days. Of the 6-year period for bringing the action, only a total period of 4 years, 6 months and 8 days had therefore elapsed. The action on the oral agency had not therefore prescribed.

The obligation arising from the oral loan became due and demandable on December 31, 1938. Between this date and March 10, 1945, there is a period of 6 years, 2 months and 10 days, which added to the period of 4 months that intervened from the promulgation of the Rutter decision on May 18, 1943, to September 18, 1953, when the action was filed, gives a total period of 6 years, 6 months and 10 days. It is evident that the action on the oral loan had already prescribed when it was filed.

Action for recovery of registered land may be barred by laches.—

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," seems absolute on its face. Following said rule, it has been held that land covered by a Torrens title cannot be acquired by prescription. Prescription is unavailing not only against the registered owner but also against his heirs because the latter step into the shoes of the decedent by operation of law and are merely the continuation of the personality of their predecessor in interest. This holding was reaffirmed in *Barcelona v. Barcelona,*[247] *Virto de Montinola v. City of Iloilo,*[248] and *Tuason & Co., Inc. v. Santiago.*[249]

The rule in section 46 was applied to support the action for the recovery of a homestead which was sold in violation of the legal prohibition. against alienation. Then years' adverse possession of a duly registered homestead cannot defeat the right of the owner

[247] G.R. No. L-9014, Oct. 31, 1956, 53 O.G. 373; De Guinoo v. Court of Appeals, G.R. No. L-5541, June 25, 1955; Atun v. Nuñez, G.R. No. L-8018, Oct. 26, 1955; Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955; Padilla v. Jordan, G.R. No. L-8494, Dec. 22, 1955; Manlapaz v. Llorente, 48 Phil. 298 (1925); M. M. Tuason v. Bolaños, G.R. No. L-4935, May 28, 1954; Valiente v. Court of First Instance, 80 Phil. 415 (1948).

[248] G.R. No. L-8941, May 16, 1956.

[249] G.R. No. L-5079, July 31, 1956, 52 O.G. 5127.

to recover possession thereof. The sale of a homestead within five years from the issuance of the patent is void *ab initio,* or is an inexistent contract, being prohibited by sections 118 and 124 of the Public Land Act (Commonwealth Act No. 141). The action for the declaration of its illegality does not prescribe, according to article 1410 of the new Civil Code, a rule previously enunciated in the old case of *Tipton v. Velasco.*[250] Neither does the rule of in *pari delicto* apply to such a case, according to article 1416 of the new Civil Code.[251]

And as a corollary to the rule that registered land cannot be acquired by prescription, it has also been held that the action to recover *possession* of the same does not prescribe.[252]

However, to these seemingly absolute rules, the Supreme Court engrafted an exception in the recent case of *Mejia v. Gamponia.*[253] The exception is that the recovery of the possession of registered land may be barred by the equitable defense of laches.[254]

In the *Mejia* case, it appears that a homestead was sold by a patentee on March 24, 1916, or only eleven days after the issuance of the patent. The sale was therefore in violation of section 35 of Act 926. However, the action to recover the homestead, registered under the Torrens system in the patentee's name, was brought by the niece of the deceased patentee only *37 years* after the sale and after the homestead had been successively transferred to different persons. Said the Supreme Court:

> "Upon a careful consideration of the facts and circumstances, we are constrained to find, however, that while no *legal* defense to the action lies, an *equitable* one lies in favor of the defendant, and that is, the equitable defense of laches. We hold that the defense of prescription or adverse possession in derogation of the title of the registered owner Domingo Mejia does not lie, but that of the equitable defense of laches. Otherwise stated, we hold that while the defendant may not be considered as having acquired title by virtue of his and his successors' long continued possession for 37 years, the original owner's right to recover back the possession of the property and the title thereto from the defendant, has, by the long period of 37 years and by patentee's inaction and neglect, been converted into a stale demand."

The following ruling was also relied upon by the Supreme Court:

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250 6 Phil. 67; Sabas v. Garma, 66 Phil. 471.

251 Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955; Acierto v. De los Santos, G.R. No. L-5828, Sept. 29, 1954; De los Santos v. Roman Catholic Church v. Midsayap, G.R. No. L-6088, Feb. 25, 1954, 50 O.G. 1588.

252 J. M. Tuason v. Bolaños, Note 247; Valiente case, note 247; Francisco v. Cruz, CA 43 O.G. 5105.

253 G.R. No. L-9335, Oct. 31, 1956, 53 O.G. 677.

254 Go Chi Gun v. Go Cho, G.R. No. L-5208, Feb. 28, 1955.

> "The reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court of equity finds that the position of the parties has so changed that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequence of his own neglect.[255]

The principle is in effect one of estoppel because it prevents people who have slept on their rights from prejudicing the rights of other persons.

The *Mejia* case, in introducing a qualification on the rule of imprescriptibility of registered land, found in section 46 of Act 496 and adjudicated cases, gives a new life to the doctrine of estoppel by laches previously applied in *Gonzales v. Director of Lands*,[256] *Yaptico v. Yulo*[257] and *Kambal v. Director of Lands*.[258]

Vigilantibus et non dormientibus jura subveniunt. What seems anomalous in the *Mejia* case is that, while the patentee never lost title to the homestead by prescription and while the defendant did not acquire it by prescription, yet the patentee's successor was not able to recover the homestead and there is no clearcut declaration as to the basis of defendant's title to the homestead.

It should be noted that in the *Mejia* case the Supreme Court did not cite article 1410 of the new Civil Code, which provides that the action for the declaration of the inexistence of a contract does not prescribe. It should be further noted that in the *Perdido* case the action to recover the homestead invalidly transferred was brought 17 years after the illegal sale.

Prescription of action to recover trust property.—

The case of *Marabiles v. Quito*[259] reiterates (a) the rule that the defense of prescription is not available when the purpose of the action is to compel a trustee to convey the property registered in his name for the benefit of the *cestui que trust* and (b) the related rule that when a person through fraud succeeds in registering the property in his name, the law creates a constructive trust

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255 Penn Mutual Life Ins. Co. v. City of Austin, 168 U.S. 626.
256 52 Phil. 895.
257 57 Phil. 818.
258 62 Phil. 293.
259 G.R. No. L-10408, Oct. 18, 1956, 52 O.G. 6507.

in favor of the defrauded party and grants to the latter a right to vindicate the property regardless of the lapse of time.[260]

However, it should be noted that in the *Marabiles* case three justices in their concurring opinion held that the rule of imprescriptibility of the action to recover property held in trust applies only *to express trusts and to resulting trusts,* but not to *constructive trusts,* based on fraud or tort, since the element of trust and confidence is not present in constructive trusts. No repudiation is required for the application of extinctive prescription to constructive trusts. This was the rule laid down in *Claridad v. Benares.*[261]

It should also be noted that, in express trusts, when the trustee openly repudiates the trust by unequivocal acts known to the beneficiary, he may acquire by prescription the property held in trust.[262]

Other rulings on prescription

(1) A civil action to enforce the employer's subsidiary liability under article 103 of the Revised Penal Code, concerning the employee's civil liability to the offended party, as adjudged in a criminal case for reckless imprudence, is an action upon a judgment, and it prescribes in ten years, as provided for in article 1144 of the new Civil Code. It is not an action upon a quasi-delict, which prescribes in four years, as prescribed in article 1146 of the new Civil Code.[263]

(2) Article 1144 of the new Civil Code, which provides that an action upon a written contract must be brought within ten years, applies to an action for the reformation of the contract.[264]

(3) Where the husband executed a fictitious mortgage, the period for bringing an action to set it aside commenced to run against the wife "from the time of her discovery of the fraudulent maneuvers of which she was a victim". If she discovered the fraud only in 1948, after her husband's death, when she found the evidence showing the fraud, then it is clear that the action which she commenced in 1949, is well within the four-year period fixed by law for such kind of action.[265]

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260 Manalang v. Canlas, 50 O.G. 1980 (1954); Cristobal v. Gomez, 50 Phil. 810; Castro v. Castro, 57 Phil. 675; Gayondato v. Treasurer of the P.I., 49 Phil. 244; Bancairen v. Diones, G.R. No. L-8013, Dec. 20, 1955; Sevilla v. De los Angeles, 51 O.G. 5590 (1955); Cf. Claridad v. Benares, G.R. No. L-6438, June 30, 1955.

261 G.R. No. L-6438, June 30, 1955; 34 AM. JUR. 88, 143; Rest. of Restitution, §179; Rest. of Trusts, §219.

262 Laguna v. Levantino, 71 Phil. 566 (1941).

263 Manalo v. Robles Trans. Co., Inc., G.R. No. L-8171, Aug. 16, 1956, 52 O.G. 5797.

264 Conde v. Cuenca, G.R. No. L-9405, July 31, 1956.

265 Vasquez v. Porta, G.R. No. L-6767, Feb. 28, 1956, 52 O.G. 7615.

(4) The one year period within which the unlawful detainer suit should be brought in the justice of the peace court is counted, not from the date the rents were not paid, but from the time demand for payment of the said rents was made. It is not the failure to pay rental as agreed upon in a contract, but the failure to pay the rents after a demand therefor is made, that entitles the lessor to bring an action of unlawful detainer.[266]

(5) The provision of article 1145 of the new Civil Code that an action upon an oral contract may be brought within six years applies to an oral tenancy contract under Act No. 4054.[267]

(6) The provision of section 43 of the Code of Civil Procedure that an action upon an oral contract may be brought within six years is not inconsistent with the new Civil Code because the 6-year period is reenacted in article 1145 of the new Code. An action upon an oral agency and an oral loan should be brought within six years.[268]

(7) The alleged distributees, who failed to claim within 38 years their shares of the decedent's testamentary estate are guilty of laches.[269]

(8) Where the vendee *a retro* possessed a parcel of land for 22 years, or from 1927 to 1949, when the vendor *a retro* filed the complaint for its recovery, his possession is for a period of time sufficient not only to bar the action but to vest in title by prescription.[270]

(9) There can be no acquisitive prescription of land if claimant never possessed the same.[271]

(10) An amendment to the complaint, which introduces a new cause of action, is equivalent to a fresh suit upon a new cause of action, and the statute of limitations continues to run until the amendment is filed. Where a homestead was sold in 1937 and the 5-year period for repurchasing it would have expired in 1942, but the original complaint, filed in 1941, prayed for the annulment of the deed of sale, and it was only in 1948 that the complaint was amended by asking that the plaintiff be allowed to repurchase the homestead, it is clear that the repurchase cannot be allowed because the 5-year period had already expired when the amendment was filed. The amendment to the complaint, consisting in the

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266 Zobel v. Abreu, G.R. No. L-7663, Jan. 31, 1956, 52 O.G. 3592.
267 Dahil v. Crispin, G.R. No. L-7103, May 16, 1956.
268 Rio y Cia v. Sandoval, G.R. No. L-9391-2, Nov. 28, 1956.
269 Austria v. Ventanilla, G.R. No. L-10018, Sept. 19, 1956.
270 Amar v. Pagharion, G.R. No. L-8025, May 30, 1956, 53 O.G. 1436.
271 Pancho v. Villanueva, G.R. No. L-8604, July 25, 1956, 52 O.G. 5485.

plea for the redemption of the homestead, was a new cause of action and did not relate back to the filing of the original complaint in 1941. The redemption period continued running up to 1948.[271a]

OBLIGATIONS

Existence and enforcement of an obligation.—

The date of maturity of an obligation affects its enforcement, not its existence. In a contractual obligation to pay money, the right of the obligee accrues upon the perfection of the contract. The term fixed therein determines, not the vesting of the right of th creditor, but, merely, the time at which he may exact performance of the debtor's obligation. Where an obligation was contracted on June 29, 1944 and it was stipulated that the debt would be paid during the one year period from June 29, 1949 to June 29, 1950 and therefore the debt was demandable only beginning June 30, 1950, the creditor's right was vested on June 29, 1944 and, hence, the obligation is governed by the old Civil Code. Even if the creditor's right is supposed to exist only after June 29, 1949, still the new Civil Code would not apply to the case because it was not yet effective in 1949. This is the holding in *Nicolas v. Matias.*[272]

In the *Nicolas* case, it was argued that the mortgagee's right in an obligation which was demandable on June 30, 1950, became vested only 90 days later, considering that the mortgagor has an equity of redemption for a period of ninety (90) days, pursuant to Rule 70 of the Rules of Court, and that consequently the mortgagor's obligation to pay should be governed by the new Civil Code. This contention was not sustained. The obligation was demandable on June 30, 1950, or before the effectivity of the new Civil Code, and hence the mortgagee's right was vested already on said date.

Conditional obligation.—

In *Soriano v. Ferrer*[273] it appears that there was a judicially approved agreement providing that the debts of the deceased spouses, Eustaquio Ferrer and Emilia Castro, would be paid from the proceeds of the sale of a fishpond "as a whole" and that the debts would be a lien on the selling price. However, the wife's heirs sold their share of the fishpond. Pablo Natividad, who had become the sole creditor, contended that the wife's heirs should pay

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[271a] Barbosa v. Mallari, G.R. No. L-8012, Aug. 30, 1956, 52 O.G. 6180.

[272] G.R. No. L-8093, res. of Feb. 11, 1956, reiterating decision of Oct. 29, 1955.

[273] G.R. No. L-8308-09, May 30, 1956.

their share of the debts of the estate. *Held:* The wife's heirs could not be forced to pay any part of the debts of the estate until the whole fishpond had been sold.

Impeding the fulfillment of a condition.—

Article 1186 of the new Civil Code, which provides that "the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment", and article 1198, which provides that the debtor shall lose every right to make use of the period when he violates any undertaking, in consideration of which the creditor agreed to the period, were invoked in *Recto v. Harden,*[274] to support the opinion that a contract, where the wife agreed to pay her lawyer 20% of her share of the conjugal assets, is enforceable, although the conjugal partnership has not yet been liquidated. It appears in that case that husband and wife settled amicably their differences for the purpose of circumventing the wife's obligation to her lawyer. The wife therefore impeded the fulfillment of the conditions attached to her obligation or violated her undertaking.

Separate action is not always necessary for fixing a period for an obligation.—

Art. 1197 of the new Civil Code, formerly art. 1128, which provides that "if the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof," was applied in *Tiglao v. Manila Railroad Co.*[275] In this case the Manila Railroad Company in 1948 assumed the obligation of paying to its employees salary differentials, to be taken from the sum of ₱400,000 appropriated for the purpose, and from the date of the exhaustion of said amount, the wage differentials would be paid *"when funds for the purpose are available."* In 1952 thirty-five (35) retired employees of the company filed a suit for the recovery of ₱7,275 as the balance of their wage differentials. The company pleaded the defense that it had no available funds because it was in fact losing in its business.

Held: The fact that defendant company has suffered losses does not mean that in its multimillion peso business it does not have funds to meet an obligation amounting to ₱7,275. The fact that defendant could raise funds to meet its other obligations shows that it could raise funds to pay its obligation to plaintiffs, which deserves preferential attention since it is owed to the poor. As

[274] G.R. No. L-6897, Nov 29, 1956.
[275] G.R. No. L-7900, Jan. 12, 1956, 51 O.G. 179.

the payment of said salary differentials, after the exhaustion of the ₱400,000, depends upon the judgment of defendant's board of directors, that obligation "may be considered as one with a term whose duration has been left to the will of the debtor" and which may be fixed by the courts. No separate action is necessary to fix the term for that would only result in multiplicity of suits. A separate action would only be a mere formality and would serve no purpose than to delay the payment of the claim. The order of the lower court fixing the term of payment at one year was affirmed. The decision is consistent with the holding in previous cases.[276]

Meaning of "termination of war."—

The phrase "termination of war,"[277] as used by the parties in private contracts, is essentially one of intent. The general rule is that "war terminates when peace is formally proclaimed, except when the parties have intended otherwise and meant mere cessation of hostilities, in which case their intention must be given effect." An exception to the general rule must be proven by adequate circumstances, facts, declarations, etc. Where the parties stipulated that payment would be made within two years after the "complete termination of the present Greater East Asia War," they contemplated the formal or official declaration of peace. In that case, the termination of the war should be interpreted to refer to the signing of the Japanese Peace Treaty in San Francisco on September 8, 1951 and not to the ratification of the treaty by our Congress. This is the ruling in *Mercado v. Punsalan.*[278]

However, there is a ruling of the Court of Appeals that, where a note executed in 1944 provides that the debt shall be paid "dentro de tres años a contar desde la fecha de proclamada la paz en el Oriente," the note was not demandable in 1955 because no final treaty of peace had then been signed between the Republic of the Philippines and Japan and the Pacific war, insofar as the courts are concerned, was in a legal sense not yet terminated.[279]

But in *Navarre v. Barredo,*[280] the phrase "end of the war in the Philippines," used in a contract of loan entered into in Decem-

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276 Eleizegui v. Manila Lawn Tennis Club, 2 Phil. 309; Barretto v. City of Manila, 7 Phil. 416; Levy Hermanos v. Paterno, 18 Phil. 353; Yu Chin Piao v. Lim Tuaco, 33 Phil. 92; Yacapin and Neri Liñan v. Neri, 40 Phil. 61; Smith, Bell & Co. v. Sotelo Matti, 44 Phil. 874; Gonzalez v. De Jose, 66 Phil. 369.

277 Used as the term of obligations to pay money incurred during the Japanese occupation.

278 G.R. No. L-8366, April 27, 1956, citing De la Paz v. Moreno, G.R. No. L-6386, March 29, 1955.

279 Dizon v. Paras, 52 O.G. 2027.

280 Navarre v. Barredo, G.R. No. L-8660, May 21, 1956.

ber, 1944, was construed as referring to the war between the United States and Japan and not to the war between Japan and the Philippines. As thus construed, that war formally ended in the Philippines in the legal sense on December 31, 1946, when President Truman officially issued a proclamation of peace. Although the Philippines was then already independent, that proclamation applied to this country because it was an ally of the United States. The formal treaty of peace between Japan and the Allied Powers was signed in San Francisco on September 8, 1951.

In the *Navarre* case, it was stipulated that payment of the loan would be made "within two years after the end of the war in the Philippines." The action for the collection of the loan was filed on January 20, 1954. *Held:* The suit was not premature because more than two years had already elapsed from the end of the war, "whether this be computed from the date of the proclamation of peace by President Truman (December 31, 1946), or from the signing of the treaty of peace with Japan on September 8, 1951." The parties did not contemplate the signing of the peace treaty between Japan and the Philippines.

Article 1191 providing for implied rescission, does not apply to contracts with an express facultative resolutory condition.—

Article 1191 of the new Civil Code, which provides that "the power to rescind obligations is implied in reciprocal ones," applies only to reciprocal contracts which contain no resolutory conditions or clauses. The use in the article of the word "implied" supports this conclusion. The right to rescind is "implied" only if not expressly granted; no right can be said to be implied if expressly recognized. Thus, where a management contract provides that the principal, after two years' operation, may cancel, upon one year's notice, the general agency, the power of rescission is expressly granted. Such a stipulation contains a facultative resolutory condition, facultative because the right is made to depend upon the will of the principal, and resolutory because upon its exercise the contract is terminated. Judicial authorization is not necessary to cancel such agreement. Judicial action is proper only where there is an absence of a special provision granting the power of cancellation. This is the holding in *De la Rama Steamship Co. v. Tan.*[281]

In *Hanlon v. Haussermann,*[282] it was held that "no judicial action for the rescission of a contract is necessary to terminate the

281 G.R. No. L-8784, May 21, 1956.
282 40 Phil. 796.

obligation where the contract itself contains a resolutory provision by virtue of which the obligation is already extinguished." The *Hanlon* case should be distinguished from the case of *Larena v. Villanueva*[283] where the contract did not provide the procedure for effecting rescission, and therefore it could only be rescinded by court action.

Rescission expressly granted to a contracting party is illustrated in *Taylor v. Uy Teng Piao*,[284] where the defendant employer was given the right to terminate plaintiff's employment should the machinery expected fail to arrive in six months; and in *Caridad Estates Inc. v. Santero*,[285] where the vendor was given the option to recover possession of the land sold if the vendee should fail to pay the stipulated installments or repair the damage to the land. The only limitation on the exercise of the right to terminate a contract is when the stipulation or option is contrary to law, morals or public order.[286]

In the *De la Rama case*, it appears that De la Rama Steamship Co. and the National Development Company (NDC) on October 26, 1949 entered into a contract whereby De la Rama was to manage and operate three "Doña" vessels of the NDC. It was stipulated that "the NDC, after two years' operation, may cancel, upon one years' notice, the general agency granted to De la Rama if operations thereunder are not profitable and/or satisfactory in the opinion of NDC." It was also stipulated that De la Rama may buy the vessels "on the fifth year following the date of delivery of the vessels (if NDC has not cancelled the general agency)" and that any dispute between the parties shall be arbitrated. On September 23, 1953 De la Rama informed the NDC that it wanted to buy the vessels. On March 10, 1954 the NDC cancelled the management contract with De la Rama. The question was whether the NDC could revoke the agency without resorting to judicial action or arbitration.

Held: NDC's revocation of the agency was sanctioned by the contract. The operations of the vessel were not profitable nor satisfactory. Moreover, public funds were involved and the Government's venture into the shipping business was not advantageous. If, because of the revocation, De la Rama would cease to derive the huge profits that it had hitherto collected "from the unfortunate Government venture, the principles of *damnum absque injuria* would come in as a haven of refuge for NDC from the storm of its own

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283 53 Phil. 923.
284 Taylor v. Uy Teng Piao, 43 Phil. 873.
285 Caridad Estates, Inc. v. Santero, 71 Phil. 114.
286 Amigo v. Teves, G.R. No. L-6389, Nov. 29, 1954, 50 O.G. 5799.

creation, and bar the other party from the right to recover such expected profits."

When right to demand specific performance is not waived.—

The contract of sale gives rise to reciprocal obligations between seller and buyer, since each party assumes obligations conditioned upon those of the other, and the obligations of both are derived from a common origin, the perfected contract. It follows that, pursuant to article 1124 of the old Civil Code, now article 1191, the breach by either party of his obligation entitles the other to a choice of alternative remedies: specific performance or rescission, "with damages in either case." If the buyer defaulted in the payment of the price, the seller may choose to exact specific performance by demanding the payment of the price, unless he had waived such remedy, either in the contract or by subsequent choice on his part. The mere fact that it was stipulated in the contract of sale that upon the buyer's default, the seller may rescind the sale does not mean that the seller has waived the right to demand specific performance. Under such a stipulation the seller did not obligate himself to rescind the sale. This is the ruling in *Ramirez v. Muller.*[287]

In the *Ramirez* case, it appears that Emiliano Ramirez and Olga Muller were coowners of a motorboat. Olga sold to Ramirez her ½ interest in the boat for ₱4,500, payable in three installments, of ₱1,500 each with the rescissory clause that if Ramirez defaulted in the payment of the second installment, Olga would be authorized "to recover her half participation of ownership of the boat without obligation to reimburse the payments made by the buyer." The first installment was paid. Only ₱750 was paid on account of the second installment. Olga sued Ramirez for specific performance or for recovery of the balance of the price. Ramirez contended that Olga should recover her 1/2 interest in the boat, as stipulated in their contract. *Held:* Olga did not waive her right to demand specific performance. She could choose either rescission or specific performance.

Illustrations of rescission.—

(1) Article 1191 of the new Civil Code, formerly article 1124, provides that "the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him." On the other hand, article 1169, formerly article 1100, provides that "in reciprocal obligations, neither

[287] G.R. No. L-6536, Jan. 25, 1956.

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." These provisions were applied in *Ayala y Compañia v. Arcache.*[288]

In the *Arcache* case, it appears that Ayala y Compañia entered into a contract for the sale of four lots in Makati, Rizal for the price of ₱447,972. Arcache made a down payment of ₱100,000 and agreed to pay the balance in four installments. The first installment of the balance was due on or before February 9, 1950. Upon Arcache's failure to pay it, Ayala y Compañia, on May 13, 1950, instituted an action for the rescission of the sale. Arcache's defense was that he could not be in default with respect to the first installment because Ayala y Compañia itself failed to fulfill its obligation to transfer the title of the land to him after he had made the down payment. The court found that Arcache waived the transfer of the title to him because of the several suits instituted against him by his creditors. It found also that he was not in a financial position to pay the first installment. His breach of the contract was not casual nor slight but substantial. Rescission was decreed.

(2) Where it was stipulated in a judicially approved compromise agreement dated August 20, 1952 that plaintiffs would repurchase the homestead from defendant within 60 days from the notice of the decision, by depositing in court the redemption price, and such deposit was made on behalf of plaintiffs only on September 14, 1953 or 1 year and 24 days after the execution of the agreement, defendant "could at her option rescind the agreement and refuse to reconvey the homestead."[289]

(3) For failure of a lessee to comply with his contractual obligations, the lease may be rescinded at the lessor's instance.[290]

Novation is not presumed.—

In connection with article 1292 of the new Civil Code, which provides that novation must be declared in unequivocal terms, it was held in *Santos v. Acuña*[291] that without the *animus novandi* no substitution of obligations could possibly take place. Thus, where, by agreement of the parties, the execution of the writ of possession was suspended in order to give the judgment debtors an opportunity to repurchase the mortgaged properties sold at the foreclosure sale to the judgment creditor, but said agreement was expressly made under the condition that, if no repurchase was made,

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288 Ayala y Cia. v. Arcache, G.R. No. L-6423, Jan. 31, 1956.
289 Bayaua de Visaya v. Suguitan, G.R. No. L-8352, May 31, 1956.
290 Co Bun Kim v. Liongson, G.R. No. L-9617, Dec. 14, 1956.
291 Santos v. Acuña, G.R. No. L-8881, Oct. 31, 1956, 53 O.G. 358.

the writ of possession would remain in force, the theory that the agreement for the repurchase operated as a novation cannot be sustained. The foregoing ruling is an application of the doctrine of *Zapanta v. Rotaeche.*[292]

Extension for payment of debt does not amount to novation.—

The case of *Pascual v. Lacsamana*[293] reiterates the familiar rule that "for a novation to exist, there must be a change, substitution or renewal of an obligaion or obligatory relation, with the intention of extinguishing the former, *debitum pro debito.*" Mere extension for the payment of an obligation does not amount to a novation.[294] Novation is never presumed; there must be a declaration to that effect in unequivocal terms, or the old and the new obligation must be incompatible.[295] In the *Pascual* case, it appears that the debtor bound himself to pay on December 31, 1951 to the creditor a sum of money plus interest and liquidated damages. Later, the debtor executed another document wherein he promised to pay his debt on March 20, 1953. The second document did not mention the interest and liquidated damages. *Held:* The second document did not operate as a novation of the obligation. The debtor was still liable to pay liquidated damages.

Prewar obligations paid during Japanese time.—

The rule that payment of a prewar obligation due and demandable during the Japanese occupation could be validly made in war notes was reiterated in *Miailhe Desbarats v. Varela Vda. de Mortera.*[296] The cast is different from that involving an obligation contracted during the Japanese occupation but payable after liberation.[297]

In the *Miailhe* case there was no specification of the currency in which payment was to be made. In such a case, the rule is that the payment may be made in the money in circulation at the time of payment, which in this case was the Japanese military notes.

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292 21 Phil. 154.
293 G.R. No. L-10060, Nov. 27, 1956.
294 Inchausti v. Yulo, 34 Phil. 978.
295 Art. 1292, new Civil Code.
296 G.R. No. L-4915, May 25, 1956. See Haw Pia v. China Banking Corporation, 80 Phil. 604; Del Rosario v. Sandico, 47 O.G. 2866.
297 Soriano v. Abalos, 47 O.G. 168.

Obligation maturing during the Japanese occupation should be revalued under the Ballantyne scale.—

Where the vendor's obligation to pay for certain lots matured during the Japanese occupation and the vendor in fact tried to pay the price of said lots in October, 1943, but the checks became worthless, having been invalidly consigned in court, said obligation of the vendor may be satisfied after liberation, not peso for peso in Philippine currency, but in its equivalent under the Ballantyne scale. This is the ruling in *Gregorio Araneta, Inc. v. Tuason.*[298] The first decision in the same case found in G.R. No. L-2886,[299] adheres to the rule laid down in previous cases.[300] The basic rule on the point, stated in the *Wilson* case, is that "the Ballantyne schedule is applicable to obligations contracted during the Japanese occupation where said obligations are made payable on demand or during the said occupation but not after the war or at a specified date or period which may indicate that the parties were speculating on the continuation or cessation of the war at the time the obligation was payable."[301]

No revaluation under Ballantyne scale in case of obligations maturing after the war.—

The settled rule that an obligation contracted during the Japanese occupation, payable only after liberation, should be paid peso for peso, as stipulated in the contract and without revaluation under the Ballantyne scale,[302] was applied in *Arce Ignacio v. Aldamiz y Rementeria.*[303] In this case it appears that defendant borrowed ₱70,000 from plaintiff in December, 1943. It was stipulated that the debt would be paid only "en el termino de tres años a contar desde esta fecha" and that no payment could be made within three years from December, 1943 without the creditor's written consent. The question was whether after liberation the debt of ₱70,000 should be paid without revaluation under the Ballantyne scale. *Held:* The debt should be paid peso for peso in Philippine currency. The parties in effect stipulated that the payment should be made only on December 24, 1946.

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298 Gregorio Araneta, Inc. v. Tuason, G.R. No. L-7377, Jan. 31, 1956.
299 Aug. 22, 1952, 49 O.G. 38.
300 De la Cruz v. Del Rosario, G.R. No. L-4859, July 24, 1951; Arevalo v. Barretto, G.R. No. L-3519, July 31, 1951.
301 Wilson v. Berkenkotter, 49 O.G. 1401 (1953).
302 Roño v. Gomez, 46 O.G. Nov. Supp. 399; Gomez v. Tabia, 47 O.G. 641.
303 G.R. No. L-8668, July 31, 1956.

Following the same rule, a loan in war notes, contracted on October 25, 1944 and payable within two years after the termination of the war, should be paid peso for peso without revaluation under the Ballantyne scale.[304]

Where the parties stipulated that the loan secured in 1944 in war notes should be paid within five years from January 1, 1946 "in the currency then prevailing, at the time of payment," they must have intended to have that loan paid in that currency peso for peso and not in the equivalent of the prevailing currency in relation to the war notes.[305]

The rule in *Roño v. Gomez* and *Gomez v. Tabia* was applied to a *pacto de retro* sale. Thus, where in 1944 land was sold for ₱2,000 in Japanese war notes, with the stipulation that vendor could repurchase the land within 10 years from February 14, 1949 "by paying back the sum of ₱2,000," it was held that the repurchase should be effected peso for peso in genuine currency, without revaluation under the Ballantyne scale. The fact that the stipulation did not expressly state that redemption should be made in genuine currency would not make any difference "for it is always understood, in the absence of any agreement to the contrary, that an obligation should be paid in legal tender."[306]

Payment subject to adjustment.—

One interesting case on payment during the Japanese occupation is *Sunga v. Alviar*,[307] where a prewar mortgage debt of ₱800 was paid in war notes on April 8, 1944, but the payment was made subject to section 8, Article XI of the wartime Constitution, which provides that "all property rights and privileges acquired by any person, entity, or corporation, since the outbreak of the Greater East Asia War shall be subject to adjustment and settlement upon the termination of the said war." The question was whether said sum of ₱800 should be revalued under the Ballantyne scale.

Held: The condition attached to the payment shows that said payment was not intended to be absolute. It should be adjusted under the Ballantyne scale. The reference to the wartime Constitution was only made to describe the condition that the payment was subject to adjustment after the war.

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304 Mercado v. Punsalan, G.R. No. L-8366, April 27, 1956.

305 Cruz v. Vizcarra, G.R. No. L-10059, Nov. 19, 1956; Ponce de Leon v. Syjuco, G.R. No. L-3316, Oct. 31, 1951.

306 Gutirerrez v. Zarate, G.R. No. L-9631, Dec. 18, 1956, citing Ponce De Leon v. Syjuco, note 305; San Pedro v. Ortiz, G.R. No. L-9698, Nov. 28, 1956; Gustilo v. Jagunap, G.R. No. L-4249, Nov. 20, 1951; De Asis v. Agdamag, G.R. No. L-3709, Oct. 31, 1951.

307 G.R. No. L-8475, July 31, 1956.

Art. 1250 applies only if there is no contrary stipulation.—

Article 1250 of the new Civil Code, a new provision, provides that "in case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary." The first decided case construing this provision is *Nicolas v. Matias.*[308] In this case an obligation was contracted on June 29, 1944 and it was payable after June 29, 1949 and before June 30, 1950. The debtor contended that the debt should be revalued under the Ballantyne scale and in support of his contention, he invoked article 1250. *Held:* Article 1250 would not apply to the case because there was a contrary stipulation in the obligation in question. To apply the Ballantyne scale would mean that "the value of the currency at the time of the establishment of the obligation shall be the basis of payment." But the parties, in providing that payment of the debt could only be made within one year from June 29, 1949 evidently were aware of the depreciation of the Japanese war notes in 1944 and they intended that the value of the war notes in 1944 should not be the basis of payment. Hence, article 1250 would not apply to the case.

Application of payment.—

Following article 1173 of the old Civil Code, now article 1253, which provides that "if the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered, it was held in *Arce Ignacio v. Aldamiz y Rementeria*[309] that where in 1947 the debtor paid to the creditor ₱3,000 without specifying whether the said amount should be applied to the principal of ₱70,000 or to the accrued interests since December 1943, the said payment should be applied to the interests.

Consignation is not the remedy for determining the terms of a lease.—

The case of *Lim Si v. Lim*[310] reiterates the rule in *Ching Pue v. Gonzales*[311] that consignation is not the proper remedy to determine the relation between landlord and tenant, the term of the lease, the reasonableness of the amount of rental, and the right of

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[308] G.R. No. L-8093, Feb. 11, 1956.
[309] G.R. No. L-8668, July 31, 1956.
[310] G.R. No. L-8496, April 25, 1956, 53 O.G. 1928.
[311] 47 O.G. Dec. Supp. p. 282 (1950).

the tenant to remain in the premises against the will of the landlord.

According to the *Lim* case, the disagreement between a lessor and a lessee as to the amount of rent to be paid by a lessee cannot be decided in an action of consignation but in that of forcible entry or unlawful detainer which the lessor institutes when the lessee refuses to pay the rents that he has fixed for the property. Consignation is proper when there is a debt to be paid, which the debtor desires to pay and which the creditor refuses to receive, or neglects to receive, or cannot receive by reason of his absence. The purpose of consignation is to extinguish the obligation or debt. So, where the landlord fixed the rental but the lessee refuses to agree to the amount thus fixed and insists on paying a lower rental, which the landlord refuses to receive, the lessee cannot avoid being ejected by simply consigning the rentals in court.

Objection to consignation must be made seasonably.—

The *Miailhe* case[312] adopts the rule that an objection to a tender, to be available to the creditor, must be made seasonably and the ground of the objection must be specified. An objection to a tender on one ground is waiver of all other objections which could have been made at the time.[313] It is, therefore, ordinarily required of one to whom payment is offered in the form of a check, that he should make his objection at the time the check is offered,[314] so that the debtor may be afforded an opportunity to secure the specific money which under the law shall be accepted in payment of debts. A contrary ruling would mislead the debtor and might cause a loss which could be avoided if the creditor had seasonably objected to the form and character of the tender.[315]

Consignation by check.—

While consignation by check, even by certified check, produces no legal effect because a check is not a legal tender,[316] nevertheless, a cashier's check, which is in the same class as a certified check, may constitute a sufficient tender *where no objection is made on this ground in the lower court.*[317]

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312 *Supra* note 296.
313 52 AM. JUR. 221-222.
314 Gunby v. Ingram, 36 LRANS 232.
315 23 ALR 1288.
316 Belisario v. Natividad, 60 Phil. 156; Villanueva v. Santos, 67 Phil. 648; Cuaycong v. Rius, 47 O.G. 6125 (1950); Samaniego v. Court of Appeals, G.R. No. L-4191, April 30, 1952; Gutierrez v. Carpio, 53 Phil. 334.
317 Vda. de Eduque v. Ocampo, 47 O.G. 6155; Limkako v. Teodoro, 74 Phil. 313; This rule was followed in the Mialihe case, note 296.

In the *Miailhe* case, supra, the consignation was made by certified check during the Japanese occupation. The creditor, a British subject, ignored the consignation because the amount offered was in Japanese war notes. The objection was therefore based on the kind of the money and not on the ground that it was made by means of a check. The consignation was held to be valid.

When 2nd notice may be dispensed with.—

Two notices are required in consignation, the first being the announcement to the interested parties that the thing due would be consigned, and the second being the one made after deposit of the thing due is made. The second notice may be effected by means of service upon the creditor of the summons together with the consignation complaint. May the second notice be dispensed with?

In *Miailhe Desbarats v. Varela Vda. de Mortera*[318] it appears that the debtor's assignee tendered payment of the amount due to the creditor, who refused to accept payment in war notes. The debtor's assignee filed a petition in the cadastral record of the mortgaged land praying that he be allowed to consign the amount which was due to the mortgagee. The creditor or mortgagee was notified personally of the petition but he ignored the notice. The court allowed the consignation to be made. No notice of the deposit was made to the creditor. *Held*: Under the circumstances the second notice was not necessary as it would have served no useful purpose.

Void consignation.—

The case of *Chua Kay v. Lim Chang*[319] reiterates the rule in *China Insurance & Surety Co. Inc. v. Berkenkotter,*[320] that a consignation not made in accordance with law, nor accepted by the creditor, nor approved by the court is void. Strict conformity with the requirements of law is necessary for a valid consignation. Hence, the loss of the amount consigned should be borne by the debtor. It was further held in the *Chua Kay* case that a consignation case began during the Japanese time should be reconstituted so that the effects of such consignation may be availed of.

Genus nunquam perit.—

The generic obligation to pay money is not excused by fortuitous loss of any specific property of the debtor. This is the ruling

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318 See *supra* note 296.
319 Chua Kay v. Lim Chang, G.R. No. L-5995, May 18, 1956.
320 CA-G.R. No. 232, April 29, 1949, 46 O.G. 5466.

in *Ramirez v. Muller*[321] and it is in conformity with article 1263 of the new Civil Code, which provides that "in an obligation to deliver a generic thing, the loss or destruction of anything of the same kind does not extinguish the obligation."

CONTRACTS

Innominate contracts.—

In connection with article 1307 of the new Civil Code, which provides that "innominate contracts shall be regulated by the stipulations of the parties", the provisions of the Code on obligations and contracts, the rules governing the most analogous nominate contracts, and the customs of the place, it was held in *Santos v. Acuña*,[322] that the parties may stipulate that a contract, resembling a lease, should not be treated as a lease. "Lease is essentially a consensual contract, and its existence depends upon agreement of the parties. There is no law prohibiting stipulations that contracts, although similar to leases, should not be regarded as such between the parties. The standard contracts delineated in the law may be varied by the parties at will, in the absence of legal prohibition, or conflict with morals, good customs, public order or public policy."

Surety's obligation is transmissible to his heirs.—

An illuminating discussion on the transmissibility of obligations was made by Justice J. B. L. Reyes in the case of *Estate of K. H. Hemady v. Luzon Surety Co., Inc.*,[323] which involves the issue of whether a surety's obligation on his counterbond or indemnity agreement was terminated upon his death or could be enforced against his estate.

The pertinent codal provision is found in article 1311 of the new Civil Code, formerly article 1257, which states that "contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent."

Justice Reyes observed that "while in our successional system the responsibility of the heirs for the debts of their decedent cannot exceed the value of the inheritance they receive from him, the principle remains intact that these heirs succeed not only to the rights

[321] G.R. No. L-6536, Jan. 25, 1956, 52 O.G. 779; Also Phil. Long Distance Tel. Co. v. Jeturian, G.R. No. L-7756, July 30, 1956.
[322] G.R. No. L-8881, Oct. 31, 1956, 53 O.G. 358
[323] K. H. Hemady v. Luzon Surety Co., Inc. G.R. No. L-8437, Nov. 28, 1956.

of the deceased but also to his obligations." This is evident from articles 774 and 776 of the new Civil Code, formerly articles 659 and 661. Consequently, an heir cannot be regarded as a third person with respect to the contracts of the deceased.[324]

> "The binding effect of contracts upon the heirs of the deceased party is not altered by the provision in our Rules of Court that money debts of a deceased must be liquidated and paid from his estate before the residue is distributed among said heirs (Rule 89). The reason is that whatever payment is thus made from the estate is ultimately a payment by the heirs and distributees, since the amount of the paid claim in fact diminishes or reduces the shares that the heirs would have been entitled to receive.
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> "Under our law, therefore, the general rule is that a party's contractual rights and obligations are transmissible to the successors. The rule is a consequence of the progressive 'depersonalization' of patrimonial rights and duties that, as observed by Vittorio Polacco, has characterized the history of these instituions. From the Roman concept of a relation from person to person, the obligation has evolved into a relation from patrimony, barring those rare cases where the obligation is strictly personal, i.e., is contracted *intuitu personae*, in consideration of its performance by a specific person and by no other. The transition is marked by the disappearance of the imprisonment for debt."[325]

Justice Reyes in the *Hemady* case explained that the obligation of a surety or guarantor does not fall within any of the three exceptions concerning intransmissible obligations. It cannot be regarded as a purely personal obligation because the creditor is merely interested in being paid by the surety and it is immaterial that the payment should be made by the surety himself or by someone else in his behalf. As to the second exception, it should be noted that in the instant case, there was no express stipulation providing that the surety's obligation was intransmissible. Intransmissibility by stipulation should be expressly agreed upon, not merely implied. At the very least, it should be clearly inferable from the contract itself.[326]

Under article 1311 a person who enters into a contract is deemed to have contracted for himself and his heirs and assigns. It is therefore unnecessary for him to stipulate expressly to that effect. His failure to do so is no sign that he intended his bargain to terminate upon his death.

The third exception, which is intransmissibility by operation of law, refers to cases where the law expresses that the rights or obligations are extinguished by death as in case of legal support, parental authority, usufruct, contracts for a piece of work, partnership and agency.[327]

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[324] Barrios v. Dolor, 2 Phil. 44; Mojica v. Fernandez, 9 Phil. 403; Galasinao v. Austria, 51 O.G. 2874; De Guzman v. Salak, G.R. No. L-4133, May 13, 1953.

[325] Hemady case, *supra* note 323.

[326] 20 SCAEVOLA 541-542.

[327] Arts. 300, 327, 603, 1725, 1830 and 1919, new Civil Code.

In contrast, there is no provision in the new Civil Code that guaranty is extinguished upon the death of the guarantor or surety. Therefore, in the event that the guarantor or surety dies before the maturity of his obligation, the creditor may file a contingent claim against his estate. However, the administrator of the estate of the deceased guarantor or surety may ask for reimbursement from the principal debtor or exercise the rights granted by articles 2067 and 2071 of the new Civil Code.

Impairment of contractual obligations.—

In *Pacia v. Kapisanang Ng Mga Manggagawa sa Manila Railroad Company*[328] it appears that defendant labor union bound itself under its by-laws and constitution, approved in 1950, to give a gratuity to any member separated from the service of the company. The three plaintiffs were members of the union and employees of the Manila Railroad Company. One of them was separated from the service in June 1951 due to his prolonged absence; the second was dismissed in September 1952 for falsification and estafa; and the third was dismissed in December 1942 for the theft of one can of lubricant.

The three dismissed plaintiffs demanded the payment of gratuity from defendant labor union. Defendant refused to pay them gratuity. It relied on the amendment to its constitution passed on March 27, 1953, providing that members of defendant union who would be dismissed for violation of the law or company regulations, involving moral turpitude, cannot claim any gratuity. Defendant contended that the amendment had a retroactive effect.

Held: No retroactive effect can be given to the amendment in the absence of the clear provision to that effect. Before the amendment was enacted, plaintiffs' right to the gratuity had already vested. The amendment was adopted after two of the plaintiffs had filed their formal claim for gratuity. Defendant cannot by its unilateral act impair its contractual obligations. Plaintiffs are entitled to the gratuity provided for in defendant's constitution and by-laws before the adoption of said amendment.

No perfected contract if details have not been agreed upon.—

The rule in article 1319 of the new Civil Code that "consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract," does not apply to a situation wherein one or both of the parties consider that

[328] G.R. Nos. L-8787 and 8788, May 11, 1956, 52 O.G. 4327.

other matters or details, in addition to the subject matter and the consideration, should be stipulated and agreed upon. In that case the area of agreement must extend to all points that the parties deem material or there is no contract. Thus, an acceptance, subject to the terms of a contract being arranged between the solicitors of both parties, has been held to constitute no binding agreement. Where a corporation accepted a bid, but left the final decision to its general manager whom it empowered to work out the other details of the contract, the contract cannot be considered perfected at that stage. This is the holding in *A. Magsaysay, Inc. v. Cebu Portland Cement Co.*[329]

In the *Magsaysay* case, it appears that A. Magsaysay, Inc. submitted a proposal to the Cebu Portland Co. for the transportation of the latter's coal from Malangas, Zamboanga to Bacnotan, La Union. The bid of A. Magsaysay, Inc. was accepted by the company in a resolution of its board, which however, stated that its general manager should work out the details of the transportation contract. A draft of the contract was submitted by A. Magsaysay, Inc. but the same was revised by the company's general manager. The revised draft was submitted to the company's board of directors. The board, instead of approving the draft, directed the management to call for new bids. In view of this action of the board, A. Magsaysay, Inc. filed a suit against the company for the recovery of damages arising from an alleged breach of a perfected transportation contract.

Held: The action should be dismissed. No contract was perfected because the general manager, instead of exercising the authority granted to him by the board, submitted the draft to the board for approval. There being no perfected contract, no action for damages would lie.

Concurrence of offer and acceptance.—

The case of *Sycip v. National Coconut Corporation (Nacoco)*[330] also illustrates the rule in article 1319 of the new Civil Code, formerly article 1262, already quoted above. In the law of contracts there is no binding juridical tie unless offer and acceptance concur, i.e., unless the acceptance meets or fulfills all the conditions of the offer. In the *Sycip* case, it appears that on *December 19, 1946* the Nacoco offered to sell through Francisco Sycip 2,000 tons of copra provided that Sycip's buyer opened *within 48* hours an irrevocable letter of credit covering the cost of shipment and arranged shipping

[329] G.R. No. L-9098, Nov. 26, 1956, 53 O.G. 663.
[330] G.R. No. L-6618, April 26, 1956.

space immediately. Sycip accepted the offer but the letter of credit was opened only on *December 24th*. The Nacoco refused to ship the copra. Sycip sued it for damages amounting to ₱283,368. His complaint was dismissed because the contract was not perfected. To bind the Nacoco, Sycip should have complied with the conditions of the offer. There was no compliance because his buyer did not open the letter of credit within the 48-hour period.

Consent reluctantly given is binding.—

The case of *Acasio v. Corporacion de PP. Dominicos de Filipinas*[331] reaffirms the dictum that a distinction should be made between consent given reluctantly or even against one's good sense and judgment and a case where there was no consent at all, as where it was extorted through irresistible pressure. A contracting party acts voluntarily in the eyes of the law when he acts reluctantly and with hesitation as when he acts spontaneously and joyously. Legally speaking, a party acts as voluntarily when he acts wholly against his better sense and judgment as when he acts in conformity with them. Between the two acts there is no difference in law.[332] So where a lessee was reluctant to pay ₱100 a month as rental, but he made the payment just the same, he is bound by his act.

No duress.—

(1) In *Sison v. Dungan*[333] it was held that the fact that when the land was redeemed in December 1944 a policeman and a Japanese soldier were present, does not taint the redemption with duress because the vendor *a retro* was entitled, as a matter of legal right, to make the redemption, and, accordingly, to seek the assistance of the duly constituted authorities in the enforcement of such right.[334] The contention that the war notes used in the redemption were valueless in December 1944 was not sustained. War notes had still some value at that time and they were legal tender sufficient to discharge monetary obligations.

(2) Duress in the execution of a contract was not proved in *Feldman v. Brownell*[335] where "there was only fear of displeasing the Japanese civilian, M. Mori."

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331 G.R. No. L-9428, Dec. 21, 1956.
332 Vales v. Villa, 35 Phil. 789.
333 G.R. No. L-8016, Jan. 27, 1956.
334 Doronila v. Lopez, 3 Phil. 360; Sabalvaro v. Erlanger & Galinger, 64 Phil. 588.
335 G.R. No. L-7195, May 11, 1956.

Sufficient consideration.—

In *Chiu Chiong & Company, Inc. v. National City Bank of New York*[336] it appears that the defendant bank did not want to extend credit facilities to plaintiff unless the latter paid its prewar obligation which plaintiff claimed it had already paid to the bank of Taiwan, Ltd. during the Japanese occupation. Plaintiff was constrained to secure credit facilities from defendant bank, otherwise its business would be paralyzed. So it paid again its prewar obligation as a condition precedent for securing credit facilities from defendant bank. After the ruling validating payments during the Japanese time was announced, plaintiff sued defendant bank for the recovery of what it had paid. *Held*: There was a valid and licit consideration for the grant of credit facilities. Plaintiff cannot ask for the refund of its payment of its prewar obligation, although the payments during the Japanese time were validated.

Waiver based on erroneous premises is ineffectual.—

The case of *Monares v. Marañon*[337] reiterates the rule in *Obejera v. Iga Sy*,[338] and *Asiain v. Jalandoni*,[339] that an agreement based on a false or erroneous assumption is void, there being a false or nonexisting *causa* or consideration. It was also held in the *Monares* case that where the vendor *a retro* filed a complaint without having tendered the redemption money, the vendee *a retro* was not placed in *mora*. The obligations of both parties are reciprocal.[340]

In the *Monares* case it was agreed between Francisco Monares and Jose Marañon on March 21, 1944 that Monares repurchased from Marañon a parcel of land which he had previously sold to Marañon. Monares delivered to Marañon ₱800 in emergency notes. It was their understanding that, if after the war the value of the emergency notes had decreased, Monares would pay an additional amount to Marañon so that the consideration for the repurchase would be equivalent to ₱800 in genuine money. In 1946 Marañon asked Monares to exchange said ₱800 emergency notes with their equivalent in genuine money, but, as Monares could not do so, he told Ma rañon that the repurchase could not be carried out. Marañon then secured a title for the land in his own name by registering the previous sale executed in his favor by Monares. The latter sued Marañon for the recovery of the land.

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336 G.R. No. L-7485, Aug. 1956, 52 O.G. 5806.
337 G.R. No. L-6830, March 9, 1956.
338 76 Phil. 581, 586.
339 45 Phil. 396, 313.
340 Art. 1100, old Code, art. 1169 new Code. *Exceptio non adempleti contractus.*

Held: The parties erroneously thought that Monares had to exchange with genuine money the whole amount of ₱800 in emergency notes and that the value of said notes had already been fixed. The truth is that the value of the notes was fixed only in 1949, when Republic Act No. 69 was passed, and that the true agreement of the parties was that Monares would pay Marañon only the *difference* between ₱800 in genuine money and the true value of the emergency notes. Hence, Monares' waiver of the reconveyance was void. He was sentenced to pay Marañon ₱660 and Marañon was ordered to reconvey the land to Monares upon payment of said sum.

When mistake in area of property leased does not justify reduction of rental.—

In connection with the rule in article 1326 of the new Civil Code, that "advertisements for bidders are simply invitations to make proposals", and with the rules on mistake and fraud, it was held in *Sibug v. Municipality of Hagonoy*[341] that where there was a bidding for the lease of fishponds and it was awarded by lot and not by area of the fishponds involved, reduction of rental is not proper although it turns out later that the areas of the fishponds are actually smaller than those given in the notice of bid.

Reformation of a pacto de retro sale.—

Article 1365 of the new Civil Code, which provides that "if two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper", was applied in the case of *Conde v. Cuenco*[342] to a *pacto de retro* sale executed in 1943 which the vendor *a retro* claimed was only a mortgage. He filed his action for reformation in 1951. The vendee a *retro* contended that the action had already prescribed. This contention was rejected. The prescriptive period for such action is 10 years, provided for in article 1144 of the new Civil Code, and not the 4-year period for annulment of contracts, under article 1391 of the Code. An action for reformation is "that remedy in equity by means of which a written instrument is made or construed so as to express or conform to the real intention of the parties when error or mistake has been committed."[343] It should be noted that under articles 1602 to 1604 of the new Civil Code an absolute sale or a *pacto de retro* sale of property may be presumed to be merely an equitable mortgage under certain circumstances.

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341 G.R. No. L-7131, Feb. 29, 1956, 52 O.G. 7285.
342 Conde v. Cuenca, G. R. No. L-9405, July 31, 1956.
343 53 C.J. 906.

Estoppel to ask for reformation.—

An action for reformation of a contract of sale, instituted two weeks after the execution thereof, was dismissed in *De Guzman v. Calma,*[344] because the fraud, allegedly vitiating the sale, was not proved by clear and convincing evidence. Moreover, the complaining vendor accepted the balance of the price, tendered to him by the vendees. Such tender was made on the understanding that the conditions of the deed of sale would be carried out. "A creditor accepting the money tendered conditionally assents to the condition and cannot accept the money and reject the condition on which it was tendered."[345]

Interpretation of contracts.—

Where a management contract provides that the principal may revoke the agency if in its opinion the operations are not profitable nor satisfactory, and at the same time it is stipulated that the disputes between the parties should be settled by arbitration, it was held that the two stipulations are not in conflict. The principal may revoke the agency without resorting to arbitration. This interpretation is sanctioned by the cardinal rule that all the provisions of a contract should be given effect and that a special clause prevails over a general provision of the contract.[346]

Voidable contracts.—

Article 1302 of the old Code, now article 1397, which provides that "eprsons *sui juris* cannot x x x avail themselves of the incapacity of those with whom they contracted" was invoked in a case where a lease entered into between a municipality and an individual was voidable because it lacked the provincial governor's approval. It was held that the lessee was estopped to allege "that the contract could not be enforced against him because the contract was not approved by the governor."[347]

Restitution in case of voidable contracts.—

Article 1398 of the new Civil Code, formerly article 1303, which provides that "an obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract" does not apply to a case where plaintiff, without the approval of the Secretary of Agriculture and Natu-

344 G.R. No. L-6800, Nov. 29, 1956.
345 62 C.J. 678.
346 De la Rama Steamship Co. v. Tan, G.R. No. L-8784, May 21, 1956.
347 Municipality of Camiling v. Lopez, G.R. No. L-8945, May 23, 1956.

ral Resources, conveyed her rights under a contract for the sale of public land. The conveyance was void because, prior to such conveyance plaintiff's sales application had already been cancelled by the Director of Lands, since she allegedly permitted herself to be a dummy of the Japanese. Moreover, under section 29 of the Public Land Act, a transfer of rights under a sales application, which transfer was effected without the approval of the Secretary of Agriculture and Natural Resources, "shall produce the effect of annulling the acquisition and reverting the property and all rights thereto to the State". The case is not governed by the Civil Code.[348]

But where the guardian sold the minor's property and later the same guardian for her own account bought the property from the first purchaser, the sale were declared void at the instance of the minor's new guardian. Following article 1303 of the old Civil Code, now article 1398, the guardian was ordered to return the property and its fruits to the minor.[349]

Conformably with article 1303, if a sale of land was annulled, defendant must return the land to plaintiff and account for the fruits thereof, less the expenses for cultivation, and the amounts paid by him for taxes and installments to the Bureau of Lands. But if in such accounting, it results that defendant has a balance in his favor, plaintiff must pay such balance to defendant.[350]

Oral partition is valid.—

The case of *Barcelona v. Barcelona*[351] lays down the rule that the Statute of Frauds does not apply to the partition or renunciation of an inheritance which "is not exactly a conveyance for the reason that it does not involve transfer of property from one to another, but rather a confirmation or ratification of title or right to property by the heir renouncing in favor of another heir accepting and receiving the inheritance." The Statute of Frauds applies to executory and not to executed contracts, and performance of the contract takes it out of the operation of the statute. On grounds of equity and where no rights of creditors are involved, it is competent for the heirs to enter into an oral agreement for partition.[352] This rule is wise, if not necessary, for otherwise, thousands of oral partitions made among heirs in rural communities, involving unregistered properties of relatively small value, would have to be declared void. It is of general knowledge that in the provinces, especially

348 Francisco v. Rodriguez, G.R. No. L-8263, May 21, 1956.
349 Phil. Trust Co. v. Roldan, G.R. No. L-8477, May 31, 1956.
350 Borromeo v. Bascon, G.R. No. L-9318, June 28, 1956.
351 G.R. No. L-9014, Oct. 31, 1956, 53 O.G. 373.
352 Andal v. Hernandez, 44 O.G. 1672.

in the barrios, when a person dies leaving small parcels of land not registered under the Torrens system, either through ignorance of law or in order to avoid expenses in the legal services, notarial fees and registration fees, the heirs merely come together, make a list of the properties included in the estate, pay off small debts and sums advanced by some of the heirs, especially for expenses incurred during the last illness of the decedent and for his funeral, and then proceed to assign to each one his share of the estate, even taking into account the last instructions and wishes of the decedent. So far, this practice has been found to be not only convenient and inexpensive, but even advisable, and is accepted by the people. There is no good reason for disturbing that practice.

It should be noted that the "renunciation" mentioned in the *Barcelona* case does not mean "repudiation", since repudiation is required to be in a public or authentic instrument, according to articles 1051 and 1358 of the new Civil Code. What is meant perhaps is the renunciation treated in article 1050 of the new Civil Code, which is considered an acceptance of the inheritance.

Inexistent contracts cannot be ratified.

The rule in article 1409 of the new Civil Code that inexistent contracts cannot be ratified, was applied in *Vasquez v. Porta*[358] where it appears that in 1940 the wife Dolores Vasquez agreed with her husband, Mariano Arroyo, on the liquidation of the conjugal partnership and under that agreement she relinquished all her claims to 17 parcels of land in consideration of the sum of ₱15,000, payment of which was guaranteed by Jaime Porta. These parcels were fictitiously mortgaged by her husband to Porta to evade his obligation to give her support. After her husband's death, she became the administratrix of his estate. She brought an action for the annulment of the foreclosure sale of said lands to Porta. *Held:* The previous agreement did not estop her from assailing the sale. She assented to the agreement in the erroneous belief that the mortgage to Porta was valid. Not having knowledge of the true facts, her assent cannot be construed as a ratification. Moreover, the mortgage was inexistent for lack of consideration. An inexistent contract cannot be ratified.

No prescription of action to declare contract void.—

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

[358] Vasquez v. Porta, G.R. No. L-6767, Feb. 28, 1956.

not prescribe" was cited in *Quetulio v. Ver*[354] where the court found that in 1929 Mercedes Ver executed a fictitious sale of 94 lots in favor of Primo Quetulio. Since the sale lacked consideration, it was inexistent or void *ab initio*. The Supreme Court noted that the rule in article 1410 already existed under the old Code, as held in *Belen v. Collector of Customs*[355] and *Gonzales v. Trinidad*.[356] Being inexistent in law, such a contract need not be attacked by court action. Nor was an action necessary to rescind the sale, since rescission applies to valid contracts.

Where the parties are equally at fault, the defendant or the party in possession holds the stronger position.—

The principle of in *pari delicto potior est conditio defendentis et possidentis*, found in articles 1411 and 1412 of the new Civil Code, formerly articles 1305 and 1306 was applied to resolve the issue of whether the Filipino vendor can recover the land which he sold an alien in violation of the prohibition against such a sale contained in section 5, Article XIII of the Constitution, as construed in *Krivenko v. Register of Deeds of Manila*[357] and the earlier but forgotten case of *Levy Hermanos Inc. v. Ledesma*.[358] Following that principle, it was ruled in several cases that the Filipino vendor cannot recover the land thus illegally sold to the alien.[359] The rule was applied in *Dinglasan v. Lee Bun Ting*,[360] where the Filipino vendor sought to recover a parcel of land sold in 1936 to an alien. It was observed in the *Dinglasan* case that the scope of the Supreme Court's power and authority "is to interpret the law merely, leaving to the proper coordinate body the function of laying down the policy that should be followed in relation to conveyances in violation of the constitutional prohibition and in implementing said policy." The situation in these prohibited conveyances is not different from that existing in a case, where a homestead was sold within five years from and after the issuance of the patent[361] for which situation the legislature has adopted the policy, not of

354 G.R. No. L-6831, June 28, 1956.

355 46 Phil. 241.

356 67 Phil. 682. See Tipton v. Velasco, 6 Phil. 69 (1906), where it was held that "mere lapse of time cannot give efficacy to void contracts." Corpuz v. Beltran, 51 O.G. 5631 (1955).

357 81 Phil. 461.

358 69 Phil. 49

359 Caoile v. Yu Chiao Peng, G.R. No. L-04068, Sept. 29, 1953, 49 O.G. 4321; Talento v. Makiki, 49 O.G. 4331 (1953); Bautista v. Uy Isabelo, G.R. No. L-3007, 49 O.G. 4336 (1953); Rellosa v. Gaw Chee Gun, 49 O.G. 4345 (1953); Cabauatan v. Uy Hoo, G.R. No. L-02207, Jan. 23, 1951; Ricamara v. Ngo Ki, G.R. No. L-5836, April 29, 1953; Bough v. Cantiveros, 40 Phil. 210; Perez v. Herranz, 7 Phil. 215.

360 G.R. No. L-5996, June 27, 1956, 52 O.G. 3567.

361 §118, Com. Act No. 141 (Public Land Law).

returning the homestead sold to the original homesteader, but of forfeiting the homestead and returning it to the public domain subject to disposition in accordance with law.[362]

Moreover, in the *Dinglasan* case the sale was effected in 1936 and the action to recover the land was brought only in 1948, or more than ten years from the time the cause of action accrued.

The Supreme Court in the *Dinglasan* case made this significant statement, impliedly pointing to the failure of Congress to remedy the anomalous situation occasioned by the *Krivenko* ruling:

> "We take this occasion to call the attention of the legislature to the absence of a law or policy on sales in violation of the Constitution. This Court would have filled the void were we not aware of the fact that the matter falls beyond the scope of our authority and properly belongs to a coordinate power."

Not applicable to simulated contracts.—

The principle of in *pari delicto non oritur actio* does not apply to simulated or fictitious contracts nor to those that are inexistent for lack of an essential requisite, such as consideration.[363] Where the husband, to evade his obligation to pay support to his wife, pursuant to a court judgment, executed a fictitious mortgage on his properties, which he later sold to the supposed mortgagee in a foreclosure proceeding, the wife, in her own behalf and as administratrix of her husband's estate can sue for the annulment of the foreclosure sale and recover the properties. The said maxim does not apply to the case.[364]

Not applicable to disbarment cases.—

The defense of in *pari delicto* cannot be applied to a disbarment proceeding. Where respondent lawyer, a married man was able to seduce a girl by representing to her that he was single and later he caused the girl to be married to his son and continued cohabiting with her after the marriage, he cannot defend on the ground that the girl was in *pari delicto*.[365]

Squatters cannot demand return of rentals.—

Where certain squatters on city streets paid nominal rentals for their occupancy of said streets or plazas, and later their houses were demolished as a public nuisance, they cannot invoke article

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362 §124, *id.*
363 Gonzales v. Trinidad, 67 Phil. 682.
364 Vasquez v. Porta, G.R. No. L-6767, Feb. 28, 1956, 52 O.G. 7615.
365 Mortel v. Aspiras, Adm. Case No. 145, Dec. 28, 1956, 53 O.G. 627.

1412 of the new Civil Code in support of their contention that the the rentals which they paid should be returned to them. Article 1412 provides that the other party, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise. The squatters erroneously assumed that the city was at fault and that they were not at fault. The truth is that the city authorities merely tolerated their occupancy of city property. They should be thankful that they were allowed to stay on the property. It would be unfair to make the city return the rental which they had paid, considering that such rentals, being nominal, do not even constitute a sufficient compensation for the benefit which they had derived from the property.[366]

ESTOPPEL

Illustration of estoppel.—

Article 1431 of the new Civil Code provides that "through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[367]

Estoppel is illustrated in *Chiu Chiong & Company, Inc. v. National City Bank of New York.*[368] In this case it appears that plaintiff had a prewar obligation to defendant bank in the sum of ₱44,000. Plaintiff paid said obligation during the Japanese occupation to the Bank of Taiwan, Ltd. After liberation plaintiff applied for credit facilities with defendant bank but the latter refused to extend credit unless plaintiff paid again its prewar obligation. So plaintiff bound itself to pay said prewar obligation in installments secured by a surety bond. The bank then extended plaintiff a credit line up to ₱60,000. The said prewar obligation was fully satisfied by plaintiff in May 1950.

In 1952 plaintiff sued the bank for the refund of its payment on its prewar obligation. Its theory was that there was an oral understanding between plaintiff and defendant that the said payment would be refunded in case payments during the Japanese time were validated. The payments were validated in April 1948 when the decision in *Haw Pia v. China Banking Corporation*[369] was rendered.

Held: Plaintiff was estopped to claim refund. Its manager admitted that he learned of the *Haw Pia* decision in August, 1948.

366 Halili v. Lacson, G.R. No. L-8892, April 11, 1956, 52 O.G. 3049.
367 See §68, Rule 123, Rules of Court.
368 G.R. No. L-7485, Aug. 23, 1956, 52 O.G. 5806.
369 80 Phil. 604 (1948).

Notwithstanding that fact, plaintiff continued making payments on its prewar obligation up to May 1950 and it filed this suit for refund only in October, 1952. *Bismorte v. Aldecoa & Co.*,[370] a leading case on estoppel was cited.

Acceptance of benefits precludes repudiation of contract.—

The rule, that a party who has accepted the benefits of a contract cannot repudiate the same,[371] was applied in *Municipality of Camiling v. Lopez*,[372] where the municipality leased to Diego Lopez for three years certain fisheries. Lopez took possession of the fisheries and paid the rentals for two years and a part of the rental for the third year. He was sued by the municipality for the recovery of the balance of the rental for the third year. He pleaded that the contract was void because it was not approved by the provincial governor. *Held:* "After he had taken advantage of the contract, entering upon the possession of the fisheries and enjoying its fruits, with knowledge of the existence of a defect in the said contract, which knowledge is presumed, he should not thereafter be permitted to attack it on the ground that the contract did not bear the approval of the provincial governor as required by law."

Estoppel by record.—

The following rules on estoppel were followed in *Beltran v. Escudero*:[373]

Estoppels by record, to the extent that they bind the parties, will also bind their privies; but they can exist only as between the same parties or those in legal privity with them, and can be used neither by them nor against strangers.[374] The rule of estoppel by record bars a second action between the same parties on an issue necessarily raised and decided in the first action; so, an issue of ownership of property and its incidents thus adjudicated cannot be relitigated in a second action between the same parties.[375] An estoppel operates on the parties to the transaction out of which it arises and their privies. Conversely, a stranger to a transaction

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[370] 17 Phil. 480; Ojinaga v. Estate of Perez, 9 Phil. 185; Lucia v. Perez, 6 Phil. 219; Hijos de I. de la Rama v. Robles, 8 Phil. 712.

[371] Tuason v. Domingo Lim, 10 Phil. 50; PP. Agustinos Recoletos v. Lichauco, 34 Phil. 5; Behn, Meyer & Co. v. Rosatzin, 5 Phil. 660; Chamber; of Commerce v. Pua Te Ching, 14 Phil. 22.

[372] G.R. No. L-8945, May 23, 1956.

[373] G.R. No. L-7983, July 31, 1956, 52 O.G. 5140.

[374] 31 C.J.S. 195.

[375] 31 C.J.S. 195.

is neither bound by, nor in a position to take advantage of, an estoppel arising therefrom. The reason for the latter rule is that mutuality is an essential element of an estoppel; an estoppel must bind both parties or neither is bound.[376] Estoppel by record refers to the judgment of a court of record.

In the *Beltran* case, it appears that in a previous case[377] between Arsenio Escudero and the heirs of Romualda Beltran, a certain parcel of land was declared conjugal property of the spouses Simeona de Mesa and Regino Beltran, the parents of Romualda. Hence, the sale of said land to Escudero by Simeona and her son Mariano Beltran was declared void to the extent of the 1/6 portion corresponding to Romualda, it appearing that said spouses had a third child named Eulalio Beltran.

In view of the decision in that previous case, the heirs of Eulalio Beltran sued Escudero for the recovery of their 1/6 portion of the land. They contended that the decision in the previous case was binding and conclusive against Escudero under the rule of estoppel by record.

Held: Estoppel by record would not lie in the second case because the heirs of Eulalio Beltran were not parties in the previous case. Escudero was not estopped to present evidence in the second case, proving that the land in question was owned by Mariano Beltran and that Eulalio Beltran had performed acts recognizing Mariano's ownership thereof. The complaint of Eulalio's heirs was dismissed because under the rule of estoppel by conduct (also known as equitable estoppel or estoppel in *pais*) they were precluded from claiming that the land in question was conjugal property of their paternal grandparents.

Other rulings.—

(1) Where the claimant of a parcel of land had leased it from the spouses owning it, he is estopped to assert ownership over the land because, under article 1436 of the new Civil Code, "a lessee or a bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor." The same rule is found in section 68, Rule 123 of the Rules of Court.[378]

(2) Where appellants submitted the case for decision without objection, they cannot claim for the first time on appeal, that

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[376] 19 AM. JUR. 809.

[377] Flores v. Escudero, G.R. No. L-5302, May 11, 1953; Escudero v. Flores, 51 O.G. 3444 (1955).

[378] Heirs of Marquez v. Valencia, G.R. No. L-7328, Aug. 21, 1956, 52 O.G. 6173.

they were deprived of the opportunity to submit additional evidence. They are guilty of estoppel.[379]

SALES

Transactions of a sash factory are sales, not leases.—

In some borderline cases it is sometimes difficult to distinguish a contract of sale from a lease of services where the lessor or locator supplies the materials (*locatio-conductio operarum*). The new Civil Code clarifies the distinction between the two contracts by providing in its article 1467 that "a contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work." Article 1462 of the same Code also provides that "goods to be manufactured" by the seller may be the subject matter of a sale. On the other hand, article 1713 provides that "by the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill, or *also furnish the material.*"

In *Inchausti & Co. v. Cromwell*[380] it was ruled that "the distinction between a contract of sale and one for work, labor, and materials, is tested by the inquiry whether the thing transferred is one not in existence and which would never have existed but for the order of the party desiring to acquire it, or a thing which would have existed and been the subject of sale to some other person, even if the order had not been given. When a person stipulates for the future sale of articles which he is habitually making, and which at the time are not made or finished, it is essentially a contract of sale and not a contract for labor. It is otherwise where the article would not have been made but for the agreement; and where the article ordered by the purchaser is exactly such as the vendor makes and keeps on hand for sale to anyone, and no change or modification of it is made at the vendee's request, it is a contract of sale even though it be entirely made after and in consequence of the vendee's order for it."[381]

In Celestino & Company v. Collector of Internal Revenue,[382] it was held that the transactions of a sash factory, which styles itself

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[379] Baradi v. Ignacio, G.R. No. L-8324, Jan. 19, 1956, 52 O.G. 5172.
[380] 20 Phil. 345 (1911).
[381] Inchausti case, *supra* note 380.
[382] G.R. No. L-8506, Aug. 31, 1956.

as a "manufacturer" of all kinds of doors, windows, sashes, furniture, mouldings, frames, panels and similar articles, are sales and not contract jobs nor leases of services. It was shown that the factory habitually made those articles. "The fact that the windows and doors are made by it only when customers place their orders, does not alter the nature of the establishment, for it is obvious that it only accepted such orders as called for the employment of such materials—mouldings, frames, panels—as it ordinarily manufactured or was in a position habitually to manufacture." And the fact that the factory had special customers who ordered special doors or sashes would also not make any difference because it is mechanically equipped to mass-produce such special doors or sashes if other customers would order them. If the special orders call for articles not habitually manufactured by the factory, then it would not accept the orders and there would be no sale in that case. The Supreme Court further said: "Nobody will say that when a sawmill cuts lumber in accordance with the peculiar specifications of a customer—sizes not previously held in stock for sale to the public — it thereby becomes an employee or servant of the customer, not the seller of lumber. The same consideration applies to this sash manufacturer", since it does nothing more than sell the goods that it mass-produces or habitually makes: sashes, panels, mouldings, frames, cutting them to such sizes and combining them in such forms as its customers may desire." This part of the ruling in the *Celestino* case is not in accordance with the ruling in the *Inchausti* case that in a sale there should be "no change or modification" made at the vendee's request.

However, the Supreme Court qualified the general rule in the *Celestino* case by stating that if the sash factory "accepts a job that requires the use of extraordinary or additional equipment, or involves services not generally performed by it, it thereby contracts for a piece of work — filling special orders within the meaning of article 1467".

Ownership of thing sold is transferred upon delivery.—

In a contract of sale the thing sold must be a determinate thing. This does not mean that generic things cannot be the object of a sale. It simply means that the thing sold should be a determinate object, particularly designated or physically segregated from all others of the same class. According to articles 1349 and 1460 of the new Civil Code, "the requisite that a thing be determinate is satisfied if at the time the contract is entered into, the thing is capable of being made determinate without the necessity of a new or further agreement between the parties." The ownership of the thing sold is

transferred upon its delivery to the buyer. Thus, in *Rivera v. Matute*[383] it was held that "where the commodity or article sold under the contract was part of the stocks stored in different bodegas and was indeterminate and not identified, but it had first to be separated from the whole stock, then placed in the sacks, weighed and packed and then delivered to the buyer, only then could the latter consider himself the owner thereof. Before that time it was still under the custody of the seller."

In the *Rivera* case, it appears that Claro Rivera and Amadeo Matute agreed in August 1946 on the sale of 1,300 tons of copra, which was to be taken from the bodegas of Matute in his Davao haciendas. Matute delivered only 330 tons of copra. He was supposed to make delivery in December 1946. In March 1947 he sold his copra to Clark, Jamilla & Co., Inc. In the suit for damages brought by Rivera against Matute, Rivera contended that from the date of the contract of sale he became the owner of the copra sold to him and that consequently Matute had no right to sell the copra to another entity. This contention was rejected.. The copra sold to Rivera was "indeterminate and not identified. It had first to be separated from the whole stock, then placed in sacks, weighed and packed and then delivered to" Rivera. Only then could Rivera consider himself the owner thereof.

The untenableness of Rivera's contention becomes more manifest when it is considered that, if he were the owner of the copra from the date of the sale, then he would be the one responsible for its destruction and he should have been the one to take charge of the packing and weighing. But the truth is that he would not be agreeable to bear the loss of the copra nor shoulder the expenses for the packing and transportation. The mere execution of the contract did not transfer title over the copra to Rivera. *Non nudis pactis sed traditione dominia rerum transferuntur.*

Vendor retains ownership prior to delivery.—

The rule in article 1524 of the new Civil Code that "the vendor shall not be bound to deliver the thing sold, if the vendee has not paid him the price, or if no period for the payment has been fixed in the contract", and that ownership of the property sold is not considered transmitted until the property is actually delivered and the purchaser has taken possession and paid the price agreed upon,[384] was applied in *Masiclat v. Centeno.*[385] In this case it appears that

[383] G.R. No. L-6998, Feb. 29, 1956, 52 O.G. 6905.
[384] Roman v. Grimalt, 6 Phil. 96.
[385] G.R. No. L-8420, May 31, 1956.

in the morning of January 21, 1951 a person approached Natalia Centeno, who had a store near the public market of Angeles, Pampanga, and offered to purchase 15 sacks of rice from her. The price agreed upon was ₱25 a sack. The buyer, whose name was not disclosed in the record, promised to pay the price as soon as he had received the price of adobe stones which were then being unloaded from a truck parked in front of the grocery facing Centeno's store. Relying on the buyer's promise, Centeno ordered that the rice be loaded in the truck of which Ramon Masiclat was the *encargado*. Centeno kept an eye on the rice as it was being loaded and waited for the purchaser to pay her the price. After the adobe stones had been unloaded, Centeno looked for the purchaser but the latter could nowhere be found. Thereupon, she ordered the unloading of the rice from the truck, but to her surprise Masiclat objected on the ground that he had bought the rice at ₱26 per sack from a person whom he did not know and whom he had met only that morning. In view of the dispute, Centeno called a policeman, who brought the rice to the municipal building. Masiclat sued Centeno for the recovery of the rice.

Held: Centeno had the better right to the rice because she never lost ownership thereof. The sale made by her to the unknown buyer was perfected but not consummated.[386] Masiclat did not buy the rice from the unknown person in a public market and hence article 1505 of the new Civil Code, which provides that purchases in markets are excepted from the rule that the buyer acquires no title to the goods, if he purchased them from a person who is not the owner thereof, does not apply to the case. Also inapplicable to the case is the rule that where one of two persons must suffer by the fraud of a third, the loss should fall upon him who has enabled the third person to do the wrong. Centeno was not negligent. There was no conclusive proof that the person who dealt with Centeno was the very same one who dealt with Masiclat.

Nemo dat quod non habet.—

Article 1505 of the new Civil Code, which provides that "where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell," was applied, in conjunction with article 559 of the new Code, in *Cruz v. Pahati*.[387] In the Cruz case, plaintiff was illegally deprived of his car by Jesusito Belizo, who

[386] Warner, Barnes & Co. v. Inza, 43 Phil. 505.
[387] Cruz v. Pahati, G.R. No. L-8257, April 13, 1956, 52 O.G. 3053.

sold the car to Felixberto Bulahan. Cruz was allowed to recover the car from Bulahan since Belizo, not being the owner of the car, could not have transferred any right to Bulahan.

In another 1956 case, a sale was declared void "on the principle that a vendor cannot convey more right than he had, or sell property to which he had no valid title."[388]

Meaning of F.O.B. and F.A.S..—

The case of *Insular Lumber Company v. Collector of Internal Revenue*[389] reiterates the rule in *Behn, Meyer & Co. v. Yangco*,[390] that the terms F.O.B. (free on board), C.I.F. (cost, insurance, freight) and F.A.S. (free alongside ship) merely make rules of presumption that yield to proof of contrary intent. Said terms may be used to indicate the place of delivery. They are also used in connection with the fixing of the price, and in these cases, they will not be construed as fixing the place of delivery. In other words, they may be used merely to fix the price up to a certain point, delivery to be at a farther point, for it is not uncommon to impose a duty on the seller to deliver goods at their ultimate destination for a price F.O.B. the point of shipment, that is, the buyer as part of the price bears all the expenses on the goods after the place of shipment or other named F.O.B. point, but otherwise the contract remains one for the delivery of the goods at the farther point.

In the *Insular Lumber* case the Supreme Court found that the sales of lumber under the terms F.A.S. Sagay or F.O.B. Fabrica were made only for the purpose of determining the mill cost or value of the lumber, which was placed in one invoice. The stevedoring or freight charges incurred in bringing the lumber to the vessel, in case of foreign sales, or to the point of delivery, in case of local sales, were advanced by the lumber company, billed against the buyer in a separate invoice, and reimbursed by the buyer to the lumber company together with the mill cost of the lumber. The said terms F.A.S. Sagay and F.O.B. Fabrica did not therefore indicate the place of delivery but were merely used to fix the price of the lumber at Sagay or Fabrica, and the delivery was made at a farther point, either the vessel, in case of foreign sales or the point of unloading in case of domestic sales. The stevedoring and freight charges were therefore considered part of the gross selling price of the lumber on which the lumber company should pay sales tax.

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388 Ozoa v. Montaño, G.R. No. L-8621, Aug. 27, 1956.
389 G.R. No. L-7190, April 28, 1956.
390 38 Phil. 602.

Risk of loss falls upon seller in a sale of copra "CIF New York".—

There is a general rule in article 1523 of the new Civil Code, that delivery of the goods to a carrier is deemed to be a delivery to the buyer if under the contract of sale the seller is authorized or required to send the goods to the buyer. As noted in *General Foods Corporation v. National Coconut Corporation*[391] "under an ordinary C.I.F. agreement, delivery to the buyer is complete upon delivery of the goods to the carrier and tender of the shipping and other documents required by the contract and the insurance policy taken in the buyer's behalf."[392]

However, there is no question that the parties "may, by express stipulation or impliedly (by making the buyer's obligation depend on arrival and inspection of the goods), modify a CIF contract and throw the risk upon the seller until the arrival in the port of destination."[393]

As noted in the *Behn, Meyer* case[394] the terms C.I.F. (cost, insurance and freight) and F.O.B. (free on board) merely make rules of presumption which yield to proof of contrary intention. "The question, at last, is one of intent, to be ascertained by a consideration of all the circumstances."

In the *General Foods Corporation* case, it appears that in 1947 the National Coconut Corporation (Nacoco) sold to the General Foods Corporation *1,000 long tons of copra* "CIF NEW YORK". When the copra arrived in New York and was reweighed, its weight was only *898 short tons.* The buyer, General Foods Corporation, sued the Nacoco for the recovery of the value of the shortage. The buyer's theory was that although the contract quoted a CIF New York price, the agreement contemplated the payment of the price according to the weight and quality of the cargo upon arrival in New York, the port of destination, and that therefore the risk of the shipment was upon the seller. On the other hand, the Nacoco contended that the sale was an ordinary CIF contract wherein delivery to the carrier amounted to delivery to the buyer and the latter, having paid the price, the sale was consummated.

Held: The buyer was entitled to recover the value of the shortage. "Despite the quoted price of CIF New York, and the right of the seller to withdraw 95% of the invoice price from the buyer's

391 G.R. No. L-8717, Nov. 20, 1956, 53 O.G. 652.

392 77 C.J.S. 983; 46 Am. Jur. 313; II WILLISTON ON SALES, 103-107.

393 77 C.J.S. 983-984; Williston, supra, 116; Willits v. Abekobei, 189 N.Y.S. 525. National Wholesale Grocery Cov. Mann, 146 NE 791; Llipstein v. Dilsizian, 273 Feb. 473.

394 *See* supra, note 390.

letter of credit upon tender of the shipping and other documents required by the contract, the express agreement that the 'Net Landed Weights' were to govern, and the provision that the balance of the price was to be ascertained on the basis of outurn weights and quality of the cargo at the port of discharge, indicate an intention that the precise amount to be paid by the buyer depended upon the ascertainment of the exact net weight of the cargo at the port of destination. That is furthermore shown by the provision that the seller could deliver 5% more or less than the contracted quantity, such surplus or deficiency to be paid 'on the basis of the delivered weight.' "

The Nacoco failed to prove that the shortage was due to the risks of the voyage and not to the drying up of the copra while in transit or to the reasonable allowances for errors in the weighing of the gross cargo and the empty bags in Manila. The manifest intention of the parties was that the total price should be finally ascertained only upon the basis of the net weight and quality of the copra upon arrival in New York. The prior payment of the price would not bar plaintiff's recovery of the resulting shortage.

In this connection, it should be noted that in *A. Soriano y Cia. v. Collector of Internal Revenue*,[395] a sales tax case, it was held that "where the contract is to deliver goods F.A.S. (free alongside ship), the property passes on delivery at the wharf or dock" or that delivery to the carrier is delivery to the buyer. That holding is good under the particular stipulations of the contract and the circumstances found in the *Soriano* case.

Under installment sales law vendee's other property is liable for unpaid price.—

Under article 1484 of the new Civil Code, one of the remedies of the vendor in a contract of sale of personalty the price of which is payable in installments is to "exact fulfillment of the obligation, should the vendee fail to pay". The phrase "fail to pay", which is vague, means fail to pay the installments of the price. Exasting fulfillment of the obligation means demanding specific performance or payment of the price. When the vendor has elected specific performance and secures a judgment for the payment of the unpaid balance of the price, is the judgment enforceable against the mortgaged personalty only or also against the other properties of the vendee?

In *Southern Motors, Inc. v. Magbanua*,[396] a case involving the installment sale of a truck, it appears that the vendor in its complaint prayed that the vendee be ordered to pay the balance of the

[395] G.R. No. L-5896, 51 O.G. 4558 (1955).
[396] G.R. No. L-8578, Oct. 29, 1956, 52 O.G. 7252.

price, instead of asking that the mortgaged truck be sold at public auction in conformity with section 14 of the Chattel Mortgage Law. The vendor, therefore, elected specific performance instead of foreclosing the mortgage on the truck. The trial court, in sentencing the vendee to pay the balance of the price, held that the vendor could enforce the judgment against the truck only. This holding of the trial court was erroneous. "As the plaintiff has chosen to exact the fulfillment of the defendant's obligation, the former may enforce execution of the judgment rendered in its favor on the personal and real properties of the latter not exempt from execution x x x."

The *Magbanua* case was decided under the new Civil Code. The Supreme Court's reference to section 14 of the Chattel Mortgage Law seems to indicate that the provisions of that law on foreclosure were not superseded by the corresponding provisions of the new Code on foreclosure of a pledge.[397]

Guardian cannot indirectly purchase ward's property.—

One of the maxims of the law is that what it prohibits directly cannot be done indirectly.

Article 1459 of the old Civil Code, now article 1491, provides that a guardian cannot acquire by purchase, even at public or judicial auction, either in person *"or through the mediation of another"*, the property of the person or persons who may be under his guardianship. This provision was applied in *Philippine Trust Company v. Roldan.*[398] In this case it appears that Socorro Roldan was the guardian of the minor Mariano Bernardo. She was also his stepmother. On July 27, 1947 she filed in the guardianship proceedings a motion asking for authority to sell for ₱14,700 to Fidel Ramos 17 parcels of land belonging to the minor for the alleged purpose of investing the money in a residential house at Tindalo Street, Manila. The motion was granted. On August 5, 1947 Roldan sold the said land to Ramos, who happened to be her brother-in-law. The sale was approved by the court on August 12th. The following day, August 13th, Ramos sold the land to Socorro Roldan for ₱15,000. On October 21, 1947 Roldan sold to Emilio Cruz for ₱3,000 4 of the 17 parcels of land. The Philippine Trust Company, which substitute Socorro as guardian of the minor's property on August 10, 1948, brought an action for the annulment of the three sales.

Held: The three sales were void. The case is different from *Rodriguez v. Mactal*[399] where the administratrix of the decedent's

[397] See Art. 2141, new Civil Code.
[398] G.R. No. L-8477, May 31, 1956.
[399] 60 Phil. 13.

estate, as such administratrix, sold property of the estate with judicial authorization in January 1926 to Silverio Chioco, and in March 1928 said administratrix, for her own personal account, repurchased the same property from Chioco. The repurchase was considered valid because it was not shown that Chioco originally bought the property for the benefit of the administratrix. In the instant case only one day intervened between the judicial approval of the sale to Ramos and the sale by Ramos to Roldan. The sale was found to be disadvantageous to the minor.

Contract for contingent fee.—

A contract wherein the wife bound herself to pay to her lawyer a contingent fee amounting to 20% of her share of the conjugal assets is not prohibited by article 1491 of the new Civil Code, which provides that lawyers cannot acquire by assignment the property and rights involved in any litigation wherein they have intervened.[400]

No pacto comisorio in contracts to sell.—

Article 1592 of the new Civil Code, formerly artcle 1504, provides that "in the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. After the demand, the court may not grant him a new term." Article 1592 regulates what is called the *pacto comisorio* in sales of realty, which should not be confounded with the *pacto comisorio* in pignorative agreements. The latter is a stipulation allowing the creditor to appropriate the things given by way of pledge or mortgage, or dispose of them. It is a void stipulation prohibited by articles 2088 and 2137 of the new Civil Code, but it does not render the pledge, mortgage or antichresis invalid.

"The *pacto comisorio* or *ley comisoria* is nothing more than a condition subsequent of the contract of purchase and sale. Considered carefully, it is the very condition subsequent that is always attached to all bilateral obligations according to article 1124 (now article 1191); except that when applied to real property it is not within the scope of said article 1124, and it is subordinate to the stipulations made by the contracting parties and to the provisions of article 1504."[401] Under article 1592, even if the contract of sale of realty

[400] Recto v. Harden, G.R. No. L-6897, Nov. 29, 1956.
[401] 10 MANRESA, CODIGO CIVIL, 5th Ed., 1950, 305; Villaruel v. Tan King, 43 Phil. 251.

provides for "automatic rescission upon failure to pay the price, the vendee may enforce the contract even after the expiration of the period but before demand for rescission has been made upon him either by suit or by notarial act."[402]

However, article 1592 does not apply to an executory agreement to sell land. This is the rule laid down in *Caridad Estates v. Santero*,[403] which was reiterated in *Mella v. Bismanos*,[404] and in the recent case of *Ayala y Compañia v. Arcache*.[405] In the *Arcache* case, it appears that Ayala y Compañia and Joseph Arcache entered into a contract for the sale of land. The price was ₱447,972. Arcache made a down payment of ₱100,000 and bound himself to pay the balance of ₱347,972 in installments. He failed to pay on time the first installment of the balance. *Held*: Ayala y Compañia could rescind the sale. Article 1592 does not apply to the case.

On the other hand, it should be noted that in *Albea v. Inquimboy*,[406] *Adriarte v. Court of Appeals*,[407] and *Tirol v. Hodges*[408] article 1504, now article 1592, was applied to the sale of land wherein the price was payable in installments.

Rescission of sale at vendee's instance.—

In *Bacaltos v. Esteban*[409] it appears that Leonisa Bacaltos bought the improvements on certain homesteads from Francisco Esteban. It was stipulated that the sale was subject to the approval of the Secretary of Agriculture and Natural Resources, as required by section 20 of Commonwealth Act No. 141. The contract did not state who should secure such approval. *Held*: The duty of securing the Secretary's approval devolved upon the vendor Esteban "because it is he who should give to the vendee a clear title to the property he is conveying." It was his concern to secure that approval within a reasonable time. Since more than a year had elapsed and no approval had been given, the vendee was entitled to rescind the sale. Esteban was ordered to return the amount paid to him by Bacaltos.

Old Law — Vendee may rescind sale if merchandise delivered is different from that stipulated in the contract.—

The case of *G. Assanmal v. Universal Trading Co., Inc.*[410] involves a sale contracted before the effectivity of the new Civil Code.

402 De la Cruz v. Legaspi, G.R. No. L-8024, Nov. 29, 1955, 51 O.G. 6212.
403 71 Phil. 114 (1940).
404 CA 45 O.G. 2099.
405 G.R. No. L-6423, Jan. 31, 1956.
406 47 O.G. Dec. Supp. 131.
407 49 O.G. 1421 (1953).
408 46 O.G. 608, CA, See Filipinas Colleges, Inc. v. Timbang CA, 52 O.G. 3624.
409 G.R. No. L-9121, April 11, 1956.
410 G.R. No. L-9476, Nov. 28, 1956, 52 O.G. 7578.

Being a commercial sale, it was governed by the Code of Commerce. In that case it appears that defendant agreed to sell to plaintiff *bourbon whisky* but it delivered instead *blended whisky* on February 10, 1946. On May 13, 1946 plaintiff through his lawyer complained to defendant of the defect in the quality of the whisky and demanded the rescission of the contract. Plaintiff filed his action for rescission on *June 18, 1947.*

In deciding the case, the Supreme Court applied article 336 of the Code of Commerce which provides that in case there is a defect in the quality of the merchandise delivered by the vendor in bales or packages, the vendee may bring an action for rescission or specific performance, with damages in either case, within the time fixed in the Code of Civil Procedure, which is 10 years if based on a written contract or 6 years if based on an oral contract.

It was held that plaintiff vendee could rescind the contract. He was allowed to recover the price which he had already paid, plus legal rate of interest from the filing of the complaint.

Old law; Commercial sale of meat.—

Under article 334 of the Code of Commerce a vendor is responsible for the deterioration of the meat sold by weight even if the deterioration was due to a fortuitous event. Article 342 of the same Code would not apply to a sale where there has been no delivery.[411]

Conventional redemption.—

The case of *De la Cruz v. Resurreccion*[412] adheres to the rule that in conventional redemption a *bona fide* offer or tender of the price agreed upon for redemption is sufficient to preserve the rights of the party making it, without the necessity of making judicial deposit, if the offer is refused, and that an action to enforce redemption, brought in court within the stipulated period, tolls the term for the right of redemption.[413]

In the *De la Cruz case* the stipulated period of redemption was 3 years from January 28, 1949. On September 2, 1951 the vendor *a retro,* Doroteo de la Cruz, went to the house of the vendee *a retro,* Rafael Resurreccion, to inform the latter that he wanted to redeem the property. De la Cruz did not bring the money with him. Re-

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411 Atlas Trade Development Corp. v. F. Limgenco Ltd., G.R. No. L-7407, June 30, 1956.

412 G.R. No. L-9304, April 28, 1956.

413 Rosales v. Reyes and Ordoveza, 25 Phil. 495; Canuto v. Mariano, 37 Phil. 840; Ong Chua v. Carr, 53 Phil. 975. Cf. Rivero v. Rivero, 80 Phil. 802 which assumes that consignation is necessary in pacto de retro sales.

surreccion tried to dissuade De la Cruz from making the redemption and offered him ₱400 as "premium." On October 17, 1951 De la Cruz deposited in court the redemption price.

Held: The acts of De la Cruz were sufficient to preserve his right of redemption. He interpreted Resurreccion's offer to pay a premium of ₱400 as a refusal to allow redemption. He was allowed to redeem the property although the consignation of the redemption price was not in accordance with legal requirements.

Rulings on pacto de retro sales.—

(1) Where a *pacto de retro* sale bears none of the well known indicia of a disguised mortgage, as enumerated on article 1602 of the new Civil Code, and where said sale was impugned more than 10 years after the vendors *a retro* had surrendered possession of the land sold to the vendees and after two of the parties to the transaction had died, the claim that the sale was in reality a mortgage cannot be sustained.[414]

(2) Where in a case, which was decided by the Court of Appeals and whose appeal on certiorari to the Supreme Court was denied, it was held that a *pacto de retro* sale was an equitable mortgage and that, persons other than the supposed vendors *a retro* were the real owners of the land, the alleged vendee *a retro* or mortgagee cannot later bring an action for damages against the vendors *a retro* or the owners of the land on the ground that they colluded to defraud the vendee *a retro*. The only action of the vendee *a retro* would be the recovery of the loan.[415]

(3) Where a parcel of land was sold under *pacto de retro in 1927,* without stipulation as to the term for redemption, and possession of the land was given to the vendee *a retro,* the action to compel redemption, filed *in 1949, or after 22 years,* is already barred under article 1508 of the old Civil Code, now article 1606. Three of the 8 owners of the land, who did not take part in the *pacto de retro* sale, are likewise barred from recovering the land. The vendee's possession for 22 years is sufficient to vest in him title to the land by prescription in accordance with sections 40 and 41 of the Code of Civil Procedure.[416]

Period of legal redemption under the old Code.—

Article 1524 of the old Civil Code provides that "the right of legal redemption can be exercised only within nine days, counted

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414 Tiongco v. Ibarra, G.R. No. L-7967, April 27, 1956.
415 Haw Pia v. Mapaye, G.R. No. L-8241, July 11, 1956.
416 Amar v. Pagharion, G.R. No. L-8025, May 30, 1956, 53 O.G. 1436.

from the inscription in the registry, and in the absence thereof from the time the redemptioner shall have had knowledge of the sale." Article 1524 was construed in *Manaois v. Zamora*[417] as meaning that where a redemptioner (that is an adjacent owner) entitled to exercise the right of redemption had knowledge of the conveyance prior to the registration, the 9-day period started from the date of actual knowledge and not from the date of registration. So in the *Manaois* case, where the sale of a parcel of rural land less than one hectare was executed on *April 2, 1943* and the adjacent owner knew of the sale on that date, but the sale was registered only on *July 22, 1946*, the 9-day period was counted from *April 2, 1943* and not from the date of registration.

The ruling was based on a holding of the Spanish Supreme Court that the date of registration is intended to be applied to all cases where the date of actual knowledge of the sale may be presumed from its mere registration; and not to cases where the date of prior knowledge is known; otherwise a legal presumption would be given more importance than a real fact.

As further justification for the rule, it was observed that it is desirable that purchasers of real property should not be left guessing or in suspense as to the status of their title, so as to allow or enable them to decide without delay on what to do with said property. A redemptioner with actual knowledge of the sale has more opportunity to exercise the right of redemption than a redemptioner charged with constructive knowledge of the sale merely in virtue of a registration.

It should be noted that article 1623 of the new Civil Code changed the rule in article 1524 of the old Code by providing that "the right of legal x x x redemption shall not be exercised except within thirty (30) days from the notice in writing by the vendor x x x."

LEASE

Where area of land leased was not a condition of the lease.—

Where the lease of fishponds was made by means of bidding and the lease was awarded by lot and not by area of the fishponds involved, reduction of rental is not proper if it turns out later that the areas of the fishponds are actually smaller than those given in the notice of bid. This is the ruling in *Sibug v. Municipality of Hagonoy*,[418] where it appears that after a public bidding the said munic-

[417] G.R. No. L-6251, Jan. 31, 1956, 52 O.G. 4286.
[418] G.R. No. L-7131, Feb. 29, 1956, 52 O.G. 7285.

ipality leased to Isidro Sibug two fishponds, which were described in the lease contract as Lots 3 and 6 having an area of 86 and 74 hectares, respectively. After paying the rentals for the first two years, Sibug asked for reduction of the rentals on the ground that, according to his finding, the two fishponds had only an area of 40 and 31 hectares. However, according to the evidence, the notice of bid expressly stated that the bidding was by lot and not by the hectares and that just before the bidding, the mayor made the announcement that the bidding was by lot (not by unit) and in "as is" condition. Sibug investigated the fishponds before the public bidding. He offered a higher rental for the smaller lot and a lower rental for the larger lot — a strong indication that the areas were not the principal consideration of his bids. The areas mentioned in the lease contract were stated merely for descriptive purposes and were not intended as a unit measure for computing the rentals. Sibug's allegation as to the correct areas has not been verified by the Bureau of Lands. His claim for reduction of rentals was therefore rejected.

Assignment of lease and sublease distinguished.—

The distinction between assignment of lease and sub-lease was made in the case of *Manlapat v. Salazar*.[419] According to Justice A. Reyes, in an assignment of lease, the lessee makes an absolute transfer of his interest as such lessee, thus dissociating himself from the original contract of lease, so that his personality disappears and there remains in the juridical relation only two persons, the lessor and the assignee, who is converted into a lessee; whereas, if he retains a reversionary interest, however small, the transfer is deemed a sublease. In sublease no personality disappears; there are two leases and two distinct juridical relations, although intimately connected and related to each other.[420]

The *Manlapat* case relied on the rule that a reservation by the lessee of even so short a period as the last day of the term is enough to make the transfer a sublease and that "the mere fact that the lessor is to receive a surrender of the premises on the last day of the term prevents the transfer from being an assignment." In the *Manlapat* case, it was ruled that the contract of sublease was not an assignment because it was apparent that the personality of the lessee-sublessor did not disappear and that she retained her interest in the property subleased.[421]

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[419] G.R. No. L-8221, Jan. 21, 1956, 52 O.G. 802.

[420] 10 Manresa 1950 Ed. 510. See Sy Juco v. Montemayor, 52 Phil. 73; Nava v. Yaptinchay, CA 44 O.G. 2332.

[421] See Rohde v. Manila Motor Co., Inc., G.R. No. L-7637, Dec. 29, 1956, 53 O.G. 1423.

Jeepney drivers using jeepneys under the "boundary system" are employees, not lessees.—

The case of *National Labor Union v. Dinglasan*,[422] announces the rule that the relationship between the jeepney drivers and the owner of the jeepneys under the contract known as the "boundary system" is that of employer and employee and not lessor and lessee. In the *Dinglasan* case, it appears that the petitioners were drivers who had verbal contracts with respondent for the use of the latter's jeepneys upon payment of ₱7.50 for 10 hours use. The driver did not receive salaries or wages from the jeepney owner. Their compensation was the excess of their earnings over ₱7.50 which they paid for the use of the jeepneys. The owner's supervision over the drivers consisted in inspecting the jeepneys and finding out if they were in running condition and seeing to it that the drivers did not drive the vehicles recklessly. The question was whether the drivers were employees of the jeepney owner or lessees of the jeepneys.

Held: The drivers were employees of the jeepney owner. The only features that would make their relationship one of lessor and lessee are the fact that the jeepney owner, instead of paying the drivers fixed wages, paid them as compensation the excess of the total amount of fares earned by them over the amount of ₱7.50 which they agreed to pay the jeepney owner, and the fact that the gasoline used by the jeeps is for the account of the drivers. However, these two features are not sufficient to negative the relationship of employer-employee between them because the estimated earnings for fares must be over and above the amount which the drivers agreed to pay to the jeepney owner for a ten-hour shift or ten-hour-a-day operation of the jeeps. Not having any interest in the business because they did not invest anything in the acquisition of the jeeps and did not participate in the management thereof, their services as drivers of the jeeps being their only contribution to the business, the relationship of lessor and lessee cannot be sustained. It was also ruled that "in the lease of chattels the lessor loses complete control over the chattel leased although the lessee cannot make bad use thereof, for he would be responsible for damages to the lessor should he do so." In the instant case there was supervision or a sort of control that the jeepney owner exercised over the drivers.

Lessor is not liable for repairs on the property leased if lessee assumed that obligation.—

According to article 1654 of the new Civil Code, formerly article 1554, one of the lessor's obligations is to make on the thing leased

[422] G.R. No. L-7945, March 23, 1956, 52 O.G. 1933.

during the period of the lease "all the necessary repairs in order to keep it suitable for the use to which it has been devoted, unless there is a stipulation to the contrary". This provision does not apply to a case where the lessee undertook to make all the necessary repairs. In *Sibug v. Municipality of Hagonoy*,[423] a case involving the lease by Isidro Sibug of two fishponds from the said municipality, Sibug claimed that he should be reimbursed the expenses incurred for the repairs of the dikes of the fishponds which were damaged by typhoons and the waves of Manila bay. This claim was rejected because under the contract of lease he obligated himself to make all the necessary repairs and to maintain the dikes at any and all times at his own expense during the existence of the contract in good order and condition.

Lessors' breach of lease contract entitles lessee to claim damages.—

In Philippine Air Lines, Inc. v. Prieto,[424] it appears that the National Airports Corporation gave Leopoldo Prieto an exclusive concession to operate a Snack Bar within the International Airport which was leased to the Philippine Air Lines, Inc. (PAL). Prieto complained that the National Airports Corporation violated the concession contract because it allowed the PAL to run a store inside the airport which competed with his Snack Bar. The PAL argued that the store was run by the PAL Cooperative Association, an entity distinct from the PAL.

The Supreme Court affirmed the judgment of the trial court and the Court of Appeals that the National Airports Corporation should pay ₱7,823 to Prieto as damages suffered by him and that in turn the PAL should pay the same amount to the National Airports Corporation. The PAL operated its cooperative store without the consent of the National Airports Corporation and such operation amounted to a violation of the exclusive concession contract with Prieto, because the cooperative store was engaged in the same line of business as his Snack Bar. The contention of the PAL that its personality is distinct from that of the PAL Cooperative Association was not sustained. The PAL was held liable because it authorized and abetted the establishment of the store in violation of the rules and regulations governing business activities inside the airport, which rules and regulations were binding on the PAL.

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423 G.R. No. L-7945, Feb. 29, 1956, 52 O.G. 7245.
424 G.R. No. L-6860, April 18, 1956.

Lessors' liability for damages to lessee.—

In *Bautista v. Montilla and Pascual and Pascual v. Lovina*,[425] it appears that on November 23, 1944, Nelly Montilla leased to Mariano Flores, a fishpond and granted him an option to purchase said fishpond within 18 months after six months subsequent to the cessation of hostilities between Japan and the U.S. On January 6, 1945 Flores sold and assigned his option and lease to Pilar Bautista. Montilla was not notified of the assignment which was recorded in 1946. Bautista possessed the fishpond up to April 12, 1947.

Notwithstanding the said assignment to Bautista, Flores, on December 28, 1945, mortgaged and assigned his option rights to the Manila Surety & Fidelity Company in consideration of the company's guaranty of a loan extended to Flores by the Philippine National Bank. In this assignment Flores stated that his right to purchase the fishpond would last up to September 2, 1947. On April 12, 1947 Bautista leased the fishpond for a term of two years to Wenceslao Pascual, who took possession of the fishpond and made repairs thereon. Believing that the option had expired and that Flores had not exercised it, Montilla and her husband, Primitivo Lovina, thre president of the Manila Surety & Fidelity Company, tried to take possession of the fishpond in April 1948. Pascual's man abandoned the fishpond. Pascual sued Bautista and the Lovinas for rescission of the lease.

The Supreme Court affirmed the judgment of the Court of Appeals holding that the option to purchase originally granted to Flores expired on September 2, 1947, that is, two years from September 2, 1945, when hostilities between Japan and the United States ceased; that Pilar Bautista and the Lovinas had no valid claim against each other; that Pascual could not recover damages from the Lovinas; that Pascual could recover damages from Bautista as lessor because of the latter's failure to maintain him in the peaceful possession and enjoyment of the leased premises; and that Bautista should return to Pascual the rent paid in advance to her by Pascual for reconditioning the fishpond. The Supreme Court noted that Bautista's right to the fishpond expired on September 2, 1947, when Flores' right thereto also expired.

No proof of damages.—

The lessee, who returned in good condition the leased fishpond to the lessor, is not liable for damages to the latter since no damages were proved.[426]

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[425] G.R. Nos. L-6569 and 6576, April 18, 1956.
[426] Valencia v. Tantoco, G.R. No. L-7267, Aug. 31, 1956, 52 O.G. 6567.

Forfeiture of building in favor of landowner in case lessee violates lease is valid.—

A stipulation in a contract for the lease of a parcel of land that, if the lessee fails to pay three successive monthly rentals or violates the conditions of the lease, the buildings and other improvements constructed by the lessee on the land would become the property of the lessor, was considered valid and not immoral nor unconscionable, in *Go Bun Kim v. Liongson.*[427]

In that case it appears that in 1949 Go Bun Kim leased a parcel of land from the spouses Francisco Liongson and Eulalia Ocampo for a period of 15 years at the monthly rental of ₱228. It was stipulated *inter alia* that the lessee would construct a building on the land; that he would insure said building and pay the taxes thereon; that the lessors could terminate the lease if the lessee failed to pay the monthly rentals for three successive months or violated the conditions of the lease; and that in case of failure to pay rentals or violation of the conditions of the contract, the building and other improvements would become the property of the lessors.

The lessee failed to pay the rentals for October, November and December 1950, to pay the 1951 tax on the building and to insure it. In June 1952 the lessors instituted the instant action for the termination of the lease and forfeiture of the building in their favor. Defendant lessee assailed as immoral and unconscionable the clause allowing the lessors to appropriate the building under the conditions mentioned therein. *Held*: Such clause, which is a common stipulation in leases of land, is valid.

Rent cannot be fixed in a consignation action.—

The case of *Lim Si v. Lim*[428] presents the situation whereby the parties want to enter into a contract of lease but they cannot agree on the amount of the rent. Can the prospective lessee in such a case consign in court the rent which he wants to pay but which the prospective lessor refuses to accept and ask the court to fix the amount of the rent? It was ruled in the *Lim* case that the lessee's remedy in such a situation is not consignation. If he wants to remain on the premises, although he does not want to pay the rental fixed by the lessor on the ground that it is unreasonable, then, in case an ejectment suit is brought against him, the amount of the rental may be fixed by the court.

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[427] G.R. No. L-9617, Dec. 14, 1956.
[428] G.R. No. L-8496, April 24, 1956.

But the lessee cannot consign the rental in court and then ask the court to fix the reasonable rental. The reason is that only the owner can fix the amount of the rent at the commencement of the lease. The court cannot determine the rent and compel the lessor or owner to conform thereto and allow the lessee to occupy the premises on the basis of the rents fixed by it. A lease is not a contract imposed by law, with the terms thereof also fixed by law. It is a consensual, bilateral, onerous, and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor. Without the agreement of both parties, no contract of lease can be said to have been created or established. Nobody can force another to let the latter lease his property if the owner refuses. So the owner may not be compelled by action to give his property for lease to another.

In the *Lim* case, it appears that Lim Si was allowed by Isabelo Lim to occupy two doors of an accessoria beginning July 15, 1953 but they did not fix the rental to be paid by Lim Si. The latter proposed to pay ₱600 as rental but Isabelo refused to agree, and instead, asked Lim Si to pay a rental of ₱700 a month beginning January 1, 1954. As Lim Si refused to pay ₱700 and he feared that he might be ejected, he deposited the rental at the rate of ₱600 a month first with Isabelo and later he consigned it in court. Lim Si prayed that the court should fix the monthly rental at ₱6000. *Held*: Lim Si had no cause of action against Isabelo Lim. There was no violation of Lim Si's right. It was Lim Si who violated the right of the owner because he has been occupying the premises without paying the rental fixed by the owner. Lim Si's consignation complaint was dismissed.

Right of lessee to remain in leased premises may be litigated in ejectment action.—

The rule in *Pue v. Gonzales*[429] *and Lim Si v. Lim*[430] that the right of a lessee to occupy the land leased against the lessor's will should be decided in an ejectment suit under Rule 72 of the Rules of Court was reiterated in *Teodoro v. Mirasol*[431] under a different factual situation. In the *Mirasol* case, it appears that Armando Mirasol leased a lot to Anastacio Teodoro, Jr. for a term of two years beginning October 1, 1952, renewable for another 2 years with the consent of the parties. On October 15, 1954 Mirasol terminated the lease. Teodoro sued Mirasol in the Court of First Instance and asked the court to fix a longer term for the lease. He asked for ₱10,000 as moral damages allegedly because Mirasol's wife had stated

[429] G.R. No. L-2554-56, July 21, 1950, 47 O.G. Dec. Supp. 282.
[430] G.R. No. No. L-8496, April 25, 1956, 53 O.G. 1098.
[431] G.R. No. L-8934, May 18, 1956.

that a check issued by him had been dishonored and such statement affected adversely his business. The trial court dismissed Teodoro's complaint because an ejectment suit, filed after Teodoro's complaint had been docketed, had been instituted by Mirasol against Teodoro and was pending. The Supreme Court affirmed the dismissal on the ground that the only issue between the parties was whether or not Teodoro should be allowed to continue occupying the land and that this issue was involved in the ejectment suit. Teodoro's action was filed in anticipation of the ejectment suit.

Injunction in ejectment cases.—

Article 1674 of the new Civil Code provides that in ejectment cases preliminary mandatory injunction may be issued if the higher court is satisfied that the lessee's appeal is frivolous or dilatory, or that the lessor's appeal is prima facie meritorious. Article 1674 is a new provision, complementing the rule in forcible entry cases found in article 539 of the new Code. The 10-day period fixed in article 1674 should be "counted from the date when the petitioning party is notified of the perfection of the appeal," according to *De la Cruz v. Bocar.*[432]

It was further held in the *De la Cruz* case that prior physical possession in the plaintiff in an unlawful detainer case is not indispensable when the plaintiff is a vendee.[433] It is enough that the plaintiff is the owner of the land and that defendant is in temporary occupancy thereof whether under a lease contract or on mere tolerance or under a temporary permit.

Injunction to allow lessor to enter upon the land leased.—

In *Escay v. Teodoro*[434] article 1683 of the new Civil Code, which provides that "the outgoing lessee shall allow the incoming lessee or the lessor the use of the premises and the other means necessary for the preparatory labor for the following year", was invoked to support the order of the trial court which allowed the lessor to enter upon the land leased so as to cultivate the fields. The lease in that case provided that it would be for a period of 27 years "a contar desde la zafra de 1927-1928." The lessor contended that the lease expired with the 1953-1954 crop year, and so on November 27, 1953 he filed an action praying that he be allowed to enter upon the land. The lessee contended that the lease would expire with the 1954-1955 crop year. It was held that the mandatory injunction

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[432] G.R. No. L-9814, June 30, 1956.
[433] Aguilar v. Cabrera, 74 Phil. 666.
[434] G.R. No. L-9288, April 20, 1956.

issued by the trial court allowing entry on the land was not an abuse of discretion.

Lessee under the old law has no right to be reimbursed the value of the improvements made by him on the leased property.—

Article 1573 of the old Civil Code provides that "a lessee shall have, with respect to useful and voluntary improvements, the same rights which are granted to usufructuaries." This provision is not found in the new Code, whose article 1678 provides that under certain conditions the lessee may ask for reimbursement of 1/2 of the value of the useful improvements made by him in good faith. As to cases arising under the old Code it is article 1573 that governs. Article 487 of the old Code provides that a usufructuary has no right to be indemnified for the value of the useful or recreative improvements made by him on the thing held in usufruct but he may "remove such improvements, should it be possible to do so without injury to the property." Therefore, the rules on accession and reimbursement of necessary and useful expenses, applicable to possessors in good faith, do not apply to the lessee. It should be noted, however, that under article 1671 of the New Code, "if the lessee continues enjoying the thing after the expiration of the contract, over the lessor's objection, the former shall be subject to the responsibilities of a possesor in bad faith".

Following articles 487 and 1573 of the old Code, it was held that "a tenant holding under a rental contract is not entitled to indemnification" under article 361 of the old Code, now article 448, because "the right to indemnification secured in that article 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*".[435] In other words, a tenant cannot be said to be a builder in good faith as he has no pretension to being the owner.[436]

The above rule was reiterated in *Lopez Inc. v. Philippine & Eastern Trading Co., Inc.*,[437] where the lessee erected a building on the land leased. An ejectment suit was filed against it for failure to pay rentals. The lessee was ordered ejected but the trial court

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[435] Alburo v. Villanueva, 7 Phil. 277 (1907); Tiah v. Navarro, CA 38 O.G. 1197; Montinola v. Bantug, 71 Phil. 449 (1941); Cortes v. Ramos, 46 Phil. 184 (1924); Fojas v. Velasco, 51 Phil. 520 (1928).

[436] Rivera v. Trinidad, 48 Phil. 401 (1925).

[437] G.R. No. L-8010, Jan. 31, 1956, 52 O.G. 1452.

erred in holding that the lessee could bring a separate action against the landlord for the recovery of the value of the improvements. No such action would lie, but the lessee could remove the improvements provided he causes no injury to the land. Same holding in *Feldman v. Brownell.*[437a]

Loss of leased property through fortuitous event extinguishes lease.—

Article 1568 of the old Civil Code (not retained in the new Code), provides that "if the thing leased should be lost or either of the contracting parties fails to comply with his undertaking, the provisions of article 1182 and 1183 and of articles 1101 and 1124 respectively shall be observed". Article 1182 of the old Code, now article 1262, provides that "an obligation which consists in the delivery of a determinate thing shall be extinguished if such thing should be lost or destroyed without fault on the part of the debtor and before he is in default (*mora*)" (*Res perit domino*). Conformably with these articles, it was held in *Rohde Shotwell v. Manila Motor Co., Inc.*[438] that, where a parcel of land and the buildings thereon were leased, and during the battle for liberation of Manila the buildings were totally destroyed, the lease should be regarded as extinguished. While it is true that the land still remained it cannot be denied that the building and the land constitute an indivisible unit.

It was also held in the *Rohde* case that, since the lessor and the lessee agreed during the Japanese occupation that the monthly rental should be reduced from ₱1,100 to ₱175, it would not be necessary to resolve whether there was mere trespass (*perturbacion de mero hecho*) or juridical disturbance (*perturbacion de derecho*) when a portion of the leased premises was occupied by the Imperial Japanese Army and the Central Garage of the puppet government.

Court has discretion to fix term of lease without definite period.—

Article 1687 of the new Civil Code provides that "even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year." This is a new provision added to the provisions of article 1581 of the old Code. In *Vda. de Prieto v. Santos and Gaddi,*[439] it was held that under article 1687 the lease expires at the end of each month "unless, prior thereto, the exten-

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[437a] G.R. No. L-7196, May 11, 1956.
[438] G.R. No. L-7637, Dec. 29, 1956, 53 O.G. 1423.
[439] G.R. No. L-639 and 640, Feb. 29, -956, 52 O.G. 6899.

sion of said term has been sought by appropriate action and judgment is eventually rendered therein granting said relief." It was also noted in the *Prieto* case that the leases mentioned in article 1687 are not of indefinite duration. They have a term fixed by law. Article 1687 merely gives the court discretion to extend the period of the lease. The court is not bound to extend said term. It may legally refuse to do so, if the circumstances surrounding the case warrant such action. The argument that the leases mentioned in article 1687 have an indefinite duration is preposterous because it erroneously assumes that the court, in fixing the term, would in effect *shorten* the same. But that is not what the court is supposed to do under article 1687. The court *extends* the term and does not not reduce it.

In the *Prieto* case, the lessees had constructed houses on the lands leased. Their leases were on a month-to-month basis. The terms of the leases expired on June 30, 1950, according to the notice given to them by the lessor. The trial court however gave them six months from the time the decision became final wihin which to remain as lessees. The lessor did not appeal from the judgment. But the lessees appealed. They contended that, because of the six months' extension, they coud not be ejected from the premises.

It was held that the six months' extension was merely a deferment of the execution of the ejectment order. As the case has been pending since 1950, the lessees have in effect been holding the leased premises for over five years after the term of their leases expired in 1950.

Incidentally, it should be noted that article 1678 of the new Civil Code, regarding the useful improvements made by the lessee, was applied by the trial court in the *Prieto* case.

Another case construing article 1687 is *Acasio v. Corporacion de PP. Dominicos de Filipinas*[440] which holds that article 1687 applies only to original lessees and not to sublessees and that the extension provided for therein cannot be invoked by a lessee whose lease contract was executed before the effectivity of the new Code. To apply article 1687 to sublessees might mean that even squatters or deforciants may ask for an extension of their stay in the leased premises. It was also held in the *Acasio* case that where the Court of Appeals denied the extension of the lease and no abuse of discretion was shown, its ruling will not be disturbed.

In the *Acasio* case, the lessee wanted to pay a monthly rental of ₱75, but the lessor insisted that the rental should be ₱100. The

[440] G.R. No. L-9428, Dec. 21, 1956.

Supreme Court observed that the demand for a higher rental was justified "bearing in mind the downward trend of the value of the local currency with consequent rising prices and the increase in the assessed value of the property and of the improvements which had been made thereon."

CONTRACT FOR A PIECE OF WORK

Effect of employer's acceptance of work.—

Article 1719 provides that "acceptance of the work by the employer relieves the contractor of liability for any defect in the work, unless: (1) the defect is hidden and the employer is not, by his special knowledge, expected to recognize the same; or (2) the employer expressly reserves his rights against the contractor by reason of the defect". In this connection, it was held in *George Edward Koster, Inc. v. Zulueta*[440a] that, where it was expressly agreed upon that the contractor was to be responsible only for hidden defects which may be discovered within six months after the final acceptance of the construction and the final acceptance was made on *September 8, 1949*, but the employer called the contractors attention to the hidden defects only in *August, 1950*, the objections to the defects in construction are deemed waived.

It was also held in the *Koster* case that the contractor is entitled to the payment of additional work and the owner of the building has no right to complain where the latter's architects made a certificate of final acceptance as regards the work completed; that there was occupation of the edifice by the owner without objection to the manner of the construction and without asking for the certificate of inspection required by the public authority; that the contractor had asked the owner to exempt him from inability to secure final certificate of acceptance due to changes made in the original plans and specifications; and that the owner waived whatever rights the law recognizes in his favor with respect to the newly constructed apartment.

LAW OF COMMON CARRIERS

Carrier is liable for loss due to negligence.—

Under article 361 of the Code of Commerce merchandise is transported at the risk and venture of the shipper. This rule was modified by article 1745 of the new Civil Code, which provides that a stipulation "that the goods are transported at the risk of the owner

[440a] G.R. No. L-9305, Sept. 25, 1956, 53 O.G. 1076.

or shipper" is "unreasonable, unjust and contrary to public policy." However, with respect to cases arising prior to the effectivity of the new Civil Code, article 361 applies.

Article 361 was cited in *Standard Vacuum Oil Company v. Luzon Stevedoring Co., Inc.*[441] In this case plaintiff shipper and defendant carrier in 1947 entered into a contract for the transportation of gasoline from Manila to Iloilo. The gasoline was loaded in defendant's barge, which was towed by its tugboat. During the voyage, the tugboat sank and the gasoline leaked out. It was found that the gasoline was lost due to the unseaworthiness of the tugboat towing the barge, lack of necessary spare parts on board, and deficiency or incompetence in the manpower of the tugboat. Defendant did not have in readiness any tugboat sufficient in tonnage and equipment to attend to the rescue. Under the circumstances, defendant should be held liable for the loss of the gasoline. It had the onus of proving that the loss was due to force majeure.[442] The same result would be arrived at if the case were decided under the new Civil Code, which expressly requires common carriers to exercise extraordinary diligence in the vigilance over the goods according to all the circumstances of the case and which in its article 1734 enumerates only five circumstances exempting the carrier from liability for the loss, destruction or deterioration of the goods.

The *Standard Vacuum* case is in principle similar to *Guzman v. X and Behn Meyer & Co.*[443]

Carrier's liability is primary.—

If there is a breach of the carrier's contractual obligation to carry his passengers safely to their destination (*culpa contractual*), the liability of the carrier is not merely secondary or subsidiary but is direct and immediate in accordance with the rules governing transportation contracts found in articles 1755, 1756, and 1759 of the new Civil Code and the rules applicable to contracts in general.[444]

LABOR LAW

Termination of employment, upon payment of mesada, cannot be availed of if dismissal is illegal.—

Article 1700 of the new Civil Code, which provides that "the relations between capital and labor are not merely contractual", but

[441] G.R. No. L-5203, April 18, 1956, 52 O.G. 3065.
[442] Mirasol v. Robert Dollar Co., 53 Phil. 129.
[443] 9 Phil. 112. *Cf.* Baer Senior & Co. v. Compañia Maritima, 6 Phil. 215.
[444] Medina v. Crescencia, G.R. No. L-8194, July 11, 1956, 52 O.G. 4606.

"are so impressed with public interest that labor contracts must yield to the common good", and Republic Act No. 1052, which provides that "neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance" and that "the employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of the termination of his employment," were invoked in *Yu Ki Lam v. Micaller.*[445]

In the *Micaller* case, it appears that Nena Micaller in 1953 was dismissed as a sales girl by Scoty's Department Store.

The dismissal was found to be illegal because she was dismissed on account of her union activities and the employer was therefore guilty of an unfair labor practice. Micaller was ordered reinstated with back pay. Instead of reinstating her and giving her back pay, the owners of the store on March 30, 1955 tendered to her a check for one month's salary and advised her that her employment was terminated pursuant to Republic Act No. 1052.

Held: Said law cannot be invoked by the employer for the purpose of avoiding its obligation to reinstate a dismissed employee and pay her back wages. While Republic Act No. 1052 authorizes a commercial establishment to terminate the employment of its employee by serving notice on him one month in advance, or, in the absence thereof, by paying him one month compensation from the date of the termination of his employment, such Act does not give to the employer a blanket authority to terminate the employment regardless of the cause or purpose behind such termination. It can not be made use of as a cloak to circumvent a final order of the court or as a scheme to trample upon the rights of an employee who has been the victim of an unfair labor practice. To allow the employer to take refuge under that Act and obtain by indirect action what had been enjoined by an express order of the court would be a mockery of law and a travesty of justice.[446]

When is a strike legal or illegal.—

The militant and aggressive attitude of labor unions in this country, an aspect of that upheaval whose purpose is the demand for social justice, has focussed attention on the legality of strikes. The recent case of *Interwood* (infra) discusses this question. To understand the ruling in the *Interwood* case, a brief discussion of the nature of strikes may be useful.

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[445] G.R. No. L-9565, Sept. 14, 1956, 52 O.G. 6146. See Scoty's Department Store v. Micaller, G.R. No. L-8116, Aug. 25, 1956.

[446] See *supra* note 445.

A strike is defined in section 2 of the Industrial Peace Act (Republic Act No. 875) as "any temporary stoppage of work by the concerted action of employees as a result of an industrial dispute." Section 3 of the same law recognizes the right of the laborers to strike when it provides that "employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection." A strike, as Holmes said, is a legitimate weapon in the universal struggle for existence.

Section 19 of Commonwealth Act No. 103, creating the Court of Industrial Relations, impliedly recognizes the right to strike. However, there is a prohibition against strikes in the Government found in section 11 of the Industrial Peace Act (Magna Charta of Labor).

Under section 10 of the Industrial Peace Act the Court of Industrial Relations may enjoin the declaration of a strike during the pendency of a labor dispute in industries indispensable to the national interest, which labor dispute is certified by the President of the Philippines to said court.

The nature of a strike is explained by Justice Montemayor as follows:[447]

> "Ordinarily, a strike is a coercive measure resorted to by laborers to enforce their demands. The idea behind a strike is that a company engaged in a profitable business cannot afford to have its production or activities interrupted, much less, paralyzed. Any interruption or stoppage of production spells loss, even disaster. The capital invested in machinery, factory, and other properties connected with the business would be unproductive during a strike or the stoppage of the business. On the other hand, the overhead expenses consisting of salaries of its officials, including real estate taxes and license fees continue. Knowing this, the strikers by going on strike seek to interrupt and paralyze the business and production of the company. The employer company is on the defensive. It almost invariably wants the strike stopped and the strikers back to work so as to resume and continue production. Because of this threat or danger of loss to the company, it not infrequently gives in to the demands of the strikers, just so it can maintain the continuity of its production. Or, if the strikers refuse to return to work, the employer company seeks permission from the court to employ other laborers to take their places. In such cases, pending determination of the conflict, especially where public interests so require or when the court cannot promptly decide the case, the strikers are ordered back to work."

The strict orthodox view against strikes was enunciated by Justice Moran in *National Labor Union, Inc. v. Philippine Match*

[447] Philippine Can Company v. Liberal Labor Union, G.R. No. L-3021, July 13, 1950, 47 O.G. Dec. Supp. 261.

Factory,[448] which was decided when the law did not positively rec ognize the right to strike. In that case Justice Moran said:

> "The recognition, if at all, by law of the laborers' right to strike is, at most, a negative one, and, in the last analysis nugatory. The provision of the Constitution on compulsory arbitration of industrial disputes and all the suppletory legislation enacted in pursuance thereof, rest upon the obvious policy of supplying lawful and pacific methods to laborers and employees in the vindication of their legitimate rights and the corresponding avoidance of a resort to strike. It is obvious that, while the law recognizes, in a negative way (it is now postively recognized by the Magna Charta of Labor), the laborers' right to strike, it also creates all the means by which a resort thereto may be avoided. This is so, because a strike is a remedy essentially coercive in character and general in its disturbing effects upon the social order and the public interests x x x. And to the extent that our government is one of laws and not of men, what the law, at least in spirit condemns, man must abstain from, if our orderly system is to prevail against the instrusion of mob rule. Accordingly, as the strike is an economic weapon at war with the policy of the Constitution and the law, a resort thereto by laborers shall be deemed to be a choice of remedy peculiarly their own, and outside of the statute, and, as such, the strikers must accept all the risks attendant upon their choice. If they succeed and the employer succumbs, the law will not stand in their way in the enjoyment of the lawful fruits of their victory. But if they fail, they cannot thereafter invoke the protection of the law from the consequences of their conduct, unless the right they wished vindicated is one which the law will, by all means, protect and enforce."

In the *Philippine Match Factory* case, the employees demanded the dismissal of a factory foreman allegedly for having assaulted one Dineros. Before the fiscal's office could decide the Dineros case, the employees declared a strike. The strike was held to be unreasonable and dismissal of the strikers was considered proper.

The extreme conservative view of Justice Moran should be contrasted with the liberal view of Chief Justice Paras in Central *Vegetable Oil Manufacturing Company, Inc. v. Philippine Oil Workers Union (CLO)*,[449] when he observed that *"the plea of the laborers for better conditions and for more working days cannot be said to be trivial, unreasonable and unjust, much less illegal, because it is not only the inherent right but the duty of all free meen to improve their living standards through honest work that pays a decent wage. We cannot hope to have a strong progressive nation, as long as the laboring class (which constitutes the great majority) remains under constant economic insecurity and leads a life of misery."*

In the recent case of *Interwood Employees Association v. National Hardwood & Veneer Company of the Philippines (Inter-*

448 70 Phil. 300 (1940).
449 G.R. No. L-4061, May 28, 1952.

wood),[450] emphasis was laid on the motive of the strike as the decisive factor in determining its legality or illegality. The following distinction between a legal and illegal strike was enunciated in that case:

> "The right to strike for mutual aid or protection is not absolute. It comes into being and is safeguarded by law if and when the acts or acts intended to render mutual aid or protection to affiliates o fa labor union arise from a lawful ground, reason or motive. *If the motive be lawful,* any act that would tend to give such mutual aid or protection should and must be protected and upheld. But if the motive that had impelled, prompted, moved or led members of a labor union or organization to stage a strike, even if they had acted in good faith in staging it, be unlawful, illegitimate, unjust unreasonable or trivial, and the Court of Industrial Relations finds it so, then the strike may be declared illegal."

The above ruling is not as comprehensive and broad as the doctrine announced in previous cases. In the *Interwood* cases, it appears that Enrique Marcelo, president of the Interwood Employees Association, was employed in the Interwood Company in 1948 and that he resigned in 1953. Upon his resignation his position in the company was abolished for reasons of economy. He wanted to return to his old job, but the company refused to reemploy him. So the members of the union declared a strike. The strike was illegal because it was declared for a trivial cause. Four justices dissenting held that while the strike was injudicious, those who joined the strike should not be dismissed but should be reinstated without back pay.

A more complete formulation of the rule on the legality of a strike was made in an early case where it was held that "the legality or illegality of a strike depends, *first, upon the purpose for which it is maintained, and, second, upon the means employed in carrying it on.* The fact that the combination is for a lawful purpose does not render it less unlawful where the end is to be attained by the employment of proper (improper) means, and a strike for an unlawful purpose may not be carried on by means that otherwise could be legal."[451] In other words, a strike to be legal must have a lawful purpose and should be executed through lawful means.

The *Koppel* case gives further clarification of the criteria for determining the legality of a strike. In that case it was held that, when a strike, which is an economic weapon, is resorted to for the purpose of violating an existing contract, it should be declared illegal, but if it is used to enforce compliance with an agreement, then it is legal. *The legality or illegality of a strike should be determined*

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[450] G.R. No. L-7409, May 18, 1956, 52 O.G. 3936.

[451] Rex Taxicab Co. v. Philippine Taxi Drivers' Union, 70 Phil. 621, 630 (1940).

by its objective, its purposes and the manner employed in attaining it. It is illegal if it is utilized in order to attain an illegal end, in order to encroach upon the rights of the employer, to destroy business or violate an agreement. The circumstances of each case should be considered in determining the legality or illegality of a strike.[452]

"The law does not look with favor upon strikes and lockouts because of their disturbing and pernicious effects upon the social order and the public interests. To prevent or avert them and to implement section 6, Article XIV of the Constitution, the law has created several agencies, namely: the Bureau of Labor, the Department of Labor, the Labor-Management Advisory Board, and the Court of Industrial Relations. If a strike is declared for a trivial, unjust or unreasonable purpose, or if it is carried out through unlawful means, the law will not sanction it and the court will declare it illegal, with the adverse consequences to the strikers. If the laborers resort to a strike to enforce their demands, instead of resorting 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 consequences."[453]

Thus, in the *Luzon Marine* case, a strike was condemned as illegal because it was declared while a labor dispute, initiated by the striking union, was pending in the Court of Industrial Relations, and it was engineered for the purpose of showing that the union had more than thirty members in the respondent company and thus influencing the court. The alleged threat of a company employee to dismiss the members of the union was a trivial motive for declaring the strike since said employee, as the union knew, had no right to dismiss any of the company's employees.

The legality of a strike is not dependent upon the ability of the employer to grant the demands of the workers. This observation was made by Chief Justice Paras in *Central Vegetable Oil Manufacturing Company v. Philippine Oil Industry Workers' Union,*[454] where he said:

> "The demands that gave rise to the strike may not properly be granted under the circumstances of this case, but that fact should not make said demands and the consequent strike illegal. The ability of the company to grant said demands is one thing, and the right of the laborers to make said demand is another thing. The latter should be kept invio-

[452] Koppel (Phil.) Inc. v. Koppel Employees Association, G.R. No. L-6508, April 25, 1955, 51 O.G. 2376.

[453] Luzon Marine Department Union v. Roldan, G.R. No. L-2660, May 30, 1950, 47 O.G. Dec. Supp. 146.

[454] Central Vegetable Oil Manufacturing Co. v. Phil. Oil Industry Workers' Union, G.R. No. L-4061, May 28, 1952.

late. There are adequate instrumentalities which may be resorted to in case of excesses."

The rule in the *Central Vegetable* case was followed in *Caltex (Philippines) Inc. v. Philippine Labor Organizations Caltex Chapter*,[455] where the union presented certain demands to the company, giving the latter 48 hours to decide on the demands and with the admonition that the union would declare a strike. The company failed to meet the union's demands and so a strike was declared.

Held: The strike was legal because the demands would tend to improve the conditions of the laborers and hence they cannot be considered trivial or illegal. But whether the demands could be granted or not is another question. "To make the legality or illegality of strikes dependent solely on whether the demands of laborers may or may not be granted is in effect to outlaw altogether an effective means for securing better working conditions."

If the issue of the legality or illegality of a strike is duly raised, the Court of Industrial Relations should resolve it in justice to the employer and the workers involved. Where an employer claims that the strike of some of its laborers was illegal and so it has dismissed said laborers for refusing to return to work, and raises such alleged illegality squarely in issue in a case pending before the Court of Industrial Relations, and further asserts that, because of the loss in its business, it does not presently need the services of said strikers nor of substitutes to take their places in the employer's factory, the Court of Industrial Relations, instead of ordering the strikers back to work, should first determine whether or not the strike was legal and whether or not the strikers had been properly or unlawfully discharged, and for this purpose the lower court should give priority to the hearing and determination of the case, so as to avoid commiting any possible injustice to the employer. This is especially true in a case where only a portion of the workers had gone on strike, thereby not unduly interrupting, much less, paralyzing the work and production of the company, which production by the way, does not, because of its nature, involve public interest.[456]

Illustrations of legal and illegal strikes are found in decided cases:

In *Philippine Education Co., Inc. v. Union of Philippine Education Employees (NLU)*,[457] a strike, which was declared as a pro-

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[455] G.R. No. L-4758, May 30, 1953.
[456] Phil. Can Co. v. Liberal Labor Union, G.R. No. L-3021, July 14, 1950, 47 O.G. Dec. Supp. 261.
[457] G.R. No. L-7156, May 31, 1955.

test against the dismissal by the company of 19 employees, was found to be legal. The purpose of the strike was not trivial, unreasonable or unjust. The dismissal was contrary to the order of the Court of Industrial Relations. The strikers thought that the dismissed employees were the victims of discrimination because most of them were union members. They believed that the strike was necessary to protect their interest.

A strike, which was declared by a labor union on the ground that its members were being pressed by their general foreman to affiliate with the latter's union, otherwise they were liable to be dismissed, was held to be legal. It was not declared for a trivial, unjust or unreasonable cause.[458]

Where the union declared a strike because the management did not comply with its demand that a certain worker, obnoxious to the union, be transferred to another unit within 48 hours, but after the strike had barely lasted two days, the strikers returned to duty upon the request of the management, it is erroneous to declare the said strike as illegal. The management itself invited the workers to return to duty. This amounted to a waiver of any right to consider the strikers as wrongdoers. The parties in effect had reached a compromise settlement. "To proceed with the declaration of illegality would not only breach this understanding, freely arrived at, but unnecessarily revive animosities to the prejudice of industrial peace."[459]

In the *Rex Taxicab* case, the strike declared by the taxicab drivers as a protest against the imposition of fines upon them for alleged infraction of company regulations, which strike was declared before any labor dispute was aired in the Court of Industrial Relations, was held to be justified, and the strikers were ordered reinstated.[460]

But while laborers have a right to go on a strike for just causes, they cannot avail of this right through acts of sabotage injurious to the property rights of the employer. The employer has the right to replace with other laborers the strikers who had committed sabotage.[461]

An employer cannot legally be compelled to continue the employment of a person who admittedly was guilty of misfeasance or

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458 Standard Coconut Corporation v. Court of Industrial Relations, G.R. No. L-3733, July 30, 1951.

459 Citizens Labor Union v. Standard-Vacuum Oil Co., G.R. No. L-7478, May 6, 1955.

460 See *supra* note 451, Rex Taxicab case.

461 National Labor Union, Inc. v. Court of Industrial Relations, 68 Phil. 732 (1939).

malfeasance towards his employer and whose continuance in the service of the latter is patently inimical to his interests. The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer.[462]

A strike carried out by means of coercion, force, intimidation, physical injuries, sabotage, and the use of unnecessary and obscene language or epithets by the top officials and members of the union in an attempt to prevent the other willing laborers from working is illegal. Such a strike cannot be justified in a regime of law for that would encourage abuses and terrorism and would subvert the very purposes of the law which provides for arbitration and peaceful settlement of labor disputes. "A labor philosophy based upon the theory that might is right, in disregard of law and order, is an unfortunate philosophy or regression whose sole consequences can be disorder, class hatred and intolerance."[463]

In *Union of the Philippine Education Employees (NLU) v. Philippine Education Company,*[464] certain employees of respondent company declared a strike as a protest against the dismissal of the two employees who happened to be the president and secretary of the union. The Court of Industrial Relations declared the strike to be legal, but it denied the right of the strikers to compensation during the period of the strike. The Supreme Court affirmed the decision of the Court of Industrial Relations and made the observation that "there was no urgent need for a strike and if the employees struck they did so at their risk. Until all the remedies and negotiations looking forward to the adjustment or settlement of labor disputes have been exhausted, the law does not look with favor upon resorts to radical measures, the pernicious consequences of which transcend the rights of the immediate parties."

In *Insurefco Paper Pulp & Project Workers Union v. Insular Sugar Refining Corporation,*[465] it appears that the members of the union presented certain demands to the company, but without giving the management reasonable time to consider the demands, they declared a strike. The strike was held to be illegal.

In *Almeda v. Pepsi-Cola Bottling Company, Inc.,*[466] the workers presented certain demands to the management. The demands could not be acted upon because the president of the company was abroad. The company asked the Court of Industrial Relations to enjoin the

[462] Manila Trading & Supply Co. v. Zulueta, 69 Phil. 485.
[463] Liberal Labor Union v. Phil. Can Co., G.R. No. L-4834, March 28, 1952; Greater City Masters Plumbers Association v. Kahme, 6 NYS 2nd 589.
[464] G.R. No. L-4423, March 31, 1952.
[465] G.R. No. L-7594, Sept. 8, 1954.
[466] G.R. No. L-7425, July 21, 1955.

workers from declaring a strike. A strike was declared contrary to the assurance made by the president of the union to the court that no strike would be declared. *Held:* The strike was illegal. The workers who took part in the strike were not reinstated.

In *Oriental Sawmill Co. v. National Labor Union*[467] it appears that on *May 4, 1950* the United Employees Welfare Association, a duly registered union, entered into an agreement with the petitioner, regarding working conditions. The agreement was made pursuant to a settlement concluded in a case pending in the Court of Industrial Relations. It was to last for one year. On *August 14, 1950,* 36 of the 37 members of the said United Employees Welfare Association resigned from said union and joined the National Labor Union. The next day, *August 15th,* the president of the National Labor Union addressed certain demands to the petitioner in behalf of its members who were workers of the petitioner. The petitioner replied that the workers in whose behalf the demands were made were already affiliated with the United Employees Welfare Association. On *August 22nd* the National Labor Union reiterated its demands. The petitioner replied that it could not recognize the said union unless the previous agreement with the United Employees Welfare Association was revoked. On *August 28th* the members of the National Labor Union struck. The question was whether or not the strike was legal.

Held: The strike was illegal. The transfer of the striking workers from one union to another was designed "merely to disregard and circumvent the contract" entered into between the same workers and the petitioner. "Such an act cannot be sanctioned in law or in equity as it is in derogation of the principle underlying the freedom of contract and the good faith that should exist in contractual relations."

Another instance of an illegal strike is found in *Liberal Union v. Philippine Can Company.*[468] In this case it appears that on February 26, 1949 the Liberal Labor Union and the Philippine Can Company entered into a compromise collective bargaining agreement, one of the provisions of which was that if a laborer has a complaint, the same would first be resolved by a grievance committee; then if the decision was not satisfactory, the same would be referred to the top officials of the union and the company; and if still no settlement was reached, the matter would be submitted to the Court of Industrial Relations.

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[467] G.R. No. L-4430, March 24, 1952.
[468] G.R. No. L-4834, March 28, 1952.

On March 14, 1949 the union declared a strike as a protest against the reduction of wages of seven laborers. The union later filed a petition in the Court of Industrial Relations, praying that the strike be declared legal. *Held:* The strike was illegal because the union did not adhere to the procedure agreed upon for the settlement of disputes. Even if the company did not designate its members to the grievance committee, there was no reason for the union to declare immediately a strike. It should have resorted to the Court of Industrial Relations. "The authorities are numerous which hold that strikes held in violation of the terms contained in a collective bargaining agreement are illegal, specially when they provide for conclusive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved."

In a recent case, it was held that the rule prohibiting civil service employees to strike for the purpose of securing changes or modifications in their terms and conditions of employment applies only to employees discharging *governmental functions* and not to those employees discharging the *proprietary functions* of the government including, but not limited to, the government corporations. Since the Government Service Insurance System is a government-owned or controlled corporation engaged in the business of insurance, which is of a private nature in essence and practice, its employees can declare a strike and the Court of Industrial Relations cannot be enjoined from assuming jurisdiction over a labor dispute between the GSIS and its employees.[469]

Reinstatement of strikers.—

Where during the pendency of a strike, the Court of Industrial Relations ordered the striking employees to return to their jobs and, if they failed to do so, the employer was authorized to hire new employees, and later, after trial, the Court of Industrial Relations found that the strike was illegal, but it ordered the readmission of the striking employees, it was held that the order authorizing the hiring of new employees was only provisional and did not finally determine the right of the striking employees to go back to work or of the new recruits to continue as permanent employees. The order of the Court of Industrial Relations for the reinstatement of the striking employees was affirmed.[470]

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[469] Government Service Ins. System v. Castillo, G.R. No. L-7175, April 27, 1956, 52 O.G. 4269.

[470] National City Bank of N.Y. v. National City Bank Employees' Union, G.R. No. L-6843, Jan. 31, 1956, 52 O.G. 799.

Digest of rulings on labor law.—

(1) The dismissal of an employee because of her membership in a union and her union activities is a discriminatory dismissal and constitutes on unfair labor practice. The employee thus unjustly dismissed should be reinstated with back pay. However, the Court of Industrial Relations has no power to fine the employer for such an unfair labor practice. The power to impose the penalties provided for in section 25 of Republic Act No. 875 is lodged in ordinary courts.[471]

(2) The Court of Industrial Relations can only issue injunction in cases that come under its exclusive jurisdiction and in those cases that do not, the power can be exercised by regular courts. The regular courts cannot issue an injunction *ex parte* under section 6, Rule 60 of the Rules of Court, in cases involving labor disputes. In order that the injunction may be properly issued, the law requires that there should be a hearing at which the parties should be given an opportunity to present witnesses in support of the complaint and of the opposition, if any, with the opportunity for cross-examination, and that the other conditions required as prerequisites for the granting of relief must be established and stated in the order of the court. This requirement was held to be jurisdictional such that, if not followed, it may result in the annulment of the proceedings. It appearing that such procedure was not followed in the present case, the order of the respondent court granting the writ of injunction is invalid and should be nullified.[472]

(3) Picketing cannot be enjoined by a Court of First Instance if there is already a labor dispute being litigated in the Court of Industrial Relations and if the injunction was not issued in accordance with Republic Act No. 875.[473]

(4) An injunction prohibiting the workers from picketing the employer's premises is a denial of a fundamental right granted employees, who are members of labor unions, which right may not validly be denied by the courts. What may be enjoined is the use of violence or the act of unlawful picketing, such as the com-

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471 Scoty's Department Store v. Micaller, G.R. No. L-8116, Aug. 25, 1956, 52 O.G. 5119.

472 Phil. Association of Free Labor Unions v. Tan, G.R. No. L-9115, Aug. 31, 1956, 52 O.G. 5836; Reyes v. Tan, G.R. No. 9137, Aug. 31, 1956, 52 O.G. 6187.

473 National Garments and Textiles Workers' Union-Paflu v. Caluag, G.R. No. L-9104, Sept. 10, 1956.

mission of acts of violence or intimidation against employees, not lawful picketing.[474]

(5) The Secretary of Labor can set up a wage board for the oil industry pursuant to section 4 of the Minimum Wage Law, Republic Act No. 602.[475]

(6) In *Detective and Protective Bureau, Inc. v. United Employees' Welfare Association,*[476] petitioner claimed that it was not the employer of the employees and laborers claiming additional compensation. It alleged that it was a new corporation and that the old corporation, which employed claimants, had ceased to exist by reason of insolvency. This allegation was not given credence. The Supreme Court affirmed the finding of the trial court that petitioner was the same as the old corporation.

It was also held in the *United Employees* case that work done at night is more strenuous than that performed during the daytime and therefore additional compensation for such night work was justified.[477]

(7) A claim for overtime pay, vacation leave and sick leave may be compromised.[478]

(8) Section 2 of the Eight Hour Labor Law (Commonwealth Act No. 444) provides that said law "shall apply to all persons employed in any industry or occupation, whether public or private, with the exception of farm laborers..." In *Pampanga Sugar Mills v. Pasumil Workers Union,*[479] it was held that drivers of trucks and tournahaulers and their helpers, employed in transporting cane from the field to the "switch" where they are loaded on railroad cars for transportation to the mill, are industrial workers (not agricultural laborers) and are therefore entitled to 50% for overtime work in excess of 8 hours.

It was further held in the *Pasumil* case that the ruling that the laborer cannot claim overtime pay if neither the laborer nor the employer secured the necessary authorization from the Secretary of Labor because both of them are in *pari delicto,*[480] was overruled in *Gotamco Lumber Co. v. Court of Industrial Relations,*[481]

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474 Phil. Association of Free Labor Unions (Paflu) v. Barot, G.R. No. L-9281, Sept. 28, 1956, 52 O.G. 6544. See De Leon v. National Labor Union, G.R. No. L-7536, Jan. 30, 1937.

475 Caltex (Phil.) v. Quitoriano, G.R. No. L-7158, March 21, 1956.

476 G.R. No. L-8175, Feb. 29, 1956, 52 O.G. 7288.

477 Shell Co. of the P.I. v. National Labor Union, 81 Phil. 315 (1948).

478 Mercader v. Manila Polo Club, G.R. No. L-8373, Sept. 28, 1956, 52 O.G. 7272, See Arts. 1418 and 1419, new Civil Code.

479 G.R. No. L-7668, Feb. 29, 1956, 52 O.G. 6294.

480 Pasumil Workers' Union v. CIR, 69 Phil. 370 (1940).

481 G.R. No. L-2569, Jan. 13, 1950.

which held that under Commonwealth Act No. 444 the obligation to secure such authorization devolves upon the employer, not upon the employee or laborer. The old *Pasumil* case was decided under Acts Nos. 4123 and 4242. In this connection, it should be noted that article 1418 of the new Civil Code provides that "when the law fixes, or authorizes the fixing of the maximum number of hours of labor, and a contract is entered into whereby a laborer undertakes to work longer than the maximum thus fixed, he may demand additional compensation for service rendered beyond the time limit."

(9) In order that a claim for overtime pay may be allowed, clear and satisfactory evidence must be presented to prove that overtime services were really rendered. Where the testimony on the alleged overtime rendered by men working in barges is incredible, the claim for overtime cannot be allowed.[482]

(10) In determining the back wages of workers who were unjustly dismissed and were ordered to be reinstated and who were hired on a piece-work or "pakyaw" basis, the computation should not be on the basis of the daily wage of the workers. The only fair way to fix the back wages would be to determine what these laborers would have normally earned if they had not been dismissed, using as a basis for that purpose the wages actually earned by other irregular workers doing the same kind of work who have not been dismissed. The computation of the back wages should not extend beyond the closure of the employer's business where such closure was due to legitimate business reasons and not merely to defeat the order for reinstatement. The amount earned elsewhere by the dismissed laborers after their dismissal should be deducted.[483]

(11) Under Republic Act No. 1052, effective on June 12, 1954, it was held that an employee who was hired without a definite period and was receiving compensation on a percentage basis would, upon being dismissed without a previous notice, be entitled to one month's compensation from the date of dismissal.[484] In the *Malate* case, the one month's separation pay awarded was ₱120, or equivalent to the rate under the Minimum Wage Law.

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[482] Luzon Marine Department Union v. Pineda, G.R. No. L-8681, May 2, 1956, 52 O.G. 7605.

[483] Durable Shoe Factory v. National Labor Union, G.R. No. L-7783, May 31, 1956; Macleod & Co. v. Progressive Federation of Labor, G.R. No. L-7887, May 31, 1955; Potenciano v. Estefani, G.R. No. L-7690, July 27, 1955; Garcia Palomar v. Hotel de France, 42 Phil. 660; Sotelo v. Behn, Meyer & Co., 57 Phil. 775; Aldaz v. Gay, 7 Phil 268.

[484] Malate Taxicab & Garage, Inc. v. National Labor Union, G.R. No. L-8718, May 11, 1956, 52 O.G. 3034.

(12) The execution of a final judgment of the Court of Industrial Relations, affirmed by the Supreme Court, ordering the reinstatement with back wages of laborers unjustly laid off should not be delayed on flimsy grounds.[485]

(13) Computation of sick and vacation leaves is illustrated in *Kaisahan Ng Mga Manggagawa sa Kahoy sa Filipinas v. Dee C. Chuan & Sons, Inc.*[486] Waiver of vacation leave is illustrated in *Philippine Air Lines, Inc. v. Balanguit.*[487]

(14) The principle of *res judicata* applies to the decisions of the Wage Administration Service.[488]

(15) Under Act No. 4054 if there is no written agreement between the tenant and landlord as to the sharing in the harvests, and the tenant furnishes the necessary implements and work animals and defrays all the expenses for planting and cultivation of the land, 75% of the crop will be for the tenant and 25% for the landowner. In any case, the share of the tenant cannot be less than 55% of the produce and any stipulation to the contrary is void. Thus, where the 1950-1951 rice crop of 40 cavans was divided on a 50-50 basis, and the tenant in 1952 sought a reliquidation, he was held to be entitled to 30 cavans and the landlord was ordered to return 10 cavans to him.[489]

(16) Persistent failure to pay the stipulated rental to the landlord is a just cause for dismissing the tenant under Act No. 4054, Commonwealth Act No. 461 and Republic Act No. 1199.[490]

Rulings involving the Magna Charta of Labor.—

(1) Any controversy concerning terms, tenure or conditions of employment is a labor dispute, according to section 2, Republic Act No. 875. So a case involving the propriety of a worker's dismissal is a labor dispute.[491]

(2) Under section 5(b) of Republic Act No. 875, the Court of Industrial Relations must first investigate the charges for unfair labor practice. The investigation may be conducted either by the Court itself or by a member thereof or any agent, like

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485 Philippine Movie Pictures Workers' Association, G.R. No. L-9713, July 25, 1956. See G.R. No. L-7338, Aug. 9, 1955 and G.R. No. L-5621.

486 G.R. No. L-8149, June 30, 1956.

487 G.R. No. L-8715, June 30, 1956 reiterating rule in Sun-Ripe Coconut Products v. National Labor Union, 51 O.G. 5133 (1955).

488 Brillantes v .Castro, G.R. No. L-9223, June 30, 1956.

489 Dahil v. Crispin, G.R. No. L-7103, May 16, 1956.

490 Ebreo v. Lichauco, G.R. No. L-7659, April 27, 1956.

491 Caltex (Phil.) Inc. v. Katipunan Labor Union, G.R. No. L-7496, Jan. 31, 1956.

the acting prosecutor or a commissioner. Whether or not a regular complaint is to be filed later depends upon the result of said investigation. It is when a regular complaint is filed that the Court of Industrial Relations itself holds a regular hearing at which both parties appear and present evidence and thereafter a decision is rendered.[492]

(3) For purposes of the Industrial Peace Act the term "representative" includes a legitimate labor organization or any officer or agent of such organization, whether or not employed by the employer or employees whom he represents.[493]

(4) The provisions of section 13, paragraph 1, of Republic Act No. 875, contemplate a situation not only where there had been no agreement entered into by and between employees or laborers and employer or management as to the terms and conditions of employment, but also where there had been an agreement that leaves out many or some matters on which the parties should have stipulated.[494]

(5) For purposes of the Magna Charta of Labor, acts perpetrated prior to its effectivity may be considered unfair labor practices, following the rule that retroactivity of laws that are remedial in nature is not prohibited. Moreover, taking into consideration the declared policy of Republic Act No. 875 to eliminate the causes of industrial unrest and to promote sound and stable industrial peace, there seems to be no valid reason why the law could not be applied to acts taking place before its enactment which would cause or bring about an industrial unrest.[495]

(6) The methods of concluding a collective bargaining agreement are discussed in *Bacolod-Murcia Milling Co., Inc. v. National Employees-Workers Security Union*.[496] This case is authority for the rule that an employer is not guilty of unfair labor practice in dismissing its workers who had violated its closed shop agreement with a union. A closed shop contract is one of the most prized achievements of unionism. It is an agreement whereby an employer binds himself to hire only the members of the contracting union who must continue to remain members in good standing to keep their jobs.[497]

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[492] National Union of Printing Workers v. Asia Printing or Lu Ming, 52 O.G. 5858, G.R. No. L-8750, July 30, 1956.

[493] National Labor Union v. Dinglasan, G.R. No. L-7945, March 23, 1956, 52 O.G. 1933.

[494] Buklod Ng Saulog Transit v. Casalla, G.R. No. L-8049, May 11, 1956, 52 O.G. 3027.

[495] Tolentino v. Angeles, G.R. No. L-8150, May 30, 1956, 52 O.G. 4262.

[496] G.R. No. L-9003, Dec. 21, 1956, 53 O.G. 615.

[497] National Labor Union v. Aguinaldo's Echague, Inc., 51 O.G. 2899 (1955). See Tolentino case, note 495.

Accident in the course of employment.—

An employer is not an insurer against all accidental injuries which might happen to an employee while in the course of the employment, and as a general rule an employee is not entitled to recover for personal injuries resulting from an accident that befalls him while going to or returning from his place of employment, because such an accident does not arise out of and in the course of his employment. This does not imply that an employee can never recover for injuries suffered while on his way to or from work. That depends on the nature of his employment.[498] In the *Afable* case, a collector of the Singer Sewing Machine Company for the district of San Francisco del Monte, outside of Manila, was run over by a truck while he was riding a bicycle on a Sunday afternoon at the corner of Zurbaran and O'Donnell streets, Manila. He was killed. He was supposed to reside in San Francisco del Monte, but he had moved his residence to Teodora Alonso Street, Manila without notifying his employer. At the time of his death he was returning home after making some collections in San Francisco del Monte for his employer. According to the practice of the company Sunday collections should be delivered to the company on Monday morning. *Held:* The "accident which caused the death of the employee was not due to and in consequence of his employment" because at the time the accident occurred the employee was on his way home after he had finished his work for the day and had left the territory where he was authorized to make collections.

However, when an employee is accidentally injured at a point reasonably proximate to the place of work, while the employee is going to or returning from his work, such injury is deemed to have arisen out of and in the course of his employment.[499]

In *Philippine Fiber Processing Co., Inc. v. Ampil,*[500] it appears that Angel Ariar, a mechanic of the petitioner, at about 5:15 a.m., while proceeding to his place of work and running to avoid the rain, slipped and fell into a ditch fronting the main gate of petitioner's factory. He was injured and he died the next day as a result of the injuries. His working hours started at 6 a.m. He fell on a spot which was immediately proximate to his place of work.

Held: His death is compensable. The Court cited *Salilig v. Insular Lumber Co.,*[501] where compensation was allowed for in-

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498 Afable v. Singer Sewing Machine Co., 58 Phil. 39 (1933).
499 Bountiful Brick Co. v. Giles 276 U.S. 154.
500 G.R. No. L-8130, June 30, 1956.
501 G.R. No. L-28951, Sept. 10, 1928.

jury received by a laborer from an accident in going to his place of work, along a path or way owned by his employer and commonly used by the latter's laborers. Two justices dissented from the holding in the *Ampil* case.

In another 1956 case, *Martha Lumber Mill, Inc. v. Lagradante*,[502] it appears that Felicito Lagradante was murdered on the night of March 7, 1951. He was a concession guard in a forestry concession, appointed by the Department of Agriculture and Natural Resources under Forestry Administrative Order No. 11, which order requires private licensees to have at least one concession guard. The deceased was therefore considered an employee of the lumber mill or concessionaire which paid his salary. The intervention of the Government in the appointment of the guard was designed to insure faithful performance of his duties "to patrol and cooperate with the Government in the protection of the area of the licensee employing him." The issue was whether the death of Lagradante arose out of and in the course of his employment, considering that he was murdered outside office hours.

Held: His death is compensable because it may be regarded as having arisen out of and in the course of his employment. It appears that the deceased was required to live and sleep in the quarters provided by his employer, the concessionaire, obviously by reason of the nature of his duties as a concession guard, with the result that, although he had to observe certain working hours, he nevertheless was compelled to stay in his quarters, thereby in effect making himself available, regardless of time, for the protection of the rights and interests of his employer.

Lagradante's death was held to be compensable although in the criminal case his heirs were awarded an indemnity and although it was found in that case that the motive of the killing was robbery. The Supreme Court took into consideration the fact that the employer, in a letter to the father of the deceased employee, said that the mastermind in the killing bore a grudge against the deceased in view of his having replaced the latter in his former job.

In another recent case it was held that where a driver, while driving a bus, was shot to death by a passenger, but the motive of the killing was not proved, the driver's heirs are entitled to workmen's compensation because the death may be regarded as an accident in the course of employment and it may be presumed,

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[502] G.R. No. L-7599, June 27, 1956, 52 O.G. 4230.

in the absence of contrary proof, that the accident arose out of the driver's employment. There was a strong dissent in this case.[503]

Other rulings on workmen's compensation.—

(1) The indemnity granted to the heirs in a criminal case does not affect the liability of the employer to pay compensation.[504]

(2) Violation of a rule promulgated by a commission or board is not negligence *per se* but it may be evidence of negligence.[505] "Notorious negligence" means "gross negligence," implying a conscious indifference to consequences, pursuing a course of conduct which would naturally and probably result in injury, or utter disregard of consequences.[506]

(3) In *Malate Taxicab & Garage, Inc. v. Del Villar,*[507] it appears that Irineo San Juan, a taxi driver, was killed by thugs in the course of his employment. He was survived by his mother, six sisters, a brother and a father, who was an accountant earning ₱300 a month. His mother claimed workmen's compensation on the ground that she was partially dependent upon the deceased. The evidence proves that the deceased, who was earning ₱40 a week, used to give his mother ₱20, sometimes ₱30 a week or every 10 days.

Held: The mother was a dependent of the deceased within the meaning of section 9 of Act 3428 and was entitled to claim workmen's compensation from the taxicab company, the decedent's employer. Although the decedent's father was earning ₱300 a month, he had to support a family of seven children, five of whom were minors. The only child earning was the deceased.

(4) Section 3 of the Workmen's Compensation Law (Act No. 3428, as amended by Republic Act No. 772) provides that it "shall be applicable to... the employees and laborers employed in public works and in the industrial concerns of the Government and to all other persons performing manual labor in the service of the National Government and its political subdivisions and instrumentalities." When the action affects government employees and laborers employed in any public work, such as a claim for death benefit, the party in interest is either the national government, or any

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503 Batangas Transportation Co. v. Rivera, G.R. No. L-7658, May 8, 1956.

504 Marinduque Iron Mines Agents, Inc. v. Workmen's Compensation Commission, G.R. No. L-8110, June 30, 1956; Nava v. Inchausti, 57 Phil. 751; Martha Lumber Mill, Inc. v. Lagradante, G.R. No. L-7599, June 27, 1956.

505 Marinduque case, see note 504. 65 C.J.S. 427.

506 38 AM. JUR 691.

507 G.R. No. L-7489, Feb. 29, 1956.

of its political subdivisions because the money involved is part of the public funds. When the claimant is an employee or laborer of the National Government, the service of process is to be made upon the Solicitor General, as required by section 15, Rule 7, Rules of Court.[508]

(5) Where the employer not only did not file any opposition to the claim for compensation within the prescribed period, but admittedly paid compensation by reason of the accident, the compensability of the claim could no longer be disputed.[509]

(6) Under section 19 of the Workmen's Compensation Act, the average weekly wages should be computed in such a manner that it shall be the best computation that can be made of the weekly earnings of the laborer during the 12 weeks next preceding his injury, and under section 39(g) of said Act "wages" include the commercial value of the board, lodging, subsistence, fuel and other amounts which the employee receives from the employer as part of his compensation. If the commercial value of the board and lodging, subsistence and fuel is covered in "wages," there is more reason to include overtime pay and night service premium which, at any rate, may fall under "other amounts which the employee receives from the employer as part of his compensation."[510]

(7) In determining the existence of employer-employee relationship, the following elements are generally considered; (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct. The last element is the most important.[511]

(8) In *Sagun v. Philippine Diesel Service Corporation*,[512] it appears that petitioner suffered loss of vision in one eye because, while operating a stone grinder in respondent's machine shop, a foreign body entered his right eye. He was granted compensation in the sum of ₱2,643. The question was whether he was entitled to additional compensation under section 4-A of the Workmen's Compensation Law. *Held:* He was not entitled to additional compensation because respondent did not violate any rule of the Industrial Safety and Engineering Division of the Department of Labor. Respondent provided goggles for its mechanics. Petitioner

508 Republic v. Hernando, G.R. No. L-9552, July 31, 1956.
509 Bachrach Motor Co. v. Workmen's Compensation Com., G.R. No. L-8598, May 25, 1956, 52 O.G. 3583.
510 Bachrach case, see *supra* note 509.
511 Viana v. Al-Lagadan, G.R. No. L-8967, May 31, 1956; 35 AM. JUR. 445.
512 G.R. No. L-8751, May 21, 1956.

failed to use the goggles provided for the kind of work which he was doing.

(9) A concession guard appointed by the Department of Agriculture and Natural Resources under Forestry Administrative Order No. 11 dated September 11, 1934, whose salary is paid by the private forest licensee, is an employee of the latter, especially, where it is not pretended that said licensee had another concession guard.[513]

(10) The obligation of the employer to pay workmen's compensation is unaffected by the liability of the killer in the criminal case to indemnify the heirs of the deceased employee which "is wholly distinct from the obligation imposed by the Workmen's Compensation Act and the latter is in no sense subsidiary to the former.[514]

(11) The failure of the petitioner to file a notice of appeal with the Workmen's Compensation Commission is fatal to a petition for review by the Supreme Court.[515]

In the *Martha Lumber Mill, Inc.* case,[516] the widow of the deceased employee thought that he was an employee of the Bureau of Forestry because he was appointed by virtue of Forestry Administrative Order No. 11. The widow wrote to the Secretary of Labor appealing for help in securing any gratuity or benefit for the death of her husband. This circumstance was held to be a substantial compliance with the law or an excuse for delay in the filing of the formal claim for compensation.

PARTNERSHIP

Rulings under the old law.—

(1) The case of *Macdonald v. National City Bank of New York*[517] reiterates the doctrine of *Jo Chung Chang v. Pacific Commercial Co.*,[518] that where two or more persons attempted to organize a commercial partnership, but they failed to comply with the legal formalities, the law will consider them partners or their firm as a *de facto* partnership insofar as third persons are concerned, by reason of the equitable principle of estoppel. The same rule was announced in *Behn Meyer & Co. v. Rosatzin.*[519]

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513 Martha Lumber case, see note 504.
514 Martha Lumber case, note 504.
515 Martha Lumber case, note 504.
516 Martha Lumber case, *supra* note 504.
517 G.R. No. L-7991, May 21, 1956, 53 O.G. 1783.
518 45 Phil. 142 and Hung-Man Yoc v. Kieng-Chiong Seng, 6 Phil. 498.
519 5 Phil 660.

(2) In an unregistered general commercial partnership, the general manager thereof is the only one responsible for its obligations to third parties.[520]

(3) The circumstances of the case may show that a partner in a firm acted for the firm and not for his own account.[521]

AGENCY

Agency distinguished from sale.—

In *Sycip v. National Coconut Corporation (Nacoco)*,[522] it appears that the Nacoco offered to sell copra to the British Ministry of Foods through Francisco Sycip. One issue was whether Sycip was the buyer of the copra or an agent of the Nacoco. *Held:* He was an agent because his complaint for damages against the Nacoco alleged that Sycip was "to sell" the copra and was "to receive a commission of one (1%) per cent." The communications presented in evidence also speak of Sycip as a commission agent and not the buyer of the copra. He was considered an agent.[523]

Broker must effect a meeting of the minds of seller and buyer.—

The doctrine of *Danon v. Brimo*,[524] that "the duty assumed by the broker is to bring the minds of the buyer and seller to an agreement for a sale, and the price and terms on which it is to be made, and until that is done his right to commissions does not accrue," was reiterated in *Reyes v. Mosqueda* [525] under these facts: On February 16, 1949 Guardalino Mosqueda authorized Vicenta Reyes to sell his land. Reyes that same day contacted Jose Lim and offered to him Mosqueda's land at ₱7.50 a square meter. Lim thought the price was too high and, when Reyes transmitted to Mosqueda Lim's reaction, Mosqueda reduced the price to ₱7.30 a square meter. Lim still considered the price high. He told Reyes to desist from negotiating for Mosqueda as he preferred to deal directly with the latter. Reyes disclosed to Mosqueda that the buyer was Lim on that same day February 16th. On learning this fact, Mosqueda revoked the authority to sell which he had given to Reyes. He sold his land directly to Lim for less than

520 Insular Lumber Sawmill, Inc. v. Hogan, G.R. No. L-8761, July 31, 1956, 52 O.G. 5493.

521 Atlas Trade Development Corp. v. Limgenco Co., Ltd., G.R. No. L-7407, June 30, 1956.

522 G.R. No. L-6618, April 28, 1956.

523 See Velasco v. Universal Trading Co., Inc., 45 O.G. 4505; Quiroga v. Parsons Hardware Co., 38 Phil. 501; Puyat v. Arco Amusement Co., 72 Phil 402.

524 42 Phil. 133.

525 G.R. No. L-8669, May 25, 1956.

₱7 a square meter. Reyes sued Mosqueda for the recovery of her 5% commission.

Held: Since the actual sale was consummated without the intervention of Reyes, she was not entitled to any commission. Her authority to sell was revoked when there was still no perfected sale between Lim and Mosqueda.

Jus retentionis of agent.—

Article 1914 of the new Civil Code, formerly article 1730, which provides that "the agent may retain in pledge the things which are the object of the agency until the principal effects the reimbursement" for advances and pays the indemnity for damages suffered by the agent in the execution of the agency, was cited in a theft case, *Guzman v. Court of Appeals*,[526] where it was held that "an agent, unlike a servant or messenger, has both the physical and juridical possession of the goods received in agency, or the proceeds thereof, which takes the place of the goods after their sale by the agent. His duty to turn over the proceeds of the agency depends upon his discharge, as well as the result of the accounting between him and the principal; and he may set up his right of possession as against that of the principal until the agency is terminated." An agent can even assert, as against his own principal, an independent, autonomous right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for damages suffered without his fault.

The above dictum in the *Guzman* case is consistent with the holding that no estafa is committed by an agent who has in good faith retained the property committed to his care for the purpose of necessary self-protection against his principal in civil controversies arising between the two with reference to the same or related matters,[527] and with the rule that "no estafa is committed by an insurance agent who does not return the balance which the company believes him to be owing it, if he proves that the company does not credit him with moneys to which he is entitled."[528]

Illustration of agency coupled with an interest.—

In *De la Rama Steamship Co., Inc. v. Tan*,[529] it appears that De la Rama Steamship Co., Inc. had an option to buy three vessels

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[526] G.R. No. L-8572, July 3, 1956, 52 O.G. 5160.
[527] U.S. v. Berbari, 42 Phil. 152 (1921).
[528] U.S. v. Bleibel, 34 Phil. 227, 231 (1916); U.S. v. Santiago, 27 Phil. 408 (1914); People v. Aquino , 52 Phil. 37 (1928).
[529] G.R. No. L-8784, May 21, 1956.

in Japan. This option was transferred to the National Development Company (NDC). De la Rama Steamship Co. furnished technical advice to the NDC in the construction and outfitting of the vessels. In view of the services of the De la Rama Steamship Co., it was entrusted by the NDC with the operation and management of the vessels. The agency was coupled with an interest. However, it was stipulated in the management contract that "the NDC, after two years' operation, may cancel, upon one year's notice, the general agency granted De La Rama, if operations thereunder are not profitable and/or satisfactory in the opinion of the NDC."

In other words, the agency could not be terminated during the first two years, De la Rama's right thereto being absolute and irrevocable. After two years, however, the NDC may cancel the agency if in its opinion the operations are not profitable or satisfactory. After the two-year period, therefore, the agency ceased to be one coupled with an interest. It could be revoked by the NDC, as authorized by article 1920 of the new Civil Code, which provides that "the principal may revoke the agency at will."[530]

COMPROMISES

Final order upholding compromise is res judicata.—

In connection with the rule in article 2037 of the new Civil Code that "a compromise has upon the parties the effect and authority of *res judicata*," it was held in *Lim de Planas v. Castelo*,[531] that where the trial court approved a compromise agreement and later plaintiff moved that said agreement be set aside but the motion was denied and no appeal was made from the order of denial, plaintiff cannot bring another action for the reformation of the compromise agreement. The order of denial, which became final because plaintiff did not appeal, "constitutes a positive bar against the institution" of the second action for reformation.[532]

Agreement on a procedural matter.—

The agreement between the parties and their counsel that the judgment in a partition case should be rendered in accordance with the surveyor's report is not a "compromise" but only an agreement on a procedural matter which cleared the way for the simplification

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530 De la Rama case, see *supra* note 529.
531 G.R. L-9709, Nov. 28, 1956.
532 See Yboleon v. Sison, 59 Phil. 290; Marquez v. Marquez, 73 Phil. 74 (1941); De Jesus v. Go Quiolay, 65 Phil. 476 (1938).

of the issues. It did not settle the case nor put an end to the partition case.[533]

GUARANTY

Guaranty is not terminated upon guarantor's death.—

There is no provision in the new Civil Code that guaranty is extinguished upon the death of the guarantor or surety. The provisions in article 2056, that a guarantor must possess integrity, does not imply that upon the death of a guarantor or surety his obligation is extinguished. The qualifications of a guarantor, namely, integrity, capacity to bind himself and sufficient property to answer for the obligation guaranteed, are required only at the time of the perfection of the contract of guaranty. Once the contract is perfected and binding, supervening incapacity of the guarantor would not operate to exonerate him of the eventual liability which he has contracted; and if that be true of his capacity to bind himself, it should also be true of his integrity, which is a quality mentioned in article 2056 alongside with capacity.

This interpretation is confirmed by article 2057 which provides that "if the guarantor should be convicted in first instance of a crime involving dishonesty or should become insolvent, the creditor may demand another who has all the qualifications required in the preceding article (2056)." Article 2057 implies that supervening dishonesty of the guarantor does not terminate the guaranty but merely entitles the creditor to demand another guarantor. Such a step is optional with the creditor: it is his right, not his duty; he may waive it if he chooses and hold the guarantor to his bargain. Hence, under article 2057, it cannot be argued that the requirement of integrity in the guarantor or surety makes his undertaking strictly personal, so linked to his individuality that the guaranty automatically terminates upon his death. Death does not terminate the guarantor's obligation. His estate remains liable for his obligation.[534]

Surety is primarily liable for the debt secured.—

Article 2047 of the new Civil Code, which provides that "if a person binds himself solidarily with the principal debtor," the provisions on solidary obligations will apply and "in such case the contract is called a suretyship" was applied in *Philippine National Bank v. Macapanga Producers, Inc.*,[535] where it appears that the Ma-

[533] Maglalang v. Santiago, G.R. No. L-8946, Aug. 31, 1956.
[534] Estate of Hemady v. Luzon Surety Co., Inc., G.R. No. L-8437, Nov. 28, 1956, 53 O.G. 1783.
[535] G.R. No. L-8349, May 23, 1956, 52 O.G. 7597.

capanga Producers, Inc. leased the sugar mill of the Luzon Sugar Company for an annual royalty of ₱50,000. The Plaridel Surety and Insurance Co., as surety, executed a bond to insure payment of the royalty by the Macapanga Producers, Inc. The Luzon Sugar Company assigned the royalty for 1952 to the Philippine National Bank. The Macapanga Producers and the surety company were notified of the assignment. In view of the failure of the Macapanga Producers to pay the royalty to the bank, the latter filed a suit for its recovery against the Macapanga Producers and the surety company. The trial court dismissed the case against the surety company. The bank appealed.

Held: The dismissal was erroneous because under the law the surety was solidarily liable for the payment of the royalty.[536] It was further held that the assignment of the royalty did not extinguish the surety's liability because said assignment, without the knowledge or consent of the surety, was "not a material alteration of the contract, sufficient to discharge the surety. The assignment did not render more onerous the surety's obligation."[537]

Defense that defendant is a guarantor should be raised in lower court.—

In one case it was held that the defense that defendant, as a mere guarantor, is only secondarily liable, could not be entertained on appeal because it was not raised in the lower court. Defendant in that case was held primarily liable for the obligation, which he had assumed in this form: "Identification of signature and payment guaranteed." In this connection, article 2060 of the new Civil Code provides that "in order that the guarantor may make use of the benefit of excussion, he must set it up against the creditor upon the latter's demand for payment from him x x x."[538]

Extension to the debtor granted without consent of guarantor releases the latter.—

Article 2079 of the new Civil Code provides that "an extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty." This provision was applied, in *Valencia v. Leoncio*,[539] to a secret agreement between the creditor and the debtor granting the latter an extension without the guarantor's

536 Molina v. De la Riva, 7 Phil. 345; Chinese Chamber of Commerce v. Pua Te Ching, 16 Phil. 406; Ferrer v. Lopez, 56 Phil. 592.

537 Bank of the P.I. v. Albaladejo y Cia., 53 Phil. 141; Bank of the P.I. v. Gooch, 45 Phil 514; Visayan Distributors, Inc. v. Flores, 48 O.G. 4784; Del Rosario v. Nava, 50 O.G. 4189.

538 Philippine National Bank v. Olila, G.R. No. L-8189, March 23, 1956.

539 G.R. No. L-7834, July 31, 1956, 52 O.G. 4676.

consent. In the *Valencia* case, it appears that the spouses Severino Valencia and Catalina Valencia guaranteed the payment to Roman Leoncio of the sum of ₱1,800 which was adjudged by the Manila municipal court against Antonio Maglalang. Upon Maglalang's failure to pay the judgment execution was levied on the properties of the Valencia spouses. Said spouses asked the court to relieve them from their obligation as guarantors on the ground that Leoncio had secretly extended the payment of Maglalang's obligation. The municipal court found that there was such a secret extension and it released the guarantors from their obligation. Leoncio did not appeal from the order releasing the guarantors. But later he filed certiorari proceedings attacking said order. *Held*: Leoncio's failure to appeal from said order implied that the municipal court's finding as to the extension was true. The court had jurisdiction to release the guarantors from their obligation. The guaranty was extinguished by reason of the extension.

No benefit of excussion in obligations secured by a mortgage.—

The right of guarantors under article 2058 of the new Civil Code to demand exhaustion of the property of the principal debtor does not exist when a pledge or mortgage has been given as a special security for the payment of the principal obligation. Guaranties without such pledge or mortgage are governed by the provisions of the Code on guaranty found in Title XV, Book IV, whereas pledges and mortgages are governed by Title XVI, Book IV of the Code. A mortgagor is not entitled to the exhaustion of the property of the principal debtor, as held in *Saavedra v. Price*.[540] But an ordinary guarantor (not a mortgagor or pledgee), against whom a judgment was secured by the creditor, may ask for deferment of the execution of such judgment until after the properties of the principal debtor shall have been exhausted to satisfy the principal obligation.

The foregoing rules were laid down in *Southern Motors, Inc. v. Barbosa*.[541] In that case Eliseo Barbosa executed in favor of plaintiff a mortgage as a security for the payment of the amount due to plaintiff from Alfredo Brillantes. Plaintiff sued Barbosa for the foreclosure of the mortgage. Barbosa claimed the benefit of excussion because he was only a guarantor. *Held*: He could not demand exhaustion of the properties of Brillantes because he was a mortgagor, not an ordinary guarantor.

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[540] 68 Phil. 688.
[541] G.R. No. L-9306, May 26, 1956, 53 O.G. 137.

MORTGAGE

Mortgage executed by third person.—

In connection with the provision of article 2085 of the new Civil Code, that "third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property", it was held in *Butte v. Ramirez*[542] that where the creditor sued the principal debtor for the recovery of a debt secured by a chattel mortgage on shares of stock executed by a deceased person, who was the debtor's father, and the debtor confessed judgment and paid the debt, the debtor cannot demand the return of the shares mortgaged because he was not the mortgagor. The legal representative of the mortgagor was not a party to the action. The action was not foreclosure of mortgage. And, moreover, the creditor claimed that the mortgaged shares were sold to her by the mortgagor. A separate action should be filed for the recovery of the shares.

Unrecorded mortgage of unregistered land is valid between the parties.—

The case of *Guintu v. Ortiz*[543] reaffirms the rule that a mortgage on land not registered under the Torrens System nor under the Spanish Mortgage Law is valid, as between the parties, under section 194 of the Revised Administrative Code, as amended by Act No. 3344, even if such mortgage is not registered in the special registry contemplated in said section 194.[544] It should be noted that the mortgage involved in the *Guintu* case was executed on September 20, 1950, or after the new Civil Code became effective, and therefor, the court, instead of relying on the *Mota* case, should have applied article 2125 of the new Civil Code, which provides that an unrecorded deed of mortgage "is nevertheless binding between the parties."

Pacto comisorio is void.—

Articles 2087, 2088 and 2137 of the new Civil Code, formerly articles 1858, 1859 and 1884, prohibit the creditor in pledge, mortgage or antichresis from appropriating the thing given as security. A stipulation allowing such appropriation is known as *pacto comisorio* and it is void. Such a stipulation assumes varying forms, but whatever may be the tenor of the stipulation, if in essence it permits the creditor to appropriate the thing given as security, it is an invalid *pactum commissorium.* Thus in *Lopez Reyes v. Nebrija,*[545] a

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542 G.R. No. L-6604, Jan. 31, 1956.
543 G.R. No. L-9332, Nov. 28, 1956.
544 Estate of Mota v. Concepcion, 56 Phil. 712 (1932).
545 G.R. No. L-8720, March 21, 1956, 52 O.G. 1928.

stipulation in a mortgage deed that upon failure to redeem the mortgage the transaction would automatically become one of sale "without further action in court" was regarded as a void *pacto comisorio.* Reliance was placed upon the case of *Tan Chun Tic. v. West Coast Life Insurance Co. and Locsin*[546] and *Guerrero v. Yñigo.*[547]

In the *Tan Chun Tic* case the stipulation was that upon the mortgagor's default the mortgagee may take over the mortgaged lands and dispose of them, the ownership thereof being transferred to him. This was considered void. In the *Guerrero* case it was held that a stipulation providing that upon failure of the mortgagor to exercise his right to redeem, title to the land "shall pass to and become vested, absolutely, in the party of the second part" would be void if the intention was to grant the mortgagee the right to own the property upon failure of the mortgagor to pay the loan.

The *Reyes* case was distinguished from *Dalay v. Aquiatin and Maximo*[548] and *Kasilag v. Rodriguez.*[549] In the *Dalay* case, it was stipulated that if the debtor could not pay the debt on the date agreed upon, "the same shall be paid with the lands as security." Such a stipulation was regarded as valid because it "does not authorize the creditor to appropriate the property" mortgaged, nor to dispose thereof, and "*constitutes only a promise to assign said property in payment of the obligation if, upon its maturity, it is not paid.*" In the *Kasilag* case, the agreement was that if the mortgagor would fail to redeem the mortgage "she would execute a deed of absolute sale of the property" in favor of the mortgagee. Such a covenant was considered valid because it did not give automatic ownership of the property to the creditor but rather was a mere promise to assign it to him in case of the mortgagor's default.

It can be implied from the *Reyes* case that the distinction between the rulings in the *Tan Chun Tic* and *Dalay* cases lies in the tenor of the stipulation. *If the stipulation between the mortgagor and the mortgagee is that upon the mortgagor's default the mortgagee would automatically become the owner of the mortgaged property, then such a stipulation is a void pacto comisorio.* On the other hand, *if the stipulation between them is that upon the mortgagor's default, the mortgagor will convey the mortgaged property to the mortgagee as payment of the debt, the stipulation is valid.* "What the law forbids is the appropriation or disposition of the mortgaged property by the mortgagee; x x x if the debtor may legally sell

546 54 Phil. 361.
547 G.R. No. L-5572, Oct. 31, 1954.
548 47 Phil. 951.
549 69 Phil. 217.

to his creditor the mortgaged property for such price and subject to such conditions as he may deem fit, which has never been doubted, there is no reason whatsoever why he shoud not be able in like manner to make a promise to sell."[550]

In this connection, it should be recalled that a contract of loan and a promise to sell a house and lot for the price equivalent to the amount of the loan, if not paid within a certain time, was considered valid in *Alcantara v. Alinea*.[550a] "The agreement to convey the house and lot at an appraised valuation in the event of failure to pay the debt in money at its maturity is perfectly valid. It is simply an undertaking that if the debt is not paid in money, it will be paid in another way. x x x The agreement is not open to the objection that the stipulation is a *pacto comisorio*. It is not an attempt to permit the creditor to declare a forfeiture of the security upon failure of the debtor to pay the debt at maturity. It is simply provided that if the debt is not paid in money it shall be paid in another specific way by the transfer of property at a valuation."[551] The conveyance of the house is dation in payment under article 1245 of the new Civil Code.

Extrajudicial foreclosure of mortgage.—

The case of *Tan Chat v. Hodges*[552] adopts the rule that "no particular formality is required in the creation of the power of sale" and that "any words are sufficient to evince an intention that the sale may be made upon default or other contingency."[553] In the *Tan Chat* case it was held that a stipulation in a mortgage deed that "the mortgagee, in selling the property at public auction, shall follow the procedure provided for in Act No. 3135" and that such a stipulation does not deprive "the mortgagee of his right to institute the corresponding judicial proceedings to foreclose the mortgage," indicates that the parties intended an extrajudicial as well as judicial foreclosure.

Affidavit by one partner.—

The affidavit of good faith, which was attached to a chattel mortgage, is valid if it is executed by the managing partner of a *de facto* partnership.[554]

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550 12 Manresa, CODIGO CIVIL 5th Ed. 465.
550a 8 Phil. 111.
551 Agoncillo and Mariño v. Javier, 38 Phil. 424, 428.
552 G.R. No. L-2819, April 28, 1956.
553 41 C.J.S. 926.
554 Macdonald v. National City Bank of N.Y., G.R. No. L-7991, May 21, 1956, 53 O.G. 1783

Fruits as equivalent to the interest.—

In *Garcia v. Vda. de Arjona,*[555] the Supreme Court found that the contract between the parties was "an equitable mortgage or antichresis".[556] The debtor claimed that he had paid excess interest because the fruits received by the mortgagee in possession exceeded the interest of the loan. However, the debtor's evidence on the fruits of the land was ambiguous and uncertain. His claim therefore for the refund of excess interest was denied. In this connection, it should be noted that article 2138 of the new Civil Code provides that in antichresis "the contracting parties may stipulate that the interest upon the debt be compensated with the fruits of the property which is the object of the antichresis, provided that if the value of the fruits should exceed the amount of interest allowed by the laws against usury, the excess shall be applied to the principal."

QUASI-DELICTS

Electric company is not liable for damages to heirs of electrocuted person if the decedent's negligence was the proximate cause of his death.—

In *Manila Electric Company v. Remoquillo*[557] the following rule on proximate cause was applied:

> "A prior and remote cause cannot be made the basis of an action if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated, and efficient cause of the injury, even though such injury would not have happened but for such condition or occasion. If no danger existed in the condition except because of the independent cause, such condition was not the proximate cause. And if an independent negligent act or defective condition sets into operation the circumstances which result in injury because of the prior defective condition, such subsequent act or condition is the proximate cause."[558]

In the *Remoquillo* case it appears that Efren Magno was trying to repair the "media agua" of a 3-story house. The "media agua" was just below the window of the third story. While standing on the "media agua," Magno received from his son, through the window, a galvanized iron sheet with which he intended to cover the leaking portion. As he turned around, the GI sheet came to contact with the electric wire of the Manila Electric Company, which was strung parallel to the edge of the "media agua" 2-1/2 feet from it. The contact caused Magno's death by electrocution. The "media agua" was ille-

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555 G.R. No. L-8991, May 24, 1956.
556 G.R. No. L-7279, Oct. 29, 1955.
557 G.R. No. L-8328, May 18, 1956, 53 O.G. 1429.
558 45 C.J.S. 931.

gally constructed because the owner exceeded the limits fixed in the building permit. The "media agua" was supposed to be one meter wide only. Actually it was 1 meter and 17-3/8 inches wide. For this reason, the "media agua" was in close proximity to the electric wire.

The Supreme Court, reversing the decisions of the Court of Appeals and the trial court, found that the negligence of the deceased was the proximate cause of his death. His reckless negligence consisted in turning around and swinging the GI sheet without taking any precaution, such as looking back toward the street and at the wire to avoid contact, considering that the GI sheet was 6 feet long. The case was distinguished from *Astudillo v. Manila Electric Company.*[559] The Supreme Court cited with approval the ruling in *Taylor v. Manila Electric Company.*[560]

Effect of Art. 2177 on Art. 103 of Revised Penal Code.—

The new Civil Code did not repeal articles 102 and 103 of the Revised Penal Code, regarding the employer's subsidiary civil liability for the criminal acts of the employee. Article 2177 of the new Civil Code expressly recognizes civil liability arising from negligence under the Penal Code. However, it provides that plaintiff cannot recover damages twice for the same act or omission of the defendant.[561]

When diligence in the selection of employees is a defense.—

Article 2180 of the new Civil Code, formerly article 1903, makes certain persons, such as parents, guardians, owners and managers of enterprises, employers, and the State, liable for the acts of others. Such persons can avoid liability by proving "that they observed all the diligence of a good father of a family to prevent the damage." This provision implies that said persons are presumed negligent if their servants or the persons for whose acts they are responsible cause any damage to others. The presumption is *juris tantum,* not *jure et de jure.*

The liability of the persons enumerated in article 2180 is not based on *respondeat superior* but on the relationship of *paterfamilias.* Article 2180 bases the master's liability for his servant's acts on the master's negligence and not on that of his servant. This is the nota-

559 55 Phil. 227.
560 16 Phil. 8.
561 Manalo v. Robles Transportation Co., Inc., G.R. No. L-8171, Aug. 16, 1956, 52 O.G. 5797.

ble peculiarity of the Spanish law of negligence. It is, of course, in striking contrast to the American doctrine that, in relations with strangers, the negligence of the servant is conclusively the master's negligence.[562]

The primary and direct responsibility of employers and their presumed negligence are principles calculated to protect society. Workmen and employees should be carefully chosen and supervised in order to avoid injury to the public. It is the masters or employers who primarily reap the profits resulting from the services of these servants and employees. It is but right that they should guarantee the latter's careful conduct for the personal and patrimonial safety of others. As Theilhard says, "they should reproach themselves, at least, some for their weakness, others for their poor selection and all for their negligence." And as Manresa says, it is much more equitable and just that such responsibility should fall upon the principal or director who could have chosen a careful and prudent employee, and not upon the injured persons who could not exercise such selection and who used such employee because of their confidence in the principal or director.[563] The liability created by article 2180 is imposed by reason of the breach of the duties inherent in the special relations of authority or superiority existing between the person called upon to repair the damage and the one who, by his act or omission, was the cause of it.[564]

The recent case of *Campo v. Camarote*,[565] sheds some light on the procedure for rebutting the presumption that the employer was negligent in the selection of his employee or servant.

Under article 2180 of the new Civil Code, "employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry." This is a new provision. Under article 1903 of the old Code, it was held that the owner of a vehicle is not liable if at the time of the accident causing injury to a third person he was not in the vehicle. He is not among the persons mentioned in article 1903.[566]

Under the new Civil Code, however, the owner of a vehicle is included among the persons called upon to answer for the acts of the

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562 Bahia v. Litonjua and Leynes, 30 Phil. 624; Yamada v. Manila Railroad Co., 33 Phil. 8, 25; Cangco v. Manila Railroad Co., 38 Phil. 768; Cuison v. Norton & Harrison Co., 55 Phil. 18.

563 Barredo v. Garcia, 73 Phil. 607.

564 Cangco case, *supra* note 562.

565 G.R. No. L-9147, Nov. 29, 1956.

566 Johnson v. David, 5 Phil. 663; Chapman v. Underwood, 27 Phil. 374; Marquez v. Castillo, 40 O.G. 204.

employees who cause damage to third persons in the course of their employment. By reason of this new provision, the owner of a jeep driven by another becomes responsible for the driver's negligence under the conditions mentioned in article 2180. To be exempt from liability the jeep owner must prove that he exercised the diligence of a good father of a family to prevent the damage. If the owner was not in the jeep at the time of the accident, the only manner in which he could have avoided damage to third persons would have been by the exercise of the diligence of a good father of a family in the choice or selection of the driver. In the *Campo* case, it appears that owner of a jeep and his driver, who had committed homicide through reckless imprudence, were sued by the heirs of the victim for the recovery of damages. The owner set forth the plea that he was not liable because he had exercised due diligence in the selection of the driver. He said that the driver was a professional driver.

Held: In order that the jeep owner could prove that he exercised the diligence of a *bonus paterfamilias* in the selection of his driver, he should show that he carefully chose the applicant for employment as to his qualifications, his experience and record of service. If he did not do so, he could not claim that he exercised the said degree of diligence. "The reason for the law is obvious. It is indeed difficult for any person injured by the carelessness of a driver to prove the negligence or lack of due diligence of the owner of the vehicle in the choice of the driver. Were we to require the injured party to prove the owner's lack of diligence, the right will in many cases prove illusory, as seldom does a person in the community, especially in the cities, have the opportunity to observe the conduct of all possible car owners therein. So the law imposes the burden of proof of innocence on the vehicle owner. If the driver is negligent and causes damage, the law presumes that the owner was negligent and imposes upon him the burden of proving the contrary."

The foregoing holding is consistent with Manresa's opinion, that "a master who takes all possible precaution in selecting his servants or employees, bearing in mind the qualifications necessary for the performance of the duties entrusted to them, and instructs them with equal care, complies with his duty to all third parties to whom he is not bound under contract, and incurs no liability if, by person of the negligence of such servants, though it be during the performance of their duties as such, third parties should suffer damages."[567]

While in the *Campo* case it was held that the mere fact that the driver selected was a professional driver would not be sufficient to constitute *diligentissimi patrisfamilias* in the selection of such driver, it

[567]Walter Smith v. Cadwallader Gibson Lumber Co., 55 Phil. 517 (1930).

was held, on the other hand, in *Walter A. Smith & Co. v. Cadwallader Gibson Lumber Co.*,[568] that where the owner of a steamship employed a duly licensed captain and officers to man the vessel and all the members of the crew had been chosen for their reputed skill in directing and navigating the vessel, the presumption of negligence of the employer "has been overcome by the exercise of the care and diligence of a good father of a family" in the selection of the captain and other members of the crew.

As held in another old case,[569] if the master or employer shows "that in selection and supervision he exercised the care and diligence of a good father of a family", the presumption of negligence is overthrown. "Supervision includes, in proper cases, the making and promulgation by the employer of suitable rules and regulations and the issuance of suitable instructions for the information and guidance of his employees, designed for the protection of persons with whom the employer has relations through his employees."

Thus in the *Bahia* case, the employer who hired a car and used it in the transportation business, was held not liable for the death of a child, who was struck by the car due to a defect in the steering gear, because he proved that he exercised the diligence of a *bonus paterfamilias* in selecting the car and hiring the mechanic and driver of the car.

But the defense of exercise of *diligentissimi patrisfamilias* to prevent the damage or in the selection of employees is not available (a) in cases of *culpa contractual* and (b) in the action against the employer to enforce his subsidiary liability under article 103 of the Revised Penal Code.[570]

Not a defense in maritime collision.—

The defense of *diligentissimi patrisfamilias* is not also available in maritime collisions. It applies only to torts under the Civil Code. Maritime collisions are governed by the Code of Commerce. This is the holding in the recent case of *Manila Steamship Co., Inc. v. Abdulhaman.*[571] In that case the vessel of the Manila Steamship Co., Inc. and that of Lim Hong To collided due to the fault of their commanding officers. Some passengers of the latter vessel died in consequence of the collision. The Manila Steamship Co., Inc. pleaded that it was exempt from liability because it had exercised the dili-

[568] Phil. 517 (1930).
[569] Bahia v. Litonjua, 30 Phil. 624 (1915).
[570] Cangco v. Manila Railroad Co., 38 Phil. 768; City of Manila v. Manila Electric Co., 52 Phil. 565; Arambulo v. Manila Electric Co., 55 Phil. 75.
[571] G.R. No. L-9534, Sept. 29, 1956, 52 O.G. 7587.

gence of a good father of a family in the selection of its employees, which is another way of stating that it exercised due diligence to prevent the damage. *Held:* The shipowner is directly and primarily responsible for the tort resulting from a maritime collision, and it may not escape liability on the ground that it exercised due diligence in the selection and supervision of the vesssel's officers and crew.

DAMAGES

Workmen's compensation cases.—

In connection with the provision of article 2196 of the new Civil Code, that "compensation for workmen and other employees in case of death, injury or illness is regulated by special laws," it was ruled in *Manalo v. Foster Wheeler Corporation & Capital Insurance and Surety Co., Inc.*,[572] that "where claims for compensation have already been filed with the Workmen's Compensation Commission no further claims for the same injury may be filed under either the new Civil Code or other laws." The ruling was based on (a) section 46 of Act No. 3428, as amended by Republic Act No. 772, vesting exclusive jurisdiction in the Workmen's Compensation Commission to hear and decide claims for compensation under the Workmen's Compensation Act and (b) on section 5 of Act No. 3428, which provides that 'the rights and remedies granted by said Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representative, dependents or nearest of kins against the employer under the Civil Code and other laws, because of said injury."[573] In the *Manalo* case the separate action for damages filed in the Court of First Instance was dismissed for lack of jurisdiction.

Heir of victim should bring action for damages.—

Where a person died after having been run over by a bus, which was recklessly operated by its driver, and the deceased was survived by a minor child, it is the child through his guardian who should bring the action for damages. The brothers and sisters of the deceased have no cause of action for damages because they are not the nearest legal heirs of the deceased.[574]

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[572] G.R. No. L-8379, April 24, 1956, 52 O.G. 2514.

[573] See Castro v. Sagales, 50 O.G. 95 (1953); Abueg v. San Diego, 77 Phil. 730 (1946).

[574] Gonzales v. Alegarbes, G.R. No. L-7821, May 25, 1956.

Daño emergente and lucro cessante.—

Damages under article 1106 of the old Civil Code, now article 2200, include (a) the actual losses (*daño emergente*) which may consist of the rentals of the residential lot in litigation and the share of the owner in the produce of the land (if the disputed land is agricultural) during the period that the defendant possessed the land, and (b) the profits which the owner failed to realize (*lucro cessante*).[575]

In the *Tuason* case, plaintiff sued defendants for the recovery of a tract of land allegedly usurped by the latter. The land was registered in plaintiff's name. It was partly residential and partly agricultural. Plaintiff's right to the possession of the land was sustained. With respect to the damages which plaintiff could claim, it was held that "what the plaintiff could have realized by laying out streets, filling up lowlands, subdividing the parcel of land and other incidental expenses, in order to make it suitable for residential purposes, is speculative. To realize those profits would require investment of additional capital." But plaintiff was held entitled to recover the actual damages or loss (*daño emergente*) that it suffered by reason of its failure to collect or receive the rentals and fruits or produce of the parcel of land and the legal rate of interest (*lucro cessante*) on the amount of such rentals and share in the agricultural products. The amount due to plaintiff could not exceed ₱10,000, the sum demanded in its complaint.

In *J. M. Tuason & Co., Inc. v. De Guzman*,[576] plaintiff sued defendants for the purpose of ejecting them from a parcel of land over which plaintiff had a Torrens title. It was held that the award to plaintiff of damages amounting to ₱72,000, representing the alleged interests that the landowner would have realized had the land been converted into a subdivision and sold was not justified, being speculative in character. There was no evidence that the said land could have been sold at the price fixed or that of buyers would have paid the price alleged by plaintiff. That only damages properly awarded amounted to ₱1,500, representing the amount received by defendants from the squatters.

In *Bureau of Lands v. Samia*,[577] it appears that in 1947 the Rural Progress Administration (RPA) instituted proceedings for the expropriation of the land of Leon Samia. The RPA took possession of the land. In 1950 the proceedings were dismissed because of the

[575] J. M. Tuason & Co., Inc. v. Santiago, G.R. No. L-5079, July 31, 1956, 52 O.G. 2127.
[576] G.R. No. L-6938, May 30, 1956.
[577] G.R. No. L-8068, Aug. 25, 1956.

ruling that only big landed estates may be expropriated. Antonio Samia, as administrator of the estate of Leon Samia, and his heirs brought an action for damages against the RPA. *Held*: The damages recoverable should be based on 20% of the assessed value of the land, following the rental ceiling fixed in Republic Act No. 66, and, from the time that law ceased to be effective, the damages should be fixed on the basis of the average rental which Samia charged his tenants.

Measure of damages to be paid by vendor for failure to deliver thing sold.—

In sales, where the vendor fails to deliver the thing sold, the measure of damages should be the difference between the stipulated price under the contract and the market price on the date agreed upon for delivery. Under article 1107 of the old Code, now article 2201, "in case of fraud the debtor shall be liable for all losses and damages which clearly arise from the failure to fulfill the obligation." In *Rivera v. Matute*,[578] where Amado Matute failed to deliver the copra which he agreed to sell to Claro Rivera, the damages were computed on the basis of the difference between the stipulated price of ₱172.50 and the prevailing price of ₱250 per ton around December 28, 1946, the date agreed upon for delivery. Rivera's contention that the basis should be ₱360 per ton, which was the price at which Matute sold the same copra to Clark, Jamilla & Co., Inc. in March 1947 was rejected because it appears that when Matute breached the contract he had not yet contracted to sell said copra to Clark, Jamilla & Co., Inc. There was no assurance that had Matute delivered copra to Rivera in 1946 he would have waited for three months before reselling it. Moreover, the price of ₱360 included certain expenses.

Matute had agreed to sell 1,300 gross tons of copra to Rivera. He was able to deliver only 330.7 tons. This should be subtracted from 1,300, leaving a balance of 969.28 tons as the undelivered copra. The 969.28 tons should be multiplied by ₱250 to ascertain the amount which Rivera would have realized had the said copra been delivered. The result is ₱242,321. To ascertain Rivera's net unrealized profit, we have to deduct from this gross sum, the cost price of the undelivered copra. But Rivera did not have to pay for all this balance of 969.28 tons because he was entitled to 12-1/2% shrinkage which is equivalent to 121.16 tons. Subtracting this amount of shrinkage from 969.28 will give net balance of 848.12 tons. Multiplying this by the price of ₱172.50 per ton fixed in the contract will give ₱146.301.39 as the cost price. To this should be

[578] G.R. No. L-6998, Feb. 29, 1956, 52 O.G. 6905.

added the transportation expenses of ₱12.50 per ton or ₱12,116, which added to ₱146,301.39 gives a total of ₱158,416.45, as the total cost price. The difference between ₱242,321.25 and ₱158,417.45 is ₱83,903.80, which difference is the amount of unrealized profits or damages to which Rivera is entitled. To this should be added the sum of ₱10,227.50 as the cost of the sacks giving a total of ₱94,131.30. From this amount should be deducted the sum of ₱11,419.26 as the unpaid balance of the price due to Matute from Rivera on the 330 tons delivered by Matute to Rivera, leaving the sum of ₱82,612.04 as the damages which Matute should pay to Rivera.

Justice J. B. L. Reyes dissented from the above computation of the damages to which Rivera was entitled. He opined that, as Matute acted with malice, the basis of the damages would be the difference between ₱172.50 per ton and the highest price between the date of delivery and the filing of the action, which would be either ₱360 or ₱380, the price at which Matute sold the copra. He cited the case of *Suiliong & Co. v. Nanyo Shoji Kaisha.*[578]

No penalty on the right to litigate.—

The case of *George Edward Koster, Inc. v. Zulueta*[579] reitrates the rule that it is not sound public policy to place a penalty on the right to litigate[580] and that to compel the defeated party to pay the fees of the counsel of his successful opponent would throw wide the door of temptation to the opposing party to swell the fees to undue proportions, and to apportion them arbitrarily between those pertaining properly to one branch of the case from the other.[581]

In the *Zulueta* case it was held that where the refusal of defendant to pay the additional cost of constructing his apartments was due to his belief that there were defects in the construction, he was not liable to pay the attorney's fees claimed by plaintiff contractor. Defendant did not act in bad faith in refusing to pay plaintiffs' claim.

In *Mercader v. Manila Polo Club,*[582] where plaintiff sued defendant for the recovery of damages for his alleged dismissal from defendant's service, the court, in rejecting his claim, did not award attorney's fees to defendant, because there was no showing that plaintiff's action was malicious and intended only to cause prejudice to defendant.

578a 102 Phil. 772.
579 G.R. No. L-9305, Sept. 23, 1956, 53 O.G. 1076.
580 Barretto v. Arevalo, G.R. No. L-7748, Aug. 27, 1956, 52 O.G. 5819.
581 Borden Co. v. Doctors Pharmaceuticals, Inc., G.R. No. L-4199, Nov. 29, 1951; Jesswani v. Hassaram Dialdas, G.R. No. L-4651, May 12, 1951; Tan Ti v. Alvear, 26 Phil. 566.
582 G.R. No. L-8373, Sept. 28, 1956, 52 O.G. 7272.

Attorney's fees as damages.—

(1) Article 2208 of the new Civil Code, which provides for the recovery of attorney's fees and expenses of litigation, does not apply to cases arising before the effectivity of the Code. Philippine jurisprudence does not favor the inclusion of attorney's fees as an element of damages.[583] In the *Samia* case, the Supreme Court adhered to the following rule regarding counsel fees in condemnation proceedings:

> "Only the actual losses inflicted on the owner by the institution and maintenance of the proceedings are recoverable. The condemnor is liable for loss caused by interruption of business, loss of rents or of time and earnings, and for depreciation in the market value of the property or deprivation of its use. Recovery for expenses necessarily incurred, including counsel fees, may be had on abandonment or dismissal of the proceedings *where statutes so authorize; but in accordance with general rule attorney's fees and other disbursements are not ordinarily recoverable in the absence of statutory.* According to some authorities, where condemnation proceedings are dismissed and abandoned the owner may recover attorney's fees and other necessary expenses in the case of condemnation by private or quasi-public corporation or entities, *but not when the proceedings are brought by municipal or purely public corporations or entities.*"[584]

(2) The reasonableness of a contract for attorney's fees is discussed in *Harden v. Recto.*[585]

(3) No attorney's fees were awarded under article 2208 where there was no stipulation and no bad faith on defendant's part in possessing the land.[586]

(4) No attorney's fees can be adjudged as costs of litigation if there is no proof that defendant debtor in bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.[587]

(5) Attorney's fees, even if not claimed in the complaint, may be granted where the court deems it just and equitable that said fees should be recovered.[588]

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583 Bureau of Lands v. Samia, G.R. No. L-8067, Aug. 25, 1956; Tan Ti v. Alvear, 26 Phil. 566; Borden Co. v. v. Doctors Pharmaceuticals, Inc., G.R. No. L-4199, Nov. 29, 1951; Jesswani v. Hassaram Dialdas, G.R. No. L-4651, May 12, 1952.

584 30 C.J.S. 17.

585 G.R. No. L-6897, Nov. 29, 1956.

586 Garcia v. Arjona, G.R. No. L-8991, May 23, 1956.

587 Land Settlement and Development Corporation v. Gaston, G.R. No. L-8938, Oct. 31, 1956; Litam v. Espiritu, G.R. No. L-7644, Nov. 27, 1956; Maloping v. Coba, G.R. No. L-9484, Oct. 31, 1956.

588 Phil. Milling Co. v. Phil. Industrial Equipment Co., G.R. No. L-9404, Dec. 27, 1956.

(6) No damages were adjudged in a case brought by a justice of the peace against those who complained against his actuations and whose charges were dismissed. It does not appear that the defendants acted improperly or maliciously in filing the dismissed administrative charges against the justice of the peace.[589]

(7) No attorney's fees and exemplary damages can be awarded unless the case falls within the purview of articles 2208, 2232 and 2233 of the new Civil Code.[590]

(8) No attorney's fees were allowed in *Blanco v. Bailon*,[591] where the legal issue involved in the case, which was resolved adversely to the plaintiff, was decided for the first time by the Supreme Court only on May 21, 1955 after the submission of plaintiff's brief.

(9) The award of attorney's fees and damages to the winning party is discretionary upon the court.[592]

(10) In *Nicolas v. Matias*,[593] it was stipulated in a mortgage contract executed in 1944 that the debt would be paid in 1949 and that should the mortgagors be unable to make payment, they would pay ₱3,000 as attorney's fees. The mortgagees were compelled to resort to judicial foreclosure and they had to defend themselves in another suit brought by the mortgagors. Both cases reached the Supreme Court. *Held*: They were entitled to attorney's fees, but since the amount loaned was in war notes and the same was payable peso for peso in genuine money, "the demands of justice and equity would be satisfied" if the mortgagors paid ₱1,000 as attorney's fees, with the understanding that the mortgagees would satisfy the additional fees of their lawyer.

Interest and liquidated damages may be claimed.—

Some doubt has been expressed as to whether interest and liquidated damages may be claimed at the same time, in view of the provision of section 2 of the Usury Law, that the maximum rate of interest includes "commissions, premiums, fines and penalties," and liquidated damages are equivalent to a penalty.[594] The new Civil Code, in making separate provisions for penalty and liquidated damages, gives the impression that penalty is different from liquidated damages.

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589 Yap v. Boltron, G.R. No. L-9523, N ov. 15, 1956, 53 O.G. 347.
590 Bautista v. Montilla, G.R. No. L-6569; Pascual v. Lovina, G.R. No. L-6576, April 18, 1956.
591 G.R. No. L-7342, April 28, 1956.
592 Tan Chat v. Hodges, G.R. No. L-8219, April 28, 1956.
593 Nicolas v. Matias, supra note 308.
594 Lambert v. Fox, 26 Phil. 588.

Article 1226 of the new Code provides that it is lawful to stipulate for both interest and penalty. In *Arce Ignacio v. Aldamiz y Rementeria*,[595] recovery of the principal plus stipulated interest and 10% of the amount due as stipulated damages was allowed. The case of *Pascual v. Lacsamana*[596] inferentially, though not squarely, same time. In that case the Supreme Court affirmed the judgement of the trial court ordering the debtor to pay his creditor the principal of the debt, plus 12% interest per annum and 25% of the amount due as liquidated damages and attorney's fees.[597]

Interest on unliquidated damages.—

If the suit were for the recovery of a definite sum of money, interest should be paid on the amount of damages from the date of the filing of the complaint, instead of from the date of the judgment of the trial court. However, if it is for damages, unliquidated and not known until definitely ascertained, assessed and determined by the courts after proof, the interest should be reckoned from the date of the decision of the trial court, not from the date of the filing of the complaint as in suits for the recovery of money.[598]

In this connection, article 2210 of the new Civil Code provides that "interest may, in the discretion of the court, be allowed upon damages awarded for breach of contract" and article 2213 provides that "interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty."

Interest in expropriation proceedings.—

The owners of the expropriated land are entitled to recover interest from the date the Government takes possession of the condemned land, and the amounts granted by the court cease to earn interest only from the moment they are paid to the owners or deposited in court.[599]

Interest on tax refund.

Since the damages for the wrongful exaction or withholding of money is the payment of interest at the legal rate, the Collector

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595 G.R. No. L-8668, July 31, 1956.
596 G.R. No. L-10060, Nov. 27, 1956.
597 See Phil. Milling Co. case, note 588, where 6% interest plus attorney's fees of around 20% of the amount due was allowed by the Sup. Court.
598 Rivera v. Matute, G.R. No. L-6998, Feb. 29, 1956, 52 O.G. 6905.
599 Phil. Executive Commission v. Estacio, G.R. No. L-7260, Jan. 21, 1956, 52 G.O. 773; Republic v. Lara, 50 O.G. 5778; Republic v. Deleste, G.R. No. L-7208, May 23, 1956.

of Internal Revenue is liable to pay legal rate of interest on taxes which were erroneously collected by him and which he has been ordered to refund. This ruling is in consonance with article 1108 of the old Civil Code, now article 2209, in relation to section 310 of the Tax Code.[600]

Moral damages are based on reason and justice.—

The grant of moral damages is not subject to the whims and caprices of judges or courts. The court's discretion in granting or refusing it is governed by reason and justice. In order that a person may be liable for moral damages, the law requires that his act be wrongful. The adverse result of a court action does not *per se* make the act wrongful and subject the actor to the payment of moral damages. The law could not have meant to impose a penalty on the right to litigate; such a right is so precious that moral damages may not be imposed against those who may exercise it erroneously. This is the holding in *Barreto v. Arevalo*.[601]

In the the *Barreto* case, it appears that Roberto Barreto bought on January 10, 1945 a residential lot from Tomasa Arevalo. The sale was not registered. On July 22, 1946 the same lot was sold by Arevalo to Nicanor and Ambrosio Padilla. This second sale was registered on July 24, 1946. Barreto sued the Padillas for the annulment of the second sale in their favor. It was held that the Padillas acted in good faith in buying the lot and that they had the better right thereto because the first sale in Barreto's favor was not registered. But the trial court erred in awarding ₱100,000 as moral damages in favor of the Padillas. Barreto's action was brought in good faith. The fact that the decision was adverse to him did not make his action wrongful.

In another case, where the owner of a car was illegally deprived thereby an agent, who falsified a deed of sale of the car in his favor and later sold the car to another, the agent was ordered to pay the car owner moral damages of ₱5,000, plus ₱2,000 attorneys fees.[602]

The claim for moral damages was denied in a case where no actual damages were proved.[603] Defendant in that case contended that the petition for a writ of attachment contained defamatory allegations and caused him moral damages. However, it appears that the writ of attachment was never executed. So there was no basis for the claim for moral damages.

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600 Carcar Electric & Ice Plant Co., Inc. v. Collector of Internal Revenue, G.R. No. L-9257, Nov. 27, 1956; Heacock v. Collector of Customs, 37 Phil. 970.
601 G.R. No. L-7748, Aug. 27, 1956, 52 O.G. 5818.
602 Cruz v. Pahati, G.R. No. L-8257, April 13, 1956, 52 O.G. 3052.
603 Phil. National Bank v. Teves, G.R. No. L-8706 & 8813, Dec. 14, 1956, 53 O.G. 1035.

Illustrative case on exemplary damages.—

Exemplary damages, which are imposed by way of example or correction for the public good, were awarded, in addition to compensatory damages, in *Velayo v. Shell Company of the P.I. Ltd.*,[604] a case with an interesting factual situation. It appears therein, that the Commercial Air Lines, Inc. (CALI) became insolvent. On August 6, 1948 it called a conference of its principal creditors, among which was defendant Shell Company of the P.I. Ltd. At that conference the creditors learned that their credits would not be paid in full and that the claims against the CALI of its employees, the Government, and the National Airport Corporation might be given preference. A working committee was designated to supervise the preservation of the CALI'S properties. Among the members of the committee was Desmond Fitzgerald, the credit manager of defendant Shell Company, who was designated to represent all the creditors in the committee. The committee met on August 9, 1948 to discuss the methods of preserving the CALI'S assets and of making a fair division thereof among the creditors.

However, on the same day, August 9, 1948, defendant Shell Company made a telegraphic transfer of its credit to the Shell Oil Company, Inc. its sister corporation in the U.S. The assignment was formalized on August 10, 1948. On August 13, 1948 the assignee Shell Oil Company, Inc. sued the CALI in California and attached its C-54 plane in that state. Fitzgerald knew all the time that the CALI owned that plane. On January 5, 1949 the U.S. corporation secured a default judgment against the CALI.

The CALI stockholders, unaware of the California suit, resolved on August 12, 1948 to approve the sale of the CALI'S assets to the Philippine Air Lines, Inc. (PAL). In the first week of September, 1948 the National Airports Corporation learned of the California suit and it filed an action against the CALI in the Manila Court of First Instance. The CALI, on being apprised of the California suit, filed voluntary insolvency proceedings on October 7, 1948. Alfredo Velayo was appointed assignee of its assets.

On December 17, 1948 Velayo, as assignee, sued defendant Shell Company for the purpose of enjoining the prosecution of the California suit, and, in the alternative, for the purpose of recovering damages from defendant. Since the California suit could not be enjoined, the assignee's action was confined to the recovery of damages in double the value of the attached plane.

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[604] Velayo v. Shell Co. of the P.I. Ltd., G.R. No. L-7817, Oct. 31, 1956.

The Supreme Court, reversing the judgment of the trial court, held that the CALI, through the assignee, was entitled to recover damages from defendant because it acted in bad faith and betrayed the confidence and trust of the other creditors, by taking advantage of its knowledge that the CALI had a plane in California. Defendant forgot that "man does not live by bread alone" and entirely disregarded all moral inhibitory tenets in trying to outmaneuver the other creditors. Defendant was adjudged to pay the value of the plane as compensatory damages and an equal amount as exemplary damages.

Nominal damages.—

Where the court has already awarded compensatory and exemplary damages that in themselves constitute a judicial recognition that plaintiffs' right was violated, the award of nominal damages is unnecessary and improper. Nominal damages cannot coexist with compensatory damages.[605]

TRANSITIONAL PROVISIONS

Meaning of vested rights.—

The basic principle permeating the transitional provisions of the new Civil Code is found in article 2252, which provides that "changes and new provisions and rules laid down by this Code which may prejudice or impair vested or acquired rights in accordance with the old legislation shall have no retroactive effect." The Code Commission confessed that it did not venture to formulate a definition of a vested or acquired right because that problem "is extremely complicated" and "what constitutes a vested or acquired right will be determined by the courts as each particular issue is submitted to them."

Some light on the meaning of vested rights is shed by the case of *Dones v. Director of Lands*[606] which cites with approval the rule that "when a right has arisen upon a contract, or transaction in the nature of a contract, authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, it has become vested and the repeal of the statute does not affect it nor an action for its enforcement. A right once vested does not require for its preservation the continued existence of the power by which it was acquired."[607]

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605 Medina v. Crescencia, G.R. No. L-8194, July 11, 1956, 52 O.G. 4606.
606 G.R. No. L-9302, May 14, 1956.
607 Pacific Mail S.S. Co. v. Joliffe, 17 L.ed. 96; Chirac v. Chirac, 5 L.ed. 234; 11 AM. JUR. 1199

In the *Dones* case, a contract for the sale of a lot of the friar lands estate was cancelled for delinquency in the payment of the stipulated installments, but the contract was later reinstated in 1944 and the balance of the price was paid, pursuant to Executive Order No. 138 of the Philippine Commission, which had the force of law. The Director of Lands in an order dated June 12, 1950 (when Executive Order No. 138 was no longer in force) recognized the right of the applicant's heirs to a final conveyance of said lot. The validity of the Director's 1950 order was upheld, notwithstanding the abrogation of Executive Order No. 138, because the right of the applicant's heirs to a final conveyance accrued in 1944 when said Executive order was in force. It was a vested right "which the Government could not under any principle of equity and fair dealing refuse to recognize" and "which did not lapse with the alleged abrogation of the executive order upon the cessation of the Japanese regime." The lot in question could not therefore be sold to another applicant to the prejudice of the heirs of the original applicant who had already a vested right to it.

Successional rights of illegitimate children under new Code cannot impair the vested rights of other heirs.—

Article 777 of the new Civil Code, formerly article 657, lays down the fundamental principle that successional rights are vested as of the moment of death. This principle finds application in article 2263 of the new Code, which provides that the rights to inheritance of a person who died, with or without a will before August 30, 1950, when the new Code took effect, shall be governed by the old Civil Code; whereas, the inheritance of those who, with or without a will, die on or after August 30, 1950 shall be adjudicated in accordance with the new Code. In conformity with these rules, it was held in *Uson v. Del Rosario*,[608] that the successional rights granted to illegitimate children by the new Civil Code cannot be enforced with respect to the estate of a person who died before its effectivity, because to concede such rights would impair the vested successional rights of the decedent's heirs under the old Code.

The ruling in the *Uson* case was applied in *Morales v. Yañez*,[609] where the question was whether the adulterous children of a decedent, who died intestate in 1937 and was survived by his nephew and nieces as his nearest relatives, could inherit his estate under articles 287 and 988 of the new Civil Code. It was held that the estate of the deceased should go to his nephews and nieces as his sole legal heirs under the old Code, which law does not give any suc-

[608] G.R. No. L-4963, Jan. 29, 1953.
[609] G.R. No. L-9315, March 24, 1956, 52 O.G. 1945.

cessional rights to adulterous children. To grant the adulterous children the successional rights allowed to them under the new Civil Code would impair the successional rights already vested in the decedent's nephews and nieces upon his death in 1937. To have a vested right in decedent's estate, it was not necessary for his nephews and nieces to commence proceedings for the settlement of his estate. Their successional rights were vested as of the moment of death and such rights may be protected against any encroachment made or attempted before their judicial confirmation in proper proceedings.[610]

Cases governed by old Code.—

(1) Where an obligation contracted during the Japanese occupation was payable within one year from June 19, 1949 or up to June 29, 1950 and was therefore demandable only beginning June 30, 1950, its payment is governed by the old Civil Code. Article 1250 of the new Code, regarding extraordinary inflation or deflation of currency, would not apply to said obligation. To apply article 1250 to the case would impair the vested right of the creditor.The new Civil Code, according to its article 2253, cannot be applied retroactively, when to do so, would impair vested rights.[611]

(2) Where in a lease of land without a fixed term, the lessor on June 1, 1950 notified the lessee that the lease would be terminated on June 30, 1950, it is obvious that the lessor's right to terminate the lease was vested before the new Civil Code took effect. The relations of the parties are therefor to be governed by article 1581 of the old Civil Code.[612]

(3) Inasmuch as vested rights must be respected and transactions prior to the effectivity of the new Civil Code should be governed by the old Code, according to articles 2252 and 2255, it was held that the provisions of article 1687 of the new Civil Code, allowing the extension of the term of a lease, in the discretion of the court, cannot be applied to a lease contract entered into before the effectivity of the new Code.[613]

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[610] Mijares v. Neri, 3 Phil. 195; Velasco v. Vizmanos, 45 Phil. 675; Ilustre v. Alaras Frondosa, 17 Phil. 321; Bondad v. Bondad, 34 Phil. 232; Inocencio v. Gatpandan, 14 Phil.. 491; Fule v. Fule, 46 Phil. 317; Coronel v. Ona, 33 Phil. 456; Nable Jose v. Nable Jose, 41 Phil. 713.

[611] Nicolas v. Matias, G.R. No. L-8903, Res. of Feb. 11, 1956, reiterating judgment of Oct. 31, 1955.

[612] Vda. de Prieto v. Santos and Gaddi, G.R. No. L-6639 and 6640, Feb. 29, 1956, 52 O.G. 6899.

[613] Acasio v. Corporacion de los PP. Dominicos, G.R. No. L-9428, Dec. 21, 1956.

Provisions on human relations.—

Articles 19, 21 and 23 of the new Civil Code on Human Relations were given retroactive effect in a case which occurred in 1948. In giving them retroactive effect the Supreme Court relied on article 2252 of the Code, which "implies that when the new provisions of the Code do not prejudice or impair vested or acquired rights in accordance with the old legislation," they can be given retroactive effect. Articles 2253 and 2254 were also cited to support the view that articles 19, 21 and 23 have retroactive effect.[614]

[614] Velayo v. Shell Co. of the P.I., Ltd., G.R. L-7817, Oct. 31, 1956.