ANNUAL SURVEY IN CIVIL LAW—1957

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Ancient jurisprudence was viewed by a Roman jurisconsult as *divinarum atque humanarum rerum notitia, justi et que injusti scientia.* This lofty view is hardly possible of modern jurisprudence, a science whose rules must be laboriously and patiently extracted from voluminous dry-as-dust decisions in order that they can be articulated with clarity and precision.

There is no doubt that the learned justice of the Supreme Court invariably strive to perform their work conscientiously and that they endeavor to do justice in every case. Their zeal, honesty and integrity are beyond cavil. But it cannot escape notice that they are overworked. The Supreme Court is saddled with a heavy and burdensome jurisdiction. It decides, not only appeals in ordinary civil and criminal cases, but also petitions for review in numerous tax, labor, tenancy, public service, naturalization, electoral and patent cases. The justices have no adequate time to polish their decisions so as to make them more lucid and to eliminate therefrom those features and digressions which are not very necessary and which only tend to obscure the *ratio decidendi* of the case. To paraphrase Pascal's epigram, their decisions are long and involved because they have no time to shorten the same.

Anyone familiar with the work of great judges knows that the writing of decisions is an art requiring a certain technique and skill possessed only by the master craftsman. A comparison of the *40-page* decision of Justice Araullo in *Beaumont v. Prieto*,[1] and the *2-page* decision in the same case of Justice Holmes[2] reveals that, to do justice in a case, one does not have to write a very long decision.

The decisions of Justice Florentino Torres and Justice Johns are long because their productions usually contain an exhaustive (but also exhausting) statement of the pleadings. Even judges should know that failure to summarize all the pleadings in a decision would not defeat the ends of justice. The later decisions of Chief Justice Avanceña and some decisions of Chief Justice Moran and Justice Willard possess the distinctive merit of being concise, crystal clear and direct to the point. Superfluous features had been chiseled out of those decisions. They do not contain any indiscriminate citation of authorities.

However, brevity is not always a virtue. Some of the brief decisions of Justice Romualdez are difficult to understand because they omit some important facts necessary to a clear comprehension of the case. Justice Villa-Real left no doubt as to the legal points resolved

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1 41 Phil. 670 (1916)

2 249 U.S. 554; 63 L. ed. 770; 41 Phil. 958 (1919)

in his decisions. He always summarized at the end the doctrines laid down in the case and the summary serves as the syllabus or headnotes. The decisions of Justices Street, Malcolm and Laurel are characterized by felicity and grace of expression. Justice Moreland always wrote in a clear, incisive and vigorous style showing mastery of language and subject matter.

Doctor Johnson said that to have an elegant style one must spend his days and nights reading the works of Joseph Addison. To have the proper judicial style, judges should spend their days and nights reading the decisions of Holmes, Cardozo, Frankfurter and Douglas. Cardozo's essay on Law and Literature would be useful.

The task of making an annual survey of Supreme Court decisions is tedious and wearisome only because the decisions written in a pedestrian style are sometimes not easy reading. Yet, making a survey is in a way interesting and rewarding because one discovers how the rules have been applied to similar or analogous situations and how new rules have been evolved in cases of first impression. As in past surveys, the annotator in this survey has correlated the rules found in the 1957 cases on civil law with the pertinent codal provisions and the rulings enunciated in prior cases.

EFFECT AND APPLICATION OF LAWS

Illustrations of rule on prosperity of laws. —

Article 4 of the new Civil Code, which provides that "laws shall have no retroactive effect, unless the contrary is provided," was applied in *Romero v. Villamor*[3] to support the opinion that article 1080 of the new Civil Code, which changed the word "testator" in article 1056 of the old to "person," has no retroactive effect to an extrajudicial partition effected in 1949.

"In harmony with the established principle that legislative enactments, in the absence of a clearly expressed intent to the contrary, will be deemed to be prospective, and not retroactive, workmen's compensation acts have been held not to apply to injuries which occurred before the law went into effect." The law in force at the time of the occurrence of the injury applies. Therefore, Republic Act No. 772, which confers the benefits of the Workmen's Compensation Law upon all laborers and employees regardless of the amount of their compensation, cannot apply to the case of an employee who became sick of tuberculosis before June 20, 1952, when Republic Act No. 772 took effect, if said employee was receiving compensation in excess of ₱42 a week. Under the old law, employees and laborers receiving a weekly compensation in excess of ₱42 a week were not entitled to the benefits of the Workmen's Compensation Law.[4]

For the same reason, the amendment introduced to section 18 of

3 L-10850, Dec. 20, 1957

4 Wack Wack Golf & Country Club, Inc. v. Valentin, L-9641, May 24, 1957, 54 O.G. 1345; National Shipyards & Steel Corporation v. Santos, L-9561, Sept. 30, 1957, citing Amadeo v. Olabarrieta, L-6870, May 24, 1954 and 58 Am. Jur. secs. 33, 73. See Castro v. Sagales, 54 O. G. 94 (1953).

the Workmen's Compensation Law by Republic Act No. 772 cannot be given a retroactive effect.[5]

Following the rule in article 4, Republic Act No. 1081, regarding vacation and sick leaves of Government employees, cannot be given a retroactive effect.[6]

But the provision of section 24(d) of Republic Act No. 876, known as the Arbitration Law, that the court may vacate an award of an arbitrator when he has exceeded his powers, may be applied retroactively because it is procedural in character.[7] Procedural laws may be given retroactive effect to pending cases even if there is no provision to that effect.

Acts executed against constitutional provisions are void.—

In connection with the rule in article 5 of the new Civil Code that "acts executed against the provisions of mandatory or prohibitory laws shall be void," it was held in *Tañada v. Cuenco*,[8] that, inasmuch as constitutional provisions, unlike statutory enactments, are presumed to be mandatory, unless the contrary is unmistakably manifest, compliance with the procedure laid down in section 11, Article VI of the Constitution for the selection of the members of the Electoral Tribunal is mandatory; and acts performed in violation thereof are void. Where the majority party has already three members in the Senate Electoral Tribunal, but the Senate has only one minority member, who has nominated himself as the minority representative in the tribunal, it is illegal for the majority to nominate two other majority senators to the tribunal to complete the minority representation therein. The Constitution does not contemplate that the majority party would have five members in the Electoral Tribunal.

No Waiver of rights when public policy is involved.—

Article 6 of the new Civil Code, which 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," was cited in *Maniago v. Castelo*,[9] to support the view that the tenant under the Rice Tenancy Act (Republic Act No. 1199), cannot renounce the exemption from lien or attachment of 25% of his share of the produce of the land, in share tenancy, or the entire produce in leasehold for the tenant and his family from one harvest to the next. A waiver of the exemption would "amount to a waiver of the tenant's right to live" and be therefore against public policy

Although an individual may waive constitutional provisions intended for his benefit, particularly those meant for the protection of his property, and, sometimes, even those tending to secure his personal liberty, the power to waive does not exist when public policy

5 Firestone Tire & Rubber Co. of the Phil. v. Tupas L-10150, May 29, 1957
6 Tamayo v. Manila Hotel Co., L-8975, June 29, 1957
7 Lopez v. Fajardo, L-9324, Aug. 30, 1957
8 L-10520, Feb. 28, 1957
9 L-9855, April 29, 1957, 54 O.G. 60

or public morals are involved.[10] The procedure outlined in the Constitution for the organization of the Electoral Tribunals was adopted in response to the demands of the commonweal, and it has been held that where a statute is founded on public policy, those to whom it applies should not be permitted to waive its provisions.[11] This holding in *Tañada v. Delgado,*[12] is consistent with article 6 of the new Civil Code which provides that rights cannot be waived if the waiver is contrary to law, public order or public policy.

Article 6 was also cited in a tax case to support the view that where the taxpayer acknowledged his liability for the payment of taxes which had already prescribed, he is liable for the payment of the said taxes because his acknowledgement of liability, secured by a chattel mortgage, amounted to a waiver of the plea of prescription.[13]

Absurd interpretation cannot be sanctioned.—

Article 10 of the new Civil Code provides that "in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail." Following this rule, a corporation sole of the Roman Catholic Church, administering a parcel of land for the benefit of Catholic parishioners of Davao, a majority of whom are Filipinos, should be allowed to register such land in his own name. It would be absurd to apply to him the constitutional requirement that 60% of the capital stock of a corporation intending to acquire lands should be owned by Filipinos because the corporation sole is composed of only one person and is nonstock.[14]

HUMAN RELATIONS

Independent civil action in case of physical injuries based on culpa aquilliana.—

Article 33 of the new Civil Code, which provides that in cases of fraud, defamation 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 *Dyogi v. Yatco,*[15] and *Ortaliz v. Echarri.*[16] It was held in these cases that an action for damages brought by the heirs of the deceased pedestrian against the driver of the car and its owner need not await the termination of the criminal action for homicide through reckless imprudence. This holding is a reiteration of the doctrine of *Carandang v. Valenton,*[17] that the term "injuries" in article 33 includes frustrated homicide or even death. The *Valenton* case involved injuries maliciously inflicted. The separate action for damages, which was based on *culpa aquiliana,* is also authorized by article 2177 of the new Civil Code. It should be noted that, if due to the negligent handling of a motor

10 11 Am. Jur. 765; 1 Colley's Constitutional Limitations, pp. 368-371.
11 82 C. J. S. 874
12 Note 8
13 Sambrano v. Collector of Internal Revenue, L-8652, March 30, 1957
14 Roman Catholic Apoltolic Administrator v. Register of Deeds of Davao, L-8451, Dec. 20, 1957
15 L-9623, Jan. 22, 1957
16 L-9331, July 31, 1957
17 51 O.G. 2878 (1955); Laya v. Paras, CA 52 O.G. (1956)

vehicle, a passenger (as distinguished from a pedestrian) was killed, a separate action for damages may also be brought without awaiting the termination of the criminal action. In such a case, the civil action is based on *culpa contractual.*[18]

The rule in the *Dyogi* case was applied in *Dionisio v. Alvendia,*[19] to the action instituted by the passengers of a jeepney who were injured when the jeepney collided with a taxicab. The action for damages was brought against the owners of the jeepney and the taxicab and their respective drivers. It was held that "the owner and operator of the jeep may be held liable for breach of contract for his failure to bring them to their destination safe and sound. The owner and operator and the driver of the taxicab may be held liable for tort, even if the driver be relieved from criminal liability." The trial court erred in suspending the trial of the civil action for damages so as to await the outcome of the criminal case against the two drivers for serious physical injuries through reckless imprudence. The independent civil action for damages was properly brought under article 33 of the new Civil Code.

Article 33 was also cited in *People v. Flores,*[20] to support the view that an independent civil action for damages may be instituted in libel cases.

CIVIL PERSONALITY

Dissolved corporation cannot be sued.—

While under article 45 of the new Civil Code and the Corporation Law a corporation may sue and be sued, nevertheless, a dissolved corporation cannot be sued within three years following its dissolution for the purpose of enforcing the contract which it had entered into. A dissolved corporation cannot continue as a body corporate during the 3-year period "for the purpose of continuing the business for which it was established." This is the holding in *Cebu Port Labor Union v. States Marine Corporation.*[21] In that case it appears that on October 17, 1952 a resolution dissolving respondent corporation was filed in the Securities and Exchange Commission. On September 12, 1953 the instant suit was filed against it to enjoin it from violating the stevedoring contract allegedly entered into between the corporation and the petitioning union. The record shows that the vessel, for which stevedoring service used to be rendered by petitioning union, was transferred by said corporation to another corporation. *Held*: Since respondent corporation was already dissolved at the time the suit was filed and as the vessel which was the subject of the agreement had changed hands, the respondent cannot be compelled now to respect the alleged stevedoring agreement especially considering the fact that it cannot even be made a party to this suit.

18 Bisaya Land Transportation, Inc. v. Mejia, 52 O.G. 4241 (1956); Dizon v. Sacopoco, CA 53 O.G. 729 (1956); 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.
19 L-10567, Nov. 26, 1957
20 L-7528, Dec. 18, 1957
21 L-9350, May 20, 1957

DIGEST OF RULINGS ON CITIZENSHIP AND NATURALIZATION

(1) A person born in 1904 in Cebu City of Chinese parents cannot be considered a Filipino citizen under the rule of *jus soli* laid down in the *Roa* case, because he was not declared a Filipino citizen by judicial pronouncement before the *Tan Chong* case overruled the *Roa case.*[22]

(2) Failure of the petitioner to mention his eldest child, who died a few hours after birth, and a clerical error in the name of one of his children (Emilia, not Emilio) would not show that petitioner is of bad moral character.[23]

(3) In *Santos Chua v. Republic,*[24] it appears that the petitioner, upon learning that his 1947 marriage before a Chinese consul was not valid, took steps to legalize his status by having a marriage ceremony performed before a Manila municipal judge. This was done before he filed his petition for naturalization. He therefore evinced a desire to embrace our customs and follow our laws. He can be naturalized

(4) In *Teotimo Rodriguez Tio Tiam v. Republic,*[25] the Government claimed that the petitioner does not possess good moral character because, according to the testimony of an NBI agent, a certain Sonia Tiu executed a sworn statement declaring that the petitioner had ellicit relations with her mother and that she was a natural child of the petitioner. But during the hearing the sworn statement of Sonia Tiu was not presented and neither did she testify in spite of the opportunity given her to do so. *Held*: The Government's claim cannot be sustained.

(5) Petitioner may be regarded as having a lucrative business, although he is a medical student, because he acts as a commercial agent of his father with a salary of ₱1,440 a year and he owns a refreshment parlor which gives him a net profit of ₱400 every quarter. The fact that a petitioner is a student does not necessarily prevent him from having a gainful occupation. It is common knowledge that there are in this country as in other parts of the world many students who work their way through school.[26]

(6) The petitioner cannot be said to have satisfied the property qualification where the property valued at ₱8,400 claimed by him was transferred to him a few months before he filed his declaration of intention and said transfer appears to be simulated, and he is a student in Manila being supported by his parents.[27]

(7) The ability to write Moro, Chavacano and Tagalog may be inferred from the applicant's ability to write English because these

22 Teotimo Rodriguez Tio Tiam v. Republic, L-9607, April 25, 1957, 54 O.G. 1864.
23 Go Chiao v. Republic, L-9001, March 29, 1957
24 L-9983, April 22, 1957
25 Supra, note 22
26 Uy Tiao Hong & Jesus Lim v. Republic, L-8862, April 22, 1957, 54 O.G. 629; Mateo Lim v. Republic, L-4588, Jan. 28, 1953.
27 Alfonso Teh Lopez v. Republic, L-9155, April 23, 1957

dialects use the same English alphabet and are easier to write than English because they are phonetic.[28]

(8) The fact that during the hearing the petitioner was not given a practical test as to his knowledge of Tausug and Samal dialects is not an obstacle to his naturalization. The record shows that he was not given such a practical test because the trial court deemed it unnecessary that he should be given such a test. The petitioner knows English. Ability to write a dialect may be inferred from the ability to write English.[29]

(9) In *Ong Ho Ping v. Republic*,[30] the petitioner was asked this question: What is your reason why you like to become a Filipino citizen? His answer in English was the following: "Because I like the people and the government here." He wrote the Tagalog translation for that answer. However, he could not answer this question of the trial judge: "You said that your children have been baptized in the Catholic Church. Do you have any objection to informing the Court whether or not you are also a Catholic and if you are, state and write down in this piece of paper the reason why you are a Catholic?" *Held*: "His confusion or inability to give a prompt reply may have been due merely to the nature of the question and not to lack of familiarity with the English language. For not only is the question long, complex and rather involved, but it also calls for a philosophical answer which may not be easy for any layman to figure out as well as formulate."

(10) Failure of the petitioner to register his wife and his child in the immigration office as aliens is not of such a gravity as to justify the dismissal of his petition after he has proven conclusively that he has all the qualifications required by law and none of the disqualifications enumerated therein.[31]

(11) Although the petitioner failed to prove that he is a citizen of Nationalist China, his petition for naturalization can be granted. He was born in the Philippines and lived here most of the time. He went to China for a brief period in 1946 when Nationalist China was still on the Asiatic mainland. He affirmed under oath that he subscribes to the principles underlying the Philippine Constitution. He has all the qualifications for naturalization and none of the disqualifications.[32]

(12) Violation of an ordinance penalizing a person for having in his possession more than two cans of petroleum, which violation was punished by a fine of ₱5, is not a crime involving moral turpitude.[33]

(13) In *Antonio Tan v. Republic*,[34] the application for naturalization was opposed by the Government on the ground that when the

28 Go de Sero v. Republic, L-5885, Feb. 28, 1957, 53 O.G. 3425.
29 Chay Guan Tan v. Republic, L-9682, April 23, 1957 citing Wu Siok Boon v. Republic, 49 O.G. 489
30 L-9712, April 27, 1957.
31 Chay Guan Tan v. Republic, L-9682, April 23, 1957; Tan Chong Yao v. Republic, L-5074, March 3, 1953.
32 Tan Song Sin & Antonio Bueno v. Republic, L-9080, May 18, 1957.
33 Tan Song Sin, note 32
34 L-9976, April 29, 1957

petitioner was asked why he wanted to become a Filipino citizen, he replied that he wanted to practise his profession as a mechanical engineer. But at the same time he testified he had always thought that he was a Filipino citizen because his mother was a Filipina (father was a Chinaman) that he was born in the Philippines and loves this country; that he had undergone ROTC training; and that he learned that he was not a Filipino citizen when he was not allowed by the Board of Mechanical Engineers to practise his profession. *Held*: Petitioner's incidental desire to practise his profession cannot be an obstacle to his naturalization. Naturalization carries with it additional benefits such as enabling the grantee to exercise certain callings reserved to Filipinos. "It would be unrealistic to expect applicants to swear that they desire to become citizens purely out of love of this country, exclusive of the privileges publicly known to be accorded with Philippine nationality."

(14) Birth in the Philippines, in the absence of the birth certificate, may be proved by oral testimony and the baptismal record.[35]

(15) The additional requirement in section 6 that the applicant, to be exempt from filing the declaration of intention, must have given primary and secondary education to all of his children in the proper schools, applies only to children of school age, as made clear in section 2. Where the applicant was born in the Philippines and has resided here for more than 30 years and at the time of the filing of his petition, his three children had ages ranging from 4 to 6, he is exempt from filing the declaration of intention.[36]

(16) Where the petitioner came to the Philippines in 1920 and went to China in 1925 for a six months' visit, such a short visit cannot be considered as having interrupted his 30 years' continuous residence in the Philippines. He is exempt from filing the declaration of intention.[37]

(17) Completion of primary and secondary education may be proved by oral evidence. It is not necessary for the petitioner to enumerate the basic principles of the Constitution.[38]

(18) In *Chan Pong v. Republic*,[39] it appears that the petitioner arrived in the Philippines in 1936. His two witnesses testified that they came to know the petitioner in 1940 or four years after his arrival here. One witness lost track of petitioner after their first meeting in 1940 and came to meet him again by accident during the Japanese occupation. The other witness lost track of petitioner during the entire period of the Japanese occupation. It is evident that the two witnesses are not competent to testify on his character and good conduct during the entire period of residence in the Philippines, as required by law. They cannot give a reliable opinion on petitioner's

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35 Chang Briones Lorenzo v. Republic, L-9601, April 22, 1957
36 Ong Tan, Quezon v. Republic, L-9683, May 30, 1957
37 Ramon Ting v. Republic, L-9225, Aug. 21, 1957; Leon Miranda Tio Liok v. Republic, L-4545, Oct. 29, 1952
38 Tomas, Jr. v. Republic, G.R. No. L-7989, May 31, 1957
39 L-9153, May 17, 1957

good moral character and irreproachable conduct. The petition for naturalization must be denied.

(19) The petition for naturalization cannot be granted if it appears that the two witnesses have not known the petitioner for more than 10 years. Much depends upon what the witnesses know of the petitioner during at least ten years before he applied for naturalization. That is why it is necessary that these witnesses should know the petitioner for at least that period of time. A witness not mentioned in the petition cannot be offered during the hearing. The Government should have been given an opportunity to investigate the character of the witnesses.[40]

(20) The testimony of a witness that the petitioner would be an asset instead of a liability to the country and that petitioner is a law-abiding resident is sufficient although the witness has not seen the petitioner frequently. "It is not those who have actually and continuously seen a person alone that can testify as to his good conduct and behavior. In a community the conduct and behavior of a person becomes known more from his reputation than from actual observation. When the witness testified that in his opinion the petitioner would make an asset to the country, he impliedly stated that the moral reputation of petitioner is good and that he is qualified to become a citizen."[41]

(21) Section 9 of the Revised Naturalization Law provides that the petition for naturalization should be published "for three consecutive weeks in the *Official Gazette*." The *Gazette* used to be published once a month and since July 1, 1956 it has been coming out twice a month. To comply with the requirement, the petition should be published in three consecutive issues of the *Gazette*. Where the petition was published once in the July 1953 issue of the *Gazette* and for three consecutive weeks in a newspaper of general circulation, the publication "is clearly incomplete and therefore insufficient to confer jurisdiction on the court *a quo* to try the case and grant the petition." The legal requirement that there should be publication in three issues of the *Gazette* should be strictly observed. The true intent of the law is that the petition should be published three times in the *Gazette* and a single publication is not a sufficient compliance with the law.[42]

(22) The unverified certificate of the attending physician as to the birth of the petitioner may be given probative value if it was not objected to at the trial. It may be taken into consideration together with the petitioner's testimony as to the place of his birth.[43]

(23) The mere fact that an alien woman married a Filipino citizen does not suffice to confer his citizenship upon her. She must prove that she "might herself be lawfully naturalized." This means that she must not be disqualified under sec. 4.[44]

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40 Dy Suat Hong v. Republic, L-9224, May 29, 1957
41 Manuel Yu Tong Su v. Republic, L-9848, April 23, 1957, 53 O.G. 4825
42 Ong Son Cui v. Republic, L-9858, May 29, 1957
43 Chay Guan Tan v. Republic, L-9682, April 23, 1957
44 Ricardo Cua v. Board of Immigration Com., L-9997, May 22, 1957, 53 O.G. 8507, 8567; Ly Giok Ha & Wy Giok Ha v. Galang, L-10760, May 17, 1957, 54 O.G. 356.

(24) Where the judgment granting naturalization was rendered on May 16, 1950 and the petitioner took his oath on June 19, 1950, or when Republic Act No. 530, which took effect on June 16, 1950, was already in force, the taking of the oath, and petitioner's immediate departure for Spain were in violation of Republic Act No. 530.[45]

(25) Where the petitioner resided in Mambajao, Misamis Oriental up to 1948 and due to the eruption of the Hibok-Hibok volcano, he transferred his family to Baroy, Lanao, where he operated a store and where three of his children were born and his wife died, and then in 1952, when he and his family were still in Lanao, he filed his petition for naturalization in the Court of First Instance of Misamis Oriental, the venue of the petition was not properly laid. The petition should have been filed in the Lanao Court of First Instance because Lanao was the domicile of the petitioner. His allegation that he would return to Misamis Oriental if the volcano does not erupt anymore is of no moment because the possibility of eruption "may exist till the end of time."[46]

(26) Where the petitioner's eldest child is in China since 1947 and has not studied in the requisite schools, he has not complied with the educational requirement. The civil war in China is not sufficient to excuse the failure to bring the minor child to the Philippines and give him the education required by law.[47]

(27) The Government should raise in the lower court the issue that the declaration of intention was filed less than a year before the petition for naturalization was filed. It is too late to raise that question on appeal.[48]

(28) The fact that petitioner's wife was chosen by his mother and that the Chinese wife could not be brought to the Philippines because her present whereabouts in China are not known to the petitioner would not be an obstacle to his naturalization.[49]

(29) The requirement in section 7 of the Revised Naturalization Law that petitioner's witnesses should have known him to be a resident of the Philippines for the period of time required by said law means the 10-year period before the filing of the petition under section 2 or the 5-year period under section 3.[50]

(30) In order that the witnesses may testify that they know the petitioner to be a person of good repute and morally irreproachable, it is not necessary that they should know the petitioner personally from birth or since the age of reason. Existing records, common reputation and mutual friends and acquaintances are available sources of information.[51]

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45 Isasi y Larrabide v. Republic, L-9823, April 30, 1957, 53 O.G. 6529.
46 Vicente Lim v. Republic, L-9999, Dec. 24, 1957
47 Vicente Lim v. Republic, supra note 46; Ang Yee Koe Sengkee v. Republic, L-3863, Dec. 27, 1951; Oscar Anglo v. Republic, 49 O.G. 1840; Amado Abadilla Co Cai v. Republic, L-5461, Dec. 17, 1953; Antonio Chua v. Republic, L-6269, March 30, 1954; Quing Ku Chay v. Republic, L-5477, April 22, 1954; Uy Boco v. Republic, 47 O.G. 3443.
48 Lay Kock v. Republic, L-9646, Dec. 21, 1957
49 Lay Kock v. Republic, supra, note 48
50 Lay Kock v. Republic, supra note 48, citing Chua Tiong v. Republic, L-5029, May 22, 1953; Awad v. Republic, L-7685, Sept. 23, 1955.
51 Lay Kock v. Republic, supra, note 48

(31) The applicant's children of school age should be given the opportunity of getting primary or secondary education by their opportune enrollment and attendance in the schools mentioned by the law but not that they must have completed in said schools both primary and secondary education.[52]

(32) Children not of school age need not be enrolled in the requisite schools.[53]

(33) Where the petitioner six months before applying for naturalization married the woman by whom he had begotten thirteen children, his application cannot be granted because he is not a person of good moral character. He can renew his application after having observed irreproachable conduct after his marriage for the 5-year period required by section 3 of the Revised Naturalization Law of aliens married to Filipino woman.[54]

MARRIAGE

Marriage is not a mere contract.—

The principle in article 52 of the new Civil Code, that "marriage is not a mere contract but an inviolable social institution" in which the State is vitally interested, was invoked in *Brown v. Yambao*,[55] to justify the intervention of the City Fiscal in a legal separation case brought by the husband against the wife who was declared in default for having failed to answer the complaint in due time. The continuation or interruption of marriage cannot be made to depend upon the parties themselves.[56]

Proof of marriage.—

In the absence of a marriage certificate, the marriage may be proved by other evidence. In a workmen's compensation case, the marriage of the claimant to the deceased laborer was proved by her verified claim that she had married the deceased; by the affidavits of the witnesses to the marriage; by the affidavit of a person who knew the couple, stating that he knew about their marriage, that they had a child, who died, and that they lived as husband and wife in a certain barrio; and by the affidavit of the priest of the parish where the marriage was celebrated, stating that the records of the church were partially destroyed and for that reason the marriage certificate of the couple could not be located.[57]

Case where marriage was not proven.—

In *Campos Fernandez v. Puatu*,[58] Rosario Campos Fernandez tried to prove that she married Guillermo Puatu in Madrid in 1896; that after the marriage tney lived as husband and wife in Madrid;

52 Yu Kay v. Republic, L-10084, Dec. 19, 1957
53 Sy Kiam v. Republic, L-10008, Dec. 18, 1957; Yu Kay v. Republic, L-10084, Dec. 19, 1957
54 Sy Kiam v. Republic, supra, note 53 citing Yu Lo v. Republic, 48 O.G. 4334; Yu Singco v. Republic, 50 O.G. 104
55 L-10609, Oct. 18, 1957
56 Adong v. Cheong Seng Gee, 43 Phil. 43; Ramirez v. Gmur, 42 Phil. 855; Goitia v. Campos Rueda, 35 Phil. 252
57 Pan Philippines Corporation v. Frias, L-9807, April 17, 1957, 53 O.G. 4467
58 L-10071, Oct. 31, 1957

that in 1902 they came to the Philippines and continued their marital life in Manila and in Baliuag, Bulacan; that in 1917, after she discovered that Puatu was unfaithful to her, she returned to Spain, where she remained continuously thereafter; and that they never begot any offspring. Puatu had begotten seventeen children with two women. He died in Manila in 1953. *Held*: The alleged marriage was not proven. Plaintiff failed to produce any correspondence which she might have had with Puatu. She did not demand support from him. The priest, who allegedly solemnized the marriage, was not listed in the records of the Madrid bishophric. In the records of the Spanish consulate in Manila, Rosario Campos was listed as single. Moreover, in several documents Puatu declared that he was single. Since plaintiff and Puatu lived separately for 35 years, the presumption of marriage is deemed rebutted.

Void marriage.—

The case of *People v. Aragon*,[59] reiterates the rule in *People v. Mendoza*,[60] that a subsequent marriage contracted by a person during the lifetime of his first spouse is illegal and void from its performance and no judicial decree is necessary to establish its invalidity, as distinguished from a merely annullable marriage. So, where a man contracted a second marriage during the lifetime of his first wife, and then after the death of his first wife and during the lifetime of his second wife, he contracted a third marriage, he is not liable for bigamy for contracting a third marriage, because his second marriage is void *ab initio* and no judicial declaration is necessary to establish its invalidity; but he is liable for bigamy for having contracted a second marriage.

There is no provision in the Revised Penal Code requiring that a bigamous marriage, which is void *ab initio*, should be judicially declared as such. In the *Aragon* case, it was the second wife who filed a complaint for bigamy against the accused. The second marriage was not renewed after the death of the first wife and before the third marriage was contracted. Since the second marriage was void *ab initio*, the third marriage must be regarded as valid and could not be a basis for the prosecution of the accused for bigamy. Three justices dissented. They opined that the second marriage should be regarded as valid until pronounced invalid in the proper action.[61]

LEGAL SEPARATION

Collusion and recrimination in legal separation cases.—

Under article 100 of the new Civil Code "collusion between the parties to obtain legal separation shall cause the dismissal of the petition." Collusion in matrimonial cases is "the act of married persons in procuring a divorce by mutual consent, whether by preconcerted commission by one of a matrimonial offense, or by failure, in

59 L-10016, Feb. 28, 1957, 53 O.G. 3749
60 50 O.G. 1767 (1954)
61 People v. Cotas, CA 40 O.G. 3145; U.S. v. Mata, 18 Phil. 490

pursuance of agreement, to defend divorce proceedings."[62] This concept of collusion includes a case where the defendant wife, whose adultery is the ground upon which plaintiff husband based his petition for legal separation, did not answer the complaint and was thus declared in default.[63]

Recrimination is illustrated in the *Yambao* case, where the husband filed a complaint for legal separation based on the wife's adultery. The evidence disclosed that plaintiff husband was committing concubinage. His complaint for legal separation was dismissed.

Fiscal's intervention in legal separation cases.—

The case of *Brown v. Yambao*,[64] defines the nature of the fiscal's intervention in legal separation cases. Article 101 of the new Civil Code provides that "in case of nonappearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the plaintiff is not fabricated." Article 101 is intended to emphasize that marriage is more than a mere contract, that it is a social institution in which the State is vitally interested, so that its continuation or interruption cannot be made to depend upon the parties themselves. In this connection, it should be noted that section 10, Rule 35, Rules of Court prohibits a judgment on the pleadings in divorce cases and requires that the material facts alleged in the complaint for divorce be always proved.

In the *Yambao* case, the husband's complaint for legal separation was grounded on the wife's adultery. The wife did not answer the complaint in due time. She was declared in default. The trial court ordered the City Fiscal to intervene in the case to find out if there was a collusion between the parties. During the trial, the fiscal on cross-examination of the plaintiff elicited the fact that the plaintiff was living maritally with another woman. *Held*: It was proper for the fiscal to bring to light any circumstances that would give rise to the inference that the wife's default was calculated, or agreed upon, to enable the husband to obtain the decree of legal separation which he has sought without regard to the merits of his case. One such circumstance was Brown's commission of concubinage. The wife's failure to set up the defense of recrimination implies collusion between the spouses.

Prescription.—

Article 102 of the new Civil Code provides that the action for legal separation should be filed within one year from the date on which the plaintiff becomes cognizant of the cause and within five years from the date when such cause occurred. Where the adulterous acts of the wife were committed during the period from 1942 to 1945, when the offended husband was interned in the University of Santo Tomas concentration camp, and he learned of the adultery in

62 Cyclopaedic Law Dictionary; Nelson, Divorce & Separation, Sec. 500
63 Brown v. Yambao, L-10699, Oct. 18, 1957
64 See note 63

1945, but the action for legal separation was instituted only in 1955, the action is barred. It is barred although the wife did not answer the complaint and prescription was not pleaded as a defense. The court can take cognizance of the prescription because an action for legal separation involves public interest and it is the policy of the law that no decree of legal separation should be granted if there are legal obstacles thereto appearing in the record.[65]

CONJUGAL PARTNERSHIP

Property proven to be husband's capital.—

In *Cui v. Cui*,[66] it was proven that a parcel of land was donated to the husband during the marriage by his aunt and uncle to the exclusion of his wife. The property was regarded as his capital, since property acquired by a spouse during the marriage by lucrative or gratuitous title is his exclusive property, according to article 148 of the new Civil Code. The presumption in article 160 of the new Civil Code, that property of the marriage is conjugal, was overthrown.

Wife's right to impugn a fraudulent transaction of the husband.—

Under article 1413 of the old Civil Code, while the husband, "as manager of the conjugal partnership may for a valuable consideration alienate and encumber the property of the conjugal partnership without the consent of the wife, nevertheless, no alienation or agreement which the husband may make with respect to such property in contravention of this Code or in fraud of the wife shall prejudice her or her heirs." Article 1419 of the old Code provides that "the value of any gift or alienation, which, in accordance with article 1413, are deemed to be illegal or fraudulent, shall also be collated."

This means that, since the gifts or alienations made by the husband are only held invalid insofar as they prejudice the wife, their nullity cannot be decided until after the liquidation of the conjugal partnership, and it is found that they encroach upon the wife's portion. However, in order to safeguard the wife's right to ask for annulment of the fraudulent alienation, should it prove prejudicial to her, there should be recorded in the title of the transferee of the property the condition that the transfer is subject to annulment to the extent that it is prejudicial to the wife if it so appears from the liquidation of the conjugal partnership.[67]

The above rule in the *Baello* case was applied in *Tabunan v. Marigmen*,[68] where the husband sold a conjugal homestead without the knowledge of his wife and while he was living separately from her. The wife sued the buyers of the homestead for the annulment of the sale. The trial court dismissed the complaint. *Held*: The dismissal was erroneous. The wife has a cause of action against the buyers under article 1413 of the old Code because the homestead was

65 Brown v. Yambao, supra, note 63
66 L-7041, Feb. 21, 1957, 53 O.G. 3429
67 Baello v. Villanueva, 54 Phil. 213 (1930); Layson v, Oliquino, CA 47 O.G. 4216; Hofer v. Borromeo, 51 O.G. 5145 (1955)
68 L-9727, April 29, 957

conjugal. Since it was conjugal property, wherein the wife, even if living apart from her husband, had a right and interest, "the dictates of reason and fairness demanded that the husband advise or inform the wife of the sale. Absence of such advice amounted to a fraud of her rights. The husband's failure to give her a share of the proceeds prejudiced the wife within the meaning of article 1413.

Under the new Civil Code the wife's action would be based on article 173, which allows to the wife to impugn the transactions of the husband entered into without her consent. Such consent is necessary in cases of alienation of conjugal property, as provided in article 166 of the new Civil Code.

The rule in the *Baello case*,[69] that a donation of conjugal land made by the husband, without the 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, was also applied in *Liquez v. Ngo Vda. de Lopez*.[70] As already noted, the donation is invalid only insofar as it prejudices the wife, and that can be determined only after the liquidation of the conjugal partnership, and it is found that it encroaches upon the wife's portion. Article 1413 makes no distinction between gratuitous transfers and conveyances for a consideration. To determine the prejudice to the wife, it must be shown that the value of her share in the property donated cannot be paid out of the husband's share of the community profits.

In the *Liquez* case, it appears that on May 18, 1943 Salvador Lopez, a married man, donated a parcel of land to Conchita Liquez, a 16-year-old girl, in order that he could cohabit with her. The donation was made pursuant to an understanding between Lopez and Conchita's parents. Lopez died on July 1, 1943. Conchita attained majority in 1948. In 1951 she brought an action against the widow and children of Lopez for the recovery of the land donated.

Held: Conchita was entitled to so much of the donated land as may be found, upon proper liquidation of the conjugal partnership of Lopez and his wife, not to prejudice the widow's share and the legitimes of the husband's forced heirs. The case was distinguished from that of *Gallion v. Gayares*,[71] where the donation was simulated and therefore void *ab initio*. On the other hand, the donation to Conchita had an illegal consideration. Such donation may produce effects under certain circumstances where the parties are not in *pari delicto*.[72]

Liquidation of conjugal partnership.—

The case of *Romero v. Villamor*[73] reiterates the rule laid down in many cases that Act 3176, enacted on November 24, 1924, abrogated the rule under the old Civil Code that the surviving spouse may liquidate the conjugal partnership. The procedure for liquida-

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69 Supra, note 67
70 L-11240, Dec. 18, 1957
71 53 Phil. 43
72 See Obliosca v. Obliosca, CA 47 O.G. 4267

tion is provided for in Act 3176 which is now embodied in section 2, Rule 75, Rules of Court.

Liability of husband for conjugal debt after wife's death.—

In *Calma v. Tañedo*[74] it was held that after the wife's death no complaint can be brought against the husband in an ordinary action for the recovery of a debt chargeable against the conjugal property. The action for this purpose should be instituted in the testamentary proceedings for the settlement of the estate of the deceased wife. This rule was not followed in *Philippine Bank of Commerce v. Santos*[75] where it appears that on March 2, 1949 the husband secured a loan from the bank. His wife died on March 14, 1953. He was appointed judicial administrator of her estate. In 1954 the bank sued the husband for the recovery of the balance of the loan. His contention was that the bank should file its claim in the proceedings for the settlement of his deceased wife's estate. *Held*: This contention cannot be sustained. Although the loan was for the benefit of the conjugal partnership and the wife had made a partial payment on the loan and it was therefore chargeable to the conjugal partnership, nevertheless, as far as the bank was concerned, it may enforce the collection of the loan against the husband who personally secured it, or the bank may file a claim for its collection in the proceedings for the settlement of the deceased wife's estate. The husband, after paying the loan, may claim 1/2 of it from the estate of the wife. The case is different from the *Calma* case, where the conjugal obligation was contracted by both spouses.

Partition of homestead.—

In *Falcatan v. Sanchez*,[76] it appears that Patricio Sanchez occupied a homestead in 1923. In 1925, when he filed his homestead application, he had already cultivated 1/3 of the land. In 1929 his first wife died. He remarried in 1930. The homestead was surveyed in 1932. The title was issued in 1938. He died in 1944, survived by his second wife and their two children, and by his daughter of the first marriage and the four children of his son by his first marriage. The question was how to partition the homestead, which was the only property left by Sanchez.

Held: The conjugal partnership ceases upon the dissolution of the marriage. It may be liquidated in the proceedings for the settlement of the estate of the deceased spouse. Therefore, the conjugal partnerships of the two marriages of the deceased Patricio Sanchez may be liquidated in the proceedings for the summary settlement of his estate. Justice and equity demand that the rights of the interested parties in said homestead be adjudicated in proportion to the extent in which the requirements of the Public Land Law were complied with during the existence of each conjugal partnership. But, as there was no evidence on this point, it was deemed fair, under the facts of the case, to divide the homestead equally between the

73 L-10850, Dec. 20, 1957
74 66 Phil. 594 (1938)
75 L-8315, March 18, 1957, 53 O.G. 4451
76 L-9247, May 31, 1957

two marriages. The surviving spouse was given 1/4 of the homestead; the two children of the second marriage, 1/8 each; the daughter of the first marriage, 1/4; and the four grandchildren of the first marriage, the remaining 1/4 or 1/16 each.

THE FAMILY HOME

Debts include money judgment.—

The provision in article 243 of the new Civil Code, that a family home, which was extrajudicially constituted, is exempt from execution, forced sale or attachment except "for debts incurred before the declaration was registered in the Registry of Property," was construed in *Montoya v. Ignacio*,[77] as including a money judgment awarding damages for breach of the contract of carriage. The word "debt" is not qualified and must therefore, be taken in its generic sense.

In the *Montoya* case, it appears that, in a previous case,[78] Marcelino Ignacio was sentenced to pay the heirs of the deceased jeepney passenger ₱31,000 as damages. Entry of judgment was made in said case on February 4, 1954. The judgment was executed on the extrajudicially constituted family home of Ignacio. He objected to the levy on the ground that it was exempt from execution.

Held: There is no merit in Ignacio's objection. The judgment against him is a debt within the meaning of article 243. His other contention, that his family home was exempt from execution because it was constituted on January 19, 1954 and the judgment was entered only on February 4th, was likewise not sustained. To sustain it would sanction evasions of execution and defeat the intent of article 243. The judgment against him was promulgated on December 29, 1953 or before the recording of his family home in the Registry of Property. Moreover, the breach of contract which gave rise to the judgment occurred in 1949 or several years before the judgment.

Ignacio also contended that the family home was in his name and that of Estelita Poniente, who was not his wife, and, therefore, only 1/2 therefore could be levied upon. This contention was not given any serious consideration because in his sworn declaration creating the family home he stated that he was married to Estela Poniente.

PATERNITY AND FILIATION

Case where no ground for compulsory recognition was proved.—

In *Montenegro v. Montenegro*,[79] an action for compulsory recognition was brought in 1952 by Gregoria Montenegro against her supposed father, Jesus Montenegro. She claimed to have been born in 1917 as a result of the carnal relations had between her mother, Agustina Polvos, and the defendant. The carnal intercourse allegedly took place "sometimes under the coconut trees, sometimes in an

77 L-10518, Nov. 29, 1957, 54 O.G. 977
78 Montoya v. Ignacio, L-5868, Dec. 29, 1953, 50 O.G. 108
79 L-8343, June 29, 1957

uninhabited house, and at other times near a bridge." The Supreme Court affirmed the finding of the trial court and the Court of Appeals that the plaintiff had failed to establish any ground justifying compulsory recognition under article 283 of the new Civil Code, which was the law applied, rather than the old Code. The trial court said that article 2253 of the new Civil Code sanctions the application to the case of article 283. It would be more correct to say that article 283 is applicable because article 2266 provides that article 283 applies retroactively to cases concerning proof of illegitimate filiation.

Adulterous children have no successional rights in old Code.—

Children born to a married woman, who cohabited with a man, other than her husband, while she was living separately from her husband, are adulterous. Under the old Civil Code, they have no successional rights in their deceased father's estate.[80] They have successional rights under the new Civil Code, whose provisions, however, have no retroactive effect or cannot apply to the cases of adulterous children whose parents died before the effectivity of the new Civil Code.[81]

Spurious child may establish status after death of his putative father.—

One of the innovations introduced by the new Civil Code is the grant of support and successional rights to spurious children, who are categorized as "other illegitimate children," meaning children who are not natural. They are either incestuous or adulterous children. Their status is better than that of the unacknowledged natural children who have no rights whatsoever.

A legitimate child may establish his legitimacy during all his lifetime — regardless of the death of his parents. A natural child, voluntarily acknowledged may bring an action for compulsory recognition during the lifetime of his natural parents. If his parents are dead, he can only bring an action for compulsory recognition against his parents' heirs if his parents died during his minority or if after his parents' death a document should appear of which nothing had been heard and in which either or both parents recognize him. This is provided for in article 285 of the new Civil Code.

While the old and new Civil Code establish rules regarding the proof of the filiation of legitimate and natural children and specify the periods within which actions to establish their status should be brought, both Codes do not contain similar provisions for spurious children.[82] Article 289 of the new Civil Code only provides that the paternity or maternity of spurious children may be investigated in the cases mentioned in articles 283 and 284 of the new Civil Code. Article 887 of the new Civil Code specifically provides that the filiation of illegitimate children, including spurious children, must be

80 De la Cruz v. Cleofas, L-10587, April 26, 1957; Olivete v. Olivete, 53 O.G. 621 (1956); Ramirez v. Gmur, 42 Phil. 855, 865.
81 Morales v. Yañez, 52 O.G. 1945 (1956); Uson v. Del Rosario, L-4963, Jan. 29, 1953
82 Lajom v. Viola, L-6457, May 30, 1956. This case was decided under old law. The period now may be five years under Article 1149 of the new Civil Code.

duly proved. Before spurious children can assert their successional rights, is it necessary that the children be voluntarily recognized or that they bring an action for compulsory recognition like natural children?

This question was resolved in *De Reyes v. Zuzuarregui*[83] where it was ruled that "there is nothing in the new law from which we may infer that in order that an illegitimate child may enjoy his successional right he must first bring an action for recognition during the lifetime of the putative father as required by article 285 with regard to natural children. Neither is there any provision which requires that he be recognized as such before he can be accorded such successional right." Article 887 does not require that spurious children must first be recognized by their putative parents. Perhaps, the law, to avoid scandal and embarrassment, does not require spurious children to bring an action for recognition during the lifetime of their putative fathers.

On the other hand, Justice J. B. L. Reyes, dissenting in the *Zuzuarregui* case, opined that spurious children already of age, who have not been voluntarily acknowledged as such, can not bring an action for declaration or investigation of their paternity even after the death of their progenitors. The actions of spurious children for investigation of their maternity or paternity is limited by article 285. If article 285 is not applied to spurious children, then their situation would be better than that of natural children, a conclusion which is absurd as shown in *Conde v. Abaya*.[84]

In the *Zuzuarregui* case, it appears that Antonio de Zuzuarregui and Pilar Ibañez were married in 1917. They were childless. Beatriz Zuzuarregui was the spurious child of Antonio, begotten with his tenant. His wife Pilar Ibañez took Beatriz from her mother and brought her up. Beatriz was considered a member of the family. Antonio mentioned her in his income tax returns as one of his children. On the other hand, Antonio, Jr., Enrique and Jose, all surnamed De Zuzuarregui, were the children of Antonio Zuzuarregui and Pacita Javier, a cousin of Pilar Ibañez. Pacita was invited by Pilar Ibañez to live with them. Pacita had carnal relations with Antonio de Zuzuarregui and they begot the three children already named, who were brought up as members of the family, lived in the conjugal dwelling and were supported by their father Antonio. In his income tax returns, Antonio declared that Antonio, Jr., Jose and Enrique were his children. In two notarial documents he declared that Antonio Jr. was his child. Antonio declared in the birth certificates of Jose and Enrique that they were his children. Antonio died intestate in 1953. The right of Antonio, Jr., Jose and Enrique to succeed as intestate heirs of Antonio was contested by Beatriz and by her brother and half-sisters and half brother of Antonio. The question was whether Antonio, Jr., Jose and Enrique must first prove that they were recognized by their father Antonio before they could succeed to his estate.

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83 L-10010, Oct 31, 1957
84 13 Phil. 249

Held: The rules on recognition of natural children do not apply to spurious children. It is only necessary that the filiation of spurious children must be proved. In this case, there is overwhelming evidence that Antonio, Jr., Jose and Enrique were spurious children of Antonio. Even if recognition were necessary, the evidence shows that they had been recognized by their father Antonio as his illegitimate children in public or official documents.

The Zuzuarregui case should be distinguished from *Edades v. Edades*,[85] where the action to establish the status of a spurious child was brought during the lifetime of the putative father.

In *Co Tao v. Vallejo*,[86] the question was whether Co Tao, a married man, was the father of the child of Lucita Vallejo, a single woman. He denied paternity and alleged that when he had carnal intercourse with her "he used a strong French umbrella". He imputed the paternity of the child to the driver of his employer, who was also the employer of Lucita. It was held that the evidence clearly pointed to Co Tao as being the father of the child. He was sentenced to support the child at the rate of ₱10 a month.

PARENTAL AUTHORITY

Parents represent minor child.—

Articles 311 and 136 of the new Civil Code on parental authority were cited in *Ubaldo v. Salazar*[87] where a habeas corpus petition was filed by the uncle of a 17-year-old girl in order to recover custody of her from the person who had employed her as domestic helper. The girl's parents asked the court to dismiss the petition for habeas corpus. In dismissing the petition, the court noted that the parents of a minor child can represent the child in all actions which may redound to his or her benefit.

Acknowledged natural child may be adopted.—

The rule in *Prasnik v. Republic*,[88] that the acknowledging parent may adopt his acknowledged natural child, as allowed in article 338 of the new Civil Code, was reiterated in *Durang Parang Jimenez v. Republic*,[89] where the mother was allowed to adopt her acknowledged natural child who was her only child. The Supreme Court did not sustain the opposition of the Solicitor General that such adoption cannot be allowed because article 335 of the new Civil Code prohibits a person with an acknowledged natural child from adopting. It was noted that under article 338 the natural child may be adopted by the natural parent in order that the latter may make amends for the wrong done to the child and to raise him to the status of a legitimate child.

85 52 O.G. 5149 (1956)
86 L-9194, April 25, 1957
87 L-10444, June 29, 1957
88 52 O.G. 1942 (1956)
89 L-9911, May 28, 1957

USE OF SURNAMES

Change of name is a privilege.—

A change of name is a privilege and not a matter of right. The state has an interest in the names borne by individuals and entities for purposes of identification. Where prior convictions exist, it is the court's duty to consider carefully the consequences of the change of name and to deny the same unless weighty reasons are shown. Thus, where a person named Ong Pen Oan wanted to change his name to Vicente Chan Bon Lay and it appears that he had been convicted twice of gambling under the name Ong Pen Oan or Ong Pin Can, his petition for change of name was properly denied. A person with a criminal record will have evident interest in the use of a name other than his own in attempt to obliterate an unsavory record.[89a]

CIVIL REGISTRY

When error in birth certificate regarding citizenship may be corrected.—

The rule that the alleged mistake in the birth certificate regarding citizenship cannot be corrected in a mere petition for correction because article 412 of the new Civil Code, regarding correction of errors in the entries in a civil register, applies only to *clerical errors,*[90] was not followed in *Guevara Lim v. Republic,*[91] where the father filed a petition for the correction of the mistakes in the birth certificates of his two sons. He alleged that his citizenship and birthplace are not "Chinese' 'and "Amoy, China", as stated in the birth certificates, but "Filipino" and "Iba, Zambales," respectively. It appears that the petitioner was declared a Filipino citizen in a deportation case, unlike in the *Ty Kong Tin* case, where the petitioner merely pretended that he was a Filipino citizen and tried to establish his citizenship in a proceeding which was more or less summary in nature. Since petitioner's Philippine citizenship is an established fact, his petition for correction may be allowed. A clerical error implies mistake by the clerk in copying or writing or the making of wrong entries in the public records contrary to existing facts.

CLASSFICATION OF PROPERTY

Portion of navigable stream cannot be converted into a fishpond.—

The case of *Diego v. Meneses,*[92] lays down the rule that an individual may not be allowed to segregate by means of a dike or embankment a portion of a navigable stream, then render it shallow, and thereafter contend that it could be disposed of by lease because it is no longer navigable. To allow him to do so would be condoning

89a Ong Peng Ooan v. Republic, L-8035, Nov. 29, 1957
90 Ty Kong Tin v. Republic, 50 O.G. (1954); Brown v. Republic, 52 O.G. 6565 (1956)
91 L-8932, May 31, 1957
92 L-9217, Nov. 29, 1957, 54 O.G., 956

usurpation of properties of the public domain.[93] This holding is simply a reiteration of the ruling that rivers, including their natural beds and waters, are part of the public domain, and, as such, are not subject to purchase, acquisition or appropriation for personal and exclusive purposes of any person.[94] It is an aspect of the broad rule that properties for public use or service are inalienable.[95]

Are public lands patrimonial property?—

In *Lucas v. Durian,* [96] there is a statement in the majority opinion that alienable public lands are *patrimonial* property of the State. Article 421 of the new Civil Code, formerly article 340, provides that property of the State, which is not intended for public use nor for public service nor for the development of the national wealth is patrimonial property. Article 422 provides that "property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State."

One characteristic of property of public dominion intended for public use or service is that it is inalienable.[97] However, public agricultural land are alienable. For this reason, it is believed that alienable public agricultural lands must be patrimonial property of the State, since only this kind of property can be alienated.

City of Manila cannot declare a public plaza patrimonial property. —

Under the new Civil Code, property is either of public dominion or of private ownership. As already noted, property of the State, which is not intended for public use nor for some public service nor for the development of the national wealth, is patrimonial property. Friar lands and the lands of the San Lazaro Hospital are patrimonial property of the State.[98] Property of provinces, cities and municipalities not intended for public use is patrimonial. The principle that property for public use of the State is not within the commerce of man and, consequently, is inalienable and cannot be acquired by prescription,[99] applies to the property for public use of a municipality, which is likewise not within the commerce of man as long as it is used by the public and, consequently, said property is inalienable. Property of a municipality necessary for governmental purposes cannot be attached and sold for the payment of a judgment against the municipality. The supreme reason for this rule is the character of the public use to which such kind of property is devoted. Thus, auto trucks used by a municipality in sprinkling its streets, its police

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93 Insular Government v. Naval, CA 40 O.G. 11th Supp. 59
94 Meneses v. Commonwealth, 69 Phil. 647 (1940); Palanca v. Commonwealth, 69 Phil. 449 (1940); Mercado v. Macabebe, 59 Phil. 592
95 Municipality of Cavite v. Rojas, 30 Phil. 602 (1915)
96 L-7886, Sept. 23, 1957
97 See notes 101 and 102, infra.
98 Jacinto v. Director of Lands, 49 Phil. 853; Central Capiz v. Ramirez, 40 Phil. 883; Tipton v. Andueza, 5 Phil. 477
99 Art. 1108, new Civil Code; Harty v. Municipality of Victoria, 13 Phil. 152; Meneses v. Commonwealth, 69 Phil. 647; Palanca v. Commonwealth, 60 Phil. 449; Mercado v. Municipality President of Macabebe, 59 Phil. 592

patrol car, police stations, and public markets, together with the land on which they stand, are exempt from execution to satisfy the unpaid price of two strips of land bought by the municipality from a private person.[99a] It has also been held that the privilege or franchise given to a private person to enjoy the usufruct of a public market cannot be lawfully attached and sold at the instance of the concessionaire's creditor, whose right is restricted to the revenue obtained by the debtor from the enjoyment or usufruct of the said privilege.[100]

A municipal council cannot sell or lease communal or public property, such as plazas, streets, common lands, rivers, bridges, etc. because they are outside the commerce of man; and if it has done so by leasing part of a plaza, the lease is null and void, for it is contrary to the law and the thing leased cannot be the object of a contract.[101] The City of Manila has no power to lease a portion of a public sidewalk, which forms part of a public plaza.[102] The lease to private persons of a vacant land, owned by the city and intended to be used as a traffic circle, is likewise void.[103] Public plazas cannot be registered in the name of a municipality.[104] Where a land was purchased in 1832 by a parish priest for the use of the municipality but the land was devoted by the municipality to uses other than that of a public square, such land thereby became a part of its *bienes patrimonialies*.[105]

Article 422 of the new Civil Code provides that "property of public dominion, when no longer intended for public use or public service, shall form part of the patrimonial property of the State." The defense of the national territory against invasion by foreign enemies rests primarily upon the State and not upon the towns and villages. For this reason forts erected to resist invasion are presumed to have been dedicated for national defense and is property of the State. The fact that the fort so built has not been used for many years for the purposes for which it was originally intended does not of necessity deprive the State of its ownership therein. When it ceases to be used for the public good or for the necessities of the defense of the country, it becomes a part of the private property of the State. The fact that the municipality may have exercised acts of ownership over the land upon which the fort is built, by permitting it to be occupied and consenting to the erection of private houses thereon, does not of itself determine that the land has become property of the municipality.[106]

The recent case of *Unson v. Lacson*,[107] involving the power of the City of Manila under its charter to withdraw a street from public

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99a Viuda de Tantoco v. Municipal Council of Iloilo, 49 Phil. 52 (1926)
100 Tufexis v. Olaguera and Municipal Council of Guinobatan, 32 Phil. 654
101 Municipality of Cavite v. Rojas and Tiung Siuko, 30 Phil. 602, (1915); Nicolas v. Jose, 6 Phil. 589 (1906); Li Seng Giap v. Municipal Council of Naga, CA 40 O.G. 217, Supp. of Nov. 21, 1941
102 Muyot v. De la Fuente. CA 48 O.G. 1886 (1952); Capistrano v. Mayor and Chief of Police, CA 44 O.G. 2798
103 Capitulo v. Aquino, CA 53 O.G. 1477 (1956)
104 Director of Lands v. Roman Catholic Bishop of Zamboanga, 61 Phil. 644 (1935); Harty v. Municipality of Victoria, 13 Phil. 152; Nicolas v. Jose, supra
105 Municipality of Oas v. Roa, 7 Phil. 20 (1906)
106 Municipality of Hinunangan v. Director of Lands, 24 Phil. 124 (1913)
107 L-7909, Jan. 12, 1957

use, convert it into patrimonial property and then lease it to a private person, should be viewed in the light of the rules set forth above. In this case, it appears that the municipal board of Manila passed an ordinance withdrawing the northern portion of Callejon del Carmen from public use, declaring it patrimonial property and authorizing its lease to the Genato Commercial Corporation. The lessee constructed a building, on the leased portion. In view of the construction of said building, Cipriano Unson, the owner of a lot adjoining Callejon del Carmen, was deprived of his two exits on said street. He filed an action against the Mayor of Manila and the Genato Commercial Corporation for the removal of the latter's building on the leased land.

Held: The City of Manila, under its charter, has no power to withdraw a street from public use, convert it into patrimonial property and then lease it to a private person. Properties devoted to public use, such as public streets, alleys and parks, are presumed to belong to the State. Municipal corporations may not acquire the same, as patrimonial property, without a grant from the National Government, the title of which may not be divested by prescription.[108] Said corporations cannot register a public plaza or lease the same. They cannot establish title thereto adverse to the State. They cannot withdraw a plaza or alley from public use and declare the same patrimonial property of the municipality or city concerned without express, or, at least, clear grant of authority from Congress. The ordinance and lease were declared null and void.

OWNERSHIP AND COOWNERSHIP

Accion publiciana.—

An ejectment suit brought after the expiration one year from the date of unlawful deprivation is an *accion publiciana* or *plenaria de posesion*. Rule 72 of the Rules of Court does not apply to such an action.[109]

Laches in exercising jus vindicandi.—

The rule is that one who claims property that is in the possession of another must resort to the action to quiet title within the statutory period of limitation. Such action may be barred by laches, where no excuse is offered for the failure to assert title sooner.[110]

Possessor in good faith has jus retentionis.—

Article 453 of the new Civil Code provides that "if there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith." This means that if the landowner has elected to reimburse to the planter the value of the useful improvements made by him, the planter may retain the land until

108 Municipality of Tigbauan v. Director of Lands, 35 Phil. 798 (1916)
109 Barredo v. Santiago, L-11035, Sept. 30, 1957
110 44 Am. Jur. 47, 50, cited in Ongsiaco v. Ongsiaco, L-7510, March 30, 1957

he has been reimbursed such value.[111] Where the landowner failed to appeal from the decision of the trial court finding both owner and possessor to have acted in bad faith and consequently their rights must be determined as if both acted in good faith, the possessor in bad faith may be regarded as a possessor in good faith as to the improvements and so he may hold the land until he receives reimbursement of their value from the landowner. This is the rule laid down in *Llanos v. Simborio,*[112] where the landowner, in asking that he be placed in possession of the land, apparently elected not to sell the land to the possessor. He must therefore reimburse to the possessor the value of the improvements,[113] and pending such reimbursement the possessor may retain the land.[113a]

Accretion to riparian lands.—

The case of *Narag v. Court of Appeals*[114] adheres to the rule formulated by Manresa that in the allocation of the accretion among riparian lands "se debe entender verificada siguiendo siempre la extension de la linea de la propiedad confinante, quedando naturalmente a la apreciacion de hecho y sobre el terreno la resolucion de las dificultades que pueden surgir a causa de la irregularidades de las fincas y del cauce de los rios."[115]

In the *Narag* case it appears that the land of Juan del Rosario had the Cagayan River as its western boundary. As the river receded westward, the tillable portion of the land on its western part increased. The land of Eligio Narag adjoined that of Del Rosario on the south and both lands had the Cagayan River as their common boundary on the west. The question was whether Del Rosario owned exclusively the accretion left by the river. *Held*: Since the dividing line should not be extended in such a way that the adjacent owner would be prejudiced, that line should be extended in its natural course, that is, in a straight line from the original point. To do otherwise would work injustice to the other adjacent owner and such was never envisioned by the legislator and certainly the ends of justice would not be served in that way. The dividing line between the lands of Narag and Del Rosario should be extended in a straight line from the old point in the east towards the west, thereby leaving the soil incorporated by way of accretion to the original land of Del Rosario.

Partition of land owned in common.—

Articles 494 and 496 of the new Civil Code regarding partition in coownership were cited in *Francisco v. National Urban Planning Commission,*[116] to support the holding that the Subdivision Regula-

111 Articles 448 and 546, new Civil Code
112 L-9704, Jan. 18, 1957, 53 O.G. 1759
113 For other cases wherein landowner and possessor both acted in bad faith, see Municipality of Ons v. Roa, 7 Phil. 20, Merchant v. City of Manila, 11 Phil. 116; Martinez v. Baganus, 28 Phil. 500. As to cases decided by the Court of Appeals on reimbursement, Baquiran v. Baquiran, CA 53 O.G. 1130, holding that the builder with a jus retentionis cannot be required to pay rentals. See also Viray v. Javier, CA 53 O.G. 1812 holding that the mortgagee is not the possessor contemplated in Art. 546.
113a Art. 546, Bernardo v. Bataclan, 68 Phil. 598 (1938)
114 L-8065, Feb. 25, 1957, 53 O.G. 7240
115 3 Codigo Civil 7th Ed., p. 328
116 L-8465, Feb. 28, 1957, 53 O.G. 3456

tions of the National Planning Commission are intended to govern only the subdivision of a tract or parcel of land for sale and for building development and not when the subdivision is made in accordance with the voluntary agreement of the coowners for the partition and termination of the coownership.

Extension of lease contract is not binding on coower who did not consent thereto.—

In *Leonzon v. Limlingan,*[117] a lot was leased by the coowners for a period of ten years with the understanding that it would be converted by the lessees into a fishpond. At the end of the term of the lease, the lessees would deliver the fishpond to the lessors "clean and complete." The 10-year period was supposed to expire on *September* 16, 1940. Some coowners extended the lease with respect to their shares for a period of four years. But Adelio Leonzon, the coowner owning a ½ pro indiviso interest, refused to agree to the extension. On *September* 2, 1940 he agreed with the lessees that the extension of the lease would be effective only as regards the shares of the other coowners. On *September* 28, 1940 he filed a complaint against the lessees for "breach of contract and damages" with respect to his undivided ½ share in the lot. The trial court dismissed the action as premature. *Held*: Leonzon acquired a vested right to the fulfillment of the lessees' obligation to clean the lot and convert it into a fishpond during the 10-year term of the lease. The extension of the lease granted by his coowners did not bind him. Under the original lease contract, he had a right that was binding and enforceable against the lessees. His action was not premature. Moreover, the lease, as extended up to 1944, had already expired.

It should be noted that in the *Leonzon* case the Supreme Court did not state the legal basis of its decision. It simply relied on the contractual stipulations of the parties. The difficulty in the *Leonzon* case is that the coowner's right is not effective with respect to any definite portion of the lot.

Accounting.—

A coowner in possession of the land owned in common must account for the fruits thereof to the other coowner.[118]

POSSESSION

Possessor in good faith.—

Where, without the wife's consent, land was donated by the husband to a 16-year old girl so that he could cohabit with her, the donation might be valid if the wife's share in the conjugal assets and the legitimes of the deceased husband's forced heirs are not impaired. The improvements made upon the land by the widow should be governed by the rules of accession and possession in good faith, it being undisputed that the widow and the husband's heirs were unaware of the donation when the improvements were made.[119]

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117 L-9552, Sept. 30, 1957
118 Garcia v. Martir, L-223, June 29, 1957
119 Liguez v. Ngo Vda. de Lopez, L-11240, Dec. 18, 1957

Mandatory injunction in forcible entry cases.—

Article 539 of the new Civil Code, which allows the possessor deprived of his possession through forcible entry to secure within ten days from the filing of the complaint a writ of preliminary mandatory injunction to restore him in his possession, is illustrated in *Torre v. Querubin.*[120] In this case, it appears that after Saturnina Uy was placed in possession of a parcel of land by the sheriff, defendants Torre forcibly entered upon the land and deprived her of the possession thereof. She filed an action against said defendants to recover possession of the land and asked that a writ of preliminary mandatory injunction be issued. The trial judge, after hearing, issued the injunction. *Held*: The issuance of the injunction was proper. It should be noted that in this case the injunction was issued by the Court of First Instance. The term "competent court" in article 539 does not, therefore, mean only the inferior courts. The injunction is intended to prevent the usurper from prolonging his possession of the property even when the rightful possessor has an immediate right thereto.

EASEMENTS

Easement on river banks.—

In *Unson v. Lacson*[121] it was held that the action of the City of Manila, in converting Callejon del Carmen into patrimonial property and thereafter leasing it to a private firm, which constructed a building on said street, contravenes article 638 of the new Civil Code, which provides that the banks of rivers and streams are subject to the 3-meter zone easement for navigation, floatage, fishing and salvage. The construction of a building on said *callejon* prevented the public from using the banks of Estero San Sebastian for purposes of said easement. Said easement is not new but is an old easement and, consequently, the rule in previous cases does not apply to the case.[122]

Gratuitous easement of way.—

Article 567 of the old Civil Code, now article 652, which provides that "when a tenenment, acquired by purchase, exchange, or partition, is surrounded by other tenements of the vendor, exchanger, or coowner, the latter shall be obliged to grant a right of way without indemnity, in the absence of an agreement to contrary," was cited in *Araneta v. Hashim,*[123] as the basis for the holding that the right of way granted by Tomas Hashim to Salvador Araneta, when he sold to the latter certain lots, may be annotated on the title of the lots on which said right of way exists.

Nonuser of easement of drainage.—

The legal servitude of drainage of rural estates (lower estates

120 L-9519, April 15, 1957, 53 O.G. 4457
121 L-7909, Jan. 12, 1957
122 Ayala de Roxas v. City of Manila, 6 Phil. 251; Chang Hang Ling v. City of Manila, 9 Phil. 215
123 L-10082, Nov. 19, 1957

must receive the waters coming from higher estates provided for in article 637 of the new Civil Code) is a continuous easement because its enjoyment does not depend upon the acts of man. Where the dikes obstructing the use of said easement were constructed in 1938 and the action for their removal was brought only in 1951, the 10-year period of nonuser had already expired and said easement was extinguished by prescription. Even if said dikes were considered a nuisance, article 698 of the new Civil Code, providing that lapse of time does not legalize a nuisance, would not apply to the case because the 10-year period for nonuser provided for in article 631 of the new Civil Code is an exception to article 698 of the same Code.[124]

NUISANCE

Old law: Right to maintain private nuisance may be acquired by prescription.—

Article 698 of the new Civil Code provides that "lapse of time cannot legalize any nuisance, whether public or private" and article 1143 of the same Code provides that the right "to bring an action to abate a public or private nuisance" is not extinguished by prescription. In *Ongsiaco v. Ongsiaco*,[125] it was held that the provision of article 631 of the new Civil Code that easements are extinguished by nonuser for ten years is a special rule applicable to easement and is an exception to the general rule in article 698. *Generalia specialibus non derogant.*[126]

In the *Ongsiaco* case, dams obstructing the easement of drainage in favor of a higher estate were constructed in 1938 and the action for their removal was brought in 1951. Even supposing that the dams could be considered nuisances under paragraph 4 of article 694 ("obstructs or interferes with x x x any body of water x v x"), nevertheless, since the easement of drainage was extinguished by nonuser for ten years, "after that period the dams could no longer interfere with the terminated rights" and when the action for their removal was brought in 1951, they could not be considered nuisances anymore.

American authorities recognize that, while no right to maintain a public nuisance can be acquired by prescription, on the other hand, the right to maintain a private nuisance may be acquired by prescription.[127] This rule could be applied in this jurisdiction to cases arising before the effectivity of the new Civil Code.

Donee is not a creditor of donor.—

The donee in a perfected donation is not a creditor of the estate of the deceased donor. The donation is perfected from the moment that there is notice of the donee's acceptance to the donor. As long

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124 Ongsiaco v. Ongsiaco, L-7510, March 30, 1957
125 Supra, note 124
126 Manila Railroad Co. v. Collector of Customs, 52 Phil. 950, 952
127 152 ALR 344-345

as the donation is not annulled, the property donated does not form part of the deceased donor's estate.[128]

Acquisition by prescription of invalidly donated property.—

The case of *Guarin v. Guarin*[129] reaffirms some settled rules regarding donations. In this case the spouses Ciriaco Guarin and Juliana Castro donated to their extrajudicially adopted children ("pulot" or "recogidos") certain parcels of land with the stipulation that the donees should not take possession of the donated properties until they become of legal age and that the donors would administer the same. Following the rule in *Laureta v. Mata,*[130] said stipulation amounts to an actual conveyance of the ownership of the donated property, subject only to the life estate of donors. That rule is also the rule in article 729 of the new Civil Code, which provides that "when the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor's death, this shall be a donation *inter vivos.*"

Even if the donation were invalid, the donees should be regarded as the owners of the same because they possessed the land adversely from 1935 to 1949, a period of fourteen years. Property invalidly donated may be acquired by prescription.[131]

Revocation based on noncompliance with conditions.—

Revocation of the donation for noncompliance with the conditions thereof cannot be done unilaterally by the donor. The revocation must be with the donee's consent or effected judicially. Where the violation of the condition of the donation took place on September 30, 1930 and the action for revocation was brought only in 1951, or more than ten years (the period in old Code is 10 years being based on written contract; in the new Code it is 4 years), the action is deemed to have prescribed, although there were subsequent violations. Under article 1969 of the old Code, now article 1150, the time for the prescription of all actions is computed from the day on which they might have been brought. This is the ruling in *Ongsiaco v. Ongsiaco.*[132]

In the *Ongsiaco* case, it appears that on July 31, 1929 Gorgonia de Ongsiaco donated *inter vivos* to her nine children her share in a certain hacienda with the condition that each donee would give her an annual pension of ₱1,000 payable in September of each year commencing September 1930. It was expressly stated that noncompliance with such condition would justify the revocation of the donation. On July 7, 1941 the donor revoked the donation to Emilia Ongsiaco on the ground that she had failed to pay her the stipulated pension of ₱1,000, the donor in turn donated to Caridad Ongsiaco a portion of the share of Emilia. Caridad accepted the donation but Emilia was

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128 Liguez v. Ngo Vda. de Lopez, L-11240, Dec. 18, 1957, citing Lopez v. Olbes, 15 Phil. 547
129 L-9577, Feb. 28, 1957
130 44 Phil. 668 and Balaqui v. Dongso, 53 Phil. 674
131 Pensader v. Pensader, 42 Phil. 959
132 L-7510, March 30, 1957

not advised of the revocation which was not registered. On April 25, 1951, Caridad sued Emilia for the recovery of the land previously donated to Emilia.

Held: Following the rule in *Parks v. Province of Tarlac*,[133] in order that a donation may be deemed revoked, the revocation must be consented to by the donee or should be judicially decreed. The notarial revocation executed by donor, without the intervention of the donee, or of the court, cannot render the donation ineffective. Since the action for the revocation of the donation accrued on September 30, 1930 and the action was brought only in 1951, the action had clearly prescribed. Even if the 10-year period should be computed from the last violation of the condition of the donation, committed on September 30, 1940, the action also had already prescribed.

REGISTRY OF PROPERTY

Registered attachment is superior to unregistered sale.—

One of the elementary rules regarding dealings over real property is the provision of article 709 of the new Civil Code that "the titles of ownership, or of other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons." This rule was applied in *Capistrano v. Philippine National Bank*,[134] which reiterates the doctrine that "if the attachment or levy of execution, though posterior to the sale, is registered before the sale is registered, it takes precedence over the latter."[135] The rule is not altered by the fact that at the time of the execution sale (pursuant to the attachment) the attaching creditor had notice of the unregistered sale as long as at the time of the levy he had no notice of such sale. The auction sale retroacts to the date of the levy. If the rule were otherwise, the preference enjoyed by the levy of execution would be meaningless and illusory.[136]

In the *Capistrano* case, it appears that in 1946 Fulgencio Moreno sold to Vicente Capistrano a parcel of land mortgaged to the Agricultural and Industrial Bank, the predecessor of the Rehabilitation Finance Corporation (RFC). As the bank would not release the owner's duplicate of the title unless its mortgaged credit was paid, the sale could not be registered. In 1950 the Philippine National Bank (PNB) levied upon the land to satisfy its judgment against Moreno. The levy was duly registered. On July 25, 1952 the RFC informed the PNB that Moreno had sold the land to Capistrano. In November 1952 the land was sold at public auction to the PNB. Capistrano filed a third-party claim with the sheriff. On November 16, 1953 Capistrano paid Moreno's mortgage obligation to the RFC and he registered the sale. He was given a new title for the land subject to the execution lien in favor of the PNB. He sued the bank for the cancellation of the lien. *Held*: The bank had a better right to the land. Capistrano's action was dismissed.

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133 49 Phil. 142 (1926)
134 L-9628, Aug. 30, 1957
135 Philippine National Bank v. Camus, 70 Phil. 289; Hernandez v. Katigbak, 69 Phil. 748
136 Vargas v. Tancioco, 67 Phil. 308; Philippine Executive Commission v. Abadilla, 74 Phil. 68

The rule in the *Capistrano* case applies to a situation where the deed of sale, executed prior to the levy, was entered in the day book of the register of deeds but the registration was not consummated because the owner's duplicate of the title was not presented for cancellation.[137] The attachment recorded after such entry in the day book prevails over the sale which has not been completely registered. The case would be different if the owner's duplicate was presented when the sale was entered in the day book.[138]

SUCCESSION

Donations to strangers are collationable.—

Article 908 of the new Civil Code, formerly article 818, provides that in computing the legitime "the value of all donations by the testator that are subject to collation" should be added to the hereditary estate. Article 1061 of the new Code, formerly article 1035, complements article 908 by providing that every compulsory heir must collate the donation which he has received from the deceased during his lifetime "in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition." Manresa's opinion is that the only collationable donations are "que sean hechas a herederos forzosos en vida del donante" and "que no son colacionables las donaciones hechas a extraños, aunque tambien concuran con aquellos." The case of *Udarbe v. Jurado,*[139] quotes the opinion of Manresa as found in the 1900 edition of his commentaries, that "donations are collationable only when the heirs of the deceased are forced heirs" and when it is proven that they prejudice the legitime.

But in the 1951 edition of his commentaries, the opinion of the Spanish Supreme Court that donations to strangers are also collationable is cited: "x x x ha de entenderse que a los efectos de fijar la porcion legitima y la porcion libre, deben considerarse colacionables todas las donaciones hechas por el testador durante su vida, ya en favor de herederos forzosos, ya en favor de personas extrañas."[140]

It should be noted that in collation of donations a distinction must be made between donations "que deben traerse a la particion, *para computarlas en la legitima,* y las que han de comprenderse en la masa para saber si son *inoficiosas,* y computarlas en su caso en el tercio libre o en el de mejora." Article 1035 of the old Code, now article 1061 uses the term "collation" in the first sense.[141]

In *Liguez v. Ngo Vda. de Leon,*[142] the Supreme Court categorically repudiated Manresa's opinion when it held that for purposes of articles 818 of the old Code, now article 908, collationable gifts "*should include gifts made not only in favor of the forced heirs, but even those made in favor of strangers,* as decided by the Supreme Court of Spain in its decisions of 4 May 1899 and 16 June 1902."

137 Ramirez v. Causin, L-10794, July 31, 1957
138 Potenciano v. Dineros, L-7614, May 31, 1955; Levin v. Bass, L-4340, May 28, 1952
139 59 Phil. 11 (1933)
140 6 Codigo Civil, 7th Ed., p. 455
141 7 Manresa, Codigo Civil, 6th Ed., 1943, p. 558
142 L-11240, Dec. 18, 1957

Legitimate half-brothers and sisters may be reservees.—

Certain aspects of *reserva troncal* or *lineal* provided in article 811 of the Civil Code, now article 891, were discussed in *Rodriguez v. Vda. de Rodriguez,*[143] where it was held that legitimate half-brothers and sisters of the *propositus* may be reservees and that the sugar quota pertaining to the reservable land is also reservable property even if the quota did not as yet exist when the *propositus* acquired the land by gratuitous title from his ascendant.

In the *Rodriguez* case it appears that in 1924 Eli Rodriguez inherited from his father certain sugar lands. At the time of Eli's death *ab intestato* in 1942, he was survived by his mother, his four legitimate half-brothers and sisters, his illegitimate half-sister and the son of another illegitimate half-sister. His mother was adjudged as sole intestate heir of the sugar lands which he had inherited from his father. However, his half-brothers and sisters, claimed to be reservees of the lands and as well as of the sugar quota allocated to the lands. They wanted their right as reservees to be registered in the Registry of Deeds. Eli's mother contended that half-brothers and sisters of the *propositus* cannot be reservees and that the sugar quota is not reservable property because it was allocated to the lands only *after* they were inherited by Eli from his father.

Held: Legitimate half-brothers and sisters can be reservees. But the illegitimate half-sister and the son of the deceased illegitimate half-sister of the *propositus* are not reservees. The reservation is in favor only of the legitimate relatives.[144] The sugar quota allotment is also reservable property because it is an improvement attaching to the lands although it was not yet in existence when the *propositus* inherited the lands in question. The reservable character of the said lands, together with the sugar quota allotment, should be annotated on the title to be issued to the mother of the deceased.[145]

Partition inter vivos.—

There is an intimation in *Romero v. Villamor,*[146] that article 1080 of the new Civil Code, which provides that a "person" may make a partition of his estate by an act *inter vivos* or by will and which is different from article 1056 of the old Code, requiring that the partition *inter vivos* should be made by a "testator," does not mean that there should always be a will in order that the partition *inter vivos* would be effective. A will was required in the old Code, but the change of "testator" to "person" may mean that a will is not required if the partition is by an act *inter vivos*. The same interpretation was made by the Court of Appeals in *Tagala v. Ybeas.*[147]

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143 L-9234, Aug. 30, 1957
144 Nieva and Alcala v. Deccampo, 41 Phil, 915; Centeno v. Centeno, 52 Phil. 322; Director of Lands v. Aguas, 63 Phil. 279
145 Edroso v. Sablan, 25 Phil. 295 (1913)
146 L-10850, Dec. 20, 1957
147 49 O.G., 200

No subrogation if sale of hereditary share was made after partition.—

Article 1088 of the new Civil Code, formerly article 1067, gives to a coheir the right to be subrogated to the rights of the purchaser who had bought the hereditary rights of an heir "before partition." Where the sale of the hereditary share of an heir was made after partition, the right of subrogation does not exist. This is the rule laid down in *Caram v. Montilla,*[148] and it is a reiteration of the doctrine of *De Jesus v. Daza.*[149]

In the *Caram* case, it appears that on *December* 9, 1949 Miguel, Fermin, Magdalena, Elena and Salud, all surnamed Caram, executed a partition agreement concerning the "Hacienda Montelibano," left by their deceased parents. They agreed to divide the property into five equal lots to be distributed by lottery among themselves. On *December* 15, 1949 the probate court having jurisdiction over the proceedings for the settlement of the decedents' estate approved the partition agreement. On *December* 19, 1949 Salud Caram sold her share of the hacienda to Rosario Montilla. On *January* 26, 1950 the five heirs held a lottery for the distribution of the lots into which the estate had been subdivided by the surveyor. It should be noted that on October 19, 1949 Elena Caram had sold to Rosario Montilla ten hectares of her share. On February 15, 1950 Fermin and Miguel sent a telegram to Rosario Montilla, stating that they heard rumors that their sisters Elena and Salud had sold their shares in the hacienda to Rosario Montilla and they expressed their desire to redeem the shares sold. Rosario replied that she was not willing to resell. On February 23, 1950 Fermin and Miguel instituted against Rosario the instant action for subrogation.

Held: As to Salud, there can be no redemption because she made the sale after partition. While it is true that after partition the coheirs became coowners,[150] yet such coownership was terminated after the subdivision of the hacienda and the raffle held among the heirs on January 26, 1950. In February 1950 it was therefore too late for the plaintiffs to claim legal redemption under article 1524 of the old Code, now article 1623 because at that time the coownership had ceased to exist. Legal redemption presupposes the existence of a coownership. Indeed, as "the purpose of the law in establishing the right of legal redemption between coowners is to reduce the number of participants until the community is done away with, once the property is subdivided and distributed among the coowners, the community has terminated and there is no reason to sustain any right of legal redemption. *Sublata causa tollitur effectus* (By removing the cause, the effect is removed).

With respect to the sale made *before* partition by Elena Caram, plaintiffs cannot exercise any right of subrogation because, although the sale was made before partition, nevertheless, they sought to exercise the right of redemption *after partition.* It was held in *Sa-*

148 L-7820, April 30, 1957
149 77 Phil. 152 (1946)
150 Alcala v. Pabalan, 19 Phil. 520 (1911); Castro v. Castro, 51 O.G. 5612 (1955)

turnino v. Paulino, [151] that "the right of redemption under Article 1067 (now Article 1088) must be exercised only *before* partition." The argument that, because the sales made by Elena and Salud were not registered, said sales cannot affect the plaintiffs, is untenable because if there were no sales, then there would be no right to repurchase; nothing having been sold, nothing could be repurchased.

Two justices dissented. They argued that after the partition there was a resulting coownership and that since plaintiffs learned of the sale on February 17th and they filed their action February 23rd, it was within the 9-day period provided for in Article 1522 of the old Code. While the coownership was terminated by the raffle on January 26th, nevertheless, it should still be considered existing at least for purposes of redemption. A contrary doctrine would nullify the right of redemption.

Voidable partition.—

Article 1081 of the old Civil Code provides that "a partition with the inclusion of a person believed to be an heir, but who is not, shall be void." Article 1105 of the new Code, which corresponds to Article 108, provides that "a partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person." These provisions were construed in *Lim v. Mabasa*[152] where it appears that Mariano Mabasa died in 1945 leaving a substantial estate. He was survived by several legitimate children among whom was Crispina Dee. In 1946 his estate was partitioned. No share was given to Crispina. In 1948 Bienvenido Lim married Crispina. In 1954 Lim sued the heirs who partitioned Mabasa's estate for the recovery of Crispina's share. Crispina was made a codefendant. She asked for the dismissal of the action. The trial court dismissed Lim's complaint on the ground that he had no personality to bring the action. He appealed.

Held: Lim's contention that the partition was void *ab initio* because persons, who were not heirs, took part in it, was not sustained. That kind of partition is merely voidable. Unless declared void, it stands. When Crispina married Lim in 1948, she did not bring to the marriage her alleged share in her father's estate. As ruled in *Cook v. McMicking,*[153] the "nullity of a deed or contract may be taken advantage of only by persons who bear such a relation to the parties to the contract that it interferes with their rights and interests." Only Crispina, not Lim, could attack the partition. She has objected to Lim's action. In fact, she has sued him for separation of property on the ground of abandonment, personal assaults and fraudulent conveyances of conjugal assets. Equity would not under the circumstances permit the husband to reach his wife's assets.

It is fallacious to assert that Lim's action relates to the fruits of the paraphernal property of Crispina. Her paraphernal property has not been identified. The husband, as administrator of the con-

151 L-7385, May 19, 1955
152 L-8663, Oct. 31, 1955
153 27 Phil. 10

jugal partnership, cannot reach the fruits of the paraphernal property before the wife has liquidated the same. Moreover, Crispina could repudiate her inheritance without her husband's consent, as authorized by Article 1047 of the new Civil Code. Lim's action was properly dismissed.

PRESCRIPTION

Adverse possession.—

In order that possession may ripen into ownership through prescription, it is necessary that such possession be adverse. The new Civil Code, unlike Section 41 of the Code of the Civil Procedure, does not mention adverse possession, but in certain articles on prescription it speaks of the "adverse claimant" and of possession "in the concept of an owner" which is equivalent to adverse possession. Moreover, the new Civil Code in Article 1119 provides that "acts of a possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for purposes of possession." Where the possession is not adverse or *en concepto de dueño,* there can be no prescription. In *Guarin v. Guarin,*[154] the evidence shows that the claimant entered into the possession of the lands in litigation and enjoyed the fruits thereof. He administered said lands, introduced improvements thereon and paid the corresponding taxes with his own money and out of the fruits of the same property. He converted the parcels of land into fishponds. He possessed the land adversely for more than fourteen years. It was held that he had acquired the lands by prescription.

The *Guarin* case also adheres to the rule that land invalidly donated because not duly accepted by the donee may be acquired by prescription by the donee.[155]

One year period commences from date of demand.—

"A demand is a prerequisite to an action for unlawful detainer, when the action is "for failure to pay rent due or to comply with the conditions of his lease', and not where the action is to terminate the lease because of expiration of its terms."[156] Where the landlord notified his tenant in March, 1953 "that effective April 1953, unless he agreed to pay the increased rental of ₱6.25, he should vacate the leased premises," and on *July* 12, 1954, the landlord made a demand upon the tenant to vacate the premises after he had failed to pay the increased rental of ₱6.25, the one year period within which to institute the suit for unlawful detainer, as provided in Article 1147 of the new Civil Code, should commence from July 12, 1954, not from March 1953. Since after the notice in March 1953, the tenant elected to stay, "he thereby merely assumed the obligation of paying the new rental and could not be ejected until he defaulted in said obligation and necessary demand was first made."[157]

154 L-9577, Feb. 28, 1957
155 Pensader v. Pensader, 47 Phil. 959; Agaton v. Vda. de Gonzales, CA-GR. 5307-R, Aug. 24, 1950; Apilado v. Apilado, CA 34 O.G. 1495; Macabasco v. Macabasco, CA 45 O.G. 2532; Azcueto v. Cabangbang, CA 45 O.G. May Supp. 144.
156 Go Tiamco v. Boom Sim, CA 43 OG 1665; Sec. 2, Rule 72, Rules of Court
157 Manotok v. Guinto, L-9540, April 30, 1957

Moratorium law interrupted prescription of actions.—

It is now settled that the moratorium law, Executive Order No. 25, dated November 18, 1944, as amended by Executive Order No. 32, dated March 10, 1945, which was modified by Republic Act No. 342 (effective on July 26, 1948), lifting the moratorium on prewar obligations (except those of war sufferers), suspended the period of prescription. The moratorium law was declared unconstitutional in *Rutter v. Esteban.*[158] The decision in the *Rutter* case was promulgated on May 18, 1953.

The rule, that the moratorium law suspended the prescriptive period, laid down in previous cases,[159] was followed in several 1957 cases: *Philippine National Bank v. Aboitiz,*[160] *Pacific Commercial Co. v. Aquino,*[161] *Parsons Hardware v. San Mauricio Mining Co.,*[162] *Bachrach Motor Co. v. Chua Tua Hian,*[163] *D'Almeida v. Hagedorn,*[164] *Liboro v. Finance & Mining Investments Corporation,*[165] *Hodges v. Vasquez de Arroyo,*[166] *Nabong Jr. v. Luzon Surety Co., Inc.,*[167] *David v. Pio Barretto Sons, Inc,*[168] and *Tioseco v. Day and Manalese.*[169]

In the *David* case, the Supreme Court clarified for the first time that a distinction must be made between the debtors who suffered war damages and those who did not. In that case the mortgage obligation matured on November 20, 1940. The suit for the cancellation of the mortgage encumbrance annotated on the title of the land mortgaged was brought on January 10, 1954, or after the expiration of 13 years, 2 months and 5 days. It was held that from this period of time should be deducted the period, from March 10, 1945, when Executive Order No. 32 became effective, to July 26, 1948 when Republic Act No. 342 took effect, or a period of 3 years, 4 months and 15 days. The statement of the trial court that the moratorium was in force up to the promulgation of the decision in the *Rutter* case on May 18, 1953 was considered incorrect because "it does not appear that the debtor or his successors in interest are war sufferers." Since of the ten-year prescriptive period for enforcing the mortgage obligation, a period of 9 years, 8 months and 20 days had run and there is still a short period remaining within which to enforce it, the action for cancellation of the mortgage encumbrance was prematurely brought.

In the *Nabong* case, it was held that where the action for reimbursement by the surety against the principal debtor and his sureties accrued on October 6, 1941, when the surety made a payment

158 49 O.G. 1807 (1953)
159 Day v. Court of First Instance, L-6691, April 27, 1954; Montilla v. Pacific Commercial Co., L-8223, Dec. 20, 1955; Manila Motor Co. v. Flores, L-9396, 52 O.G. 5804 (1956); Manila Motor Co. v. Fernandez, 52 O.G. 6883 (1956); Bartolome v. Ampil, L-8436, Aug. 28, 1956; Rio y Cia v. Sandoval, L-9391, Nov. 28, 1956; Alcantara v. Chico, 49 O.G. 150 (1952); Ma-ao Sugar Central Co. v. Barrios, 79 Phil. 666 (1947).
160 L-9500, April 11, 1957
161 L-10274, Feb. 27, 1957, 53 O.G. 4067
162 L-9584, April 27, 1957
163 L-9729, April 24, 1957, 53 O.G. 6524
164 L-10484, May 22, 1957
165 L-8948, Nov. 29, 1957
166 L-9554, May 23, 1957
167 L-10034, May 17, 1957
168 L-10833, May 21, 1957
169 L-9944, April 30, 1957

to the creditor in behalf of the principal debtor, and the action for reimbursement was filed by the surety as a counterclaim on September 24, 1954, the action had not yet prescribed because it was interrupted by the moratorium laws. From October 6, 1941 to September 24, 1954, there is a period of 12 years, 11 months and 18 days. From this period should be deducted the time intervening between March 10, 1945, when Executive Order No. 32 was issued, and July 26, 1948, when the moratorium was partly lifted by Republic Act No. 342, or a period of 3 years, 4 months and 16 days. The result is a period of 9 years, 7 months and 2 days. The 10-year period had not yet expired.

In the *Aboitiz* case it was held that, since the moratorium law has the effect of tolling the period of prescription, the action, instituted on January 30, 1953 to revive a judgment rendered on August 27, 1942, had not yet prescribed because the 10-year prescriptive period was interrupted from March 10, 1945[169a] to July 26, 1948.

In the *Bachrach* case, the action recover an amount, which fell due on December 10, 1941, was brought on August 28, 1953, or 11 years, 8 months and 18 days thereafter. It was held that the action had not yet prescribed because the 10-year period was interrupted for 3 years, 4 months and 16 days (March 10, 1945 to July 26, 1948), when the moratorium law was in force.

In the *Parsons* case the obligation became due on December 1, 1954 or after the expiration of 12 years and 3 months. From this period should be deducted the time when the moratorium law was in force (3 years, 4 months and 16 days). The action was brought therefore within the statutory period which was tolled by the moratorium law.

There is a difference between these cases and that of the *Aquino* case, where the period of interruption was computed from *March* 10, 1945 to *May* 18, 1953 when the *Rutter* decision was rendered. It was held in the *Aquino* case that, where the 10-year period for enforcing a prewar obligation commenced to run on November 18, 1941 and the action was filed on February 10, 1953, the action had not prescribed because the moratorium law tolled the prescriptive period. Only a little over three years of the 10-year period had elapsed. The computation of the period of interruption in the *Aquino* case is the same as that in the *Sandoval* case. The *Aquino* and the *Sandoval* cases can be justified on the assumption that the debtors in said cases were war sufferers.

In *Tioseco* case a judgment became final on May 1, 1940. The action to revive it was brought on September 27, 1954, or after the expiration of more than 14 years. Deducting therefrom the period of time during which the moratorium law had been in force, or from March 10, 1945, the promulgation date of Executive Order No. 32, amending Executive Order No. 25, up to May 18, 1953, the date Republic Act No. 342 was invalidated in the *Rutter* case, or a period

169a The date should be Nov. 18, 1944 when Ex. Order No. 25 suspending the enforcement of wartime obligations was issued. March 10, 1945 is the date when Ex. Order No. 32, suspending the enforcement of prewar and wartime obligation was issued.

of 8 years, 2 months and 8 days, it results that only 6 years, 2 months and 18 days of the prescriptive period had run. Since the action to revive the judgment prescribes in 10 years from the time the cause of action accrues, it follows that plaintiff's action was instituted within the statutory period.

It should be noted that the *Tioseco* case follows the procedure indicated in the *Rio* and *Aquino* cases, although there is no finding that the debtor had suffered war damage or that the case is covered by Republic Act No. 342. In the first decision rendered in the *Day* case on April 27, 1954, it was held that the period of suspension was computed from March 10, 1945 to July 20, 1948, when Republic Act No. 342, partially lifting the moratorium, took effect.

In the *Hagedorn* case, the Moratorium Law was applied to the collection of two promissory notes executed in Hongkong in 1942 and 1943 because prescription is governed by the *lex fori*. In the *Hagedorn* case, it was definitely ruled that if the debtor did not file any war damage claim, the period of interruption of the prescription period as to a wartime obligation is from March 10, 1945,[169a] when Executive Order No. 32 was issued, or a period of 3 years, 4 months and 15 days. This period should be deducted from the time embraced within the date of the promissory note and the date when the action was filed, which in this case was February 15, 1954. The 10-year period had not yet expired when the action was filed.

Other rulings on prescription.—

(1) Under Section 43 of the Code of Civil Procedure an action for the recovery of personal property or for the recovery of damages for taking, retaining, or injuring personal property must be brought within four years from the time the right of action accrues. Where pieces of jewelry were seized by the sheriff on August 24, 1943 and the action for their recovery was brought only in 1952, the action had clearly prescribed. The four-year prescriptive period expired on August 24, 1947. This is the holding in *Lapuz v. Sy Uy*.[170] The period of prescription for the recovery of personal property under Article 1140 of the new Civil Code is eight years. Article 1146 of the Code provides that actions upon an injury to plaintiff's rights or upon a quasi-delict must be brought within four years.

It was also held in the *Lapuz* case that where the action for the recovery of personal property was dismissed by the trial court on the ground that its loss was due to force majeure, the appellate court, on appeal by the plaintiff, may affirm the judgment of dismissal on the ground that the action had already prescribed, if such defense was set up by the defendant in his answer and it was well founded.

(2) Article 1112 of the new Civil Code, which provides that prescription already obtained may be renounced, was cited in *Sambrano v. Collector of Internal Revenue*,[171] a tax to support the view that a taxpayer who acknowledged his liability for the payment of

170 L-10079, May 17, 1957
171 L-8562, March 30, 1957, 53 O.G. 4839

taxes which had already prescribed, impliedly renounced the defense of prescription.

(3) If during the period of more than seventeen (17) years from the date the obligations were created no action was taken by the creditors to enforce the same, it can be presumed that the cause of action of the creditors had prescribed.[172]

(4) Laches and negligence as barring an action are illustrated in *Domingo v. Mayon Realty Corporation.*[173]

(5) Where period for revoking a donation of land started to run before the effectivity of the new Civil Code, the period applicable is that found in the Code of Civil Procedure and not the 30-year period provided for in Article 141 of the new Civil Code.[173a]

OBLIGATIONS

Exceptio non adempleti contractus.—

The rule in Article 1169 of the new Civil Code, that "in reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him" and the provision in article 1191 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," were cited in *Abaya v. Standard-Vacuum Oil Co.*,[174] to support the holding that plaintiff Gavino S. Abaya was not entitled to claim damages from defendant company.

In the *Abaya* case, there was an agreement that defendant company would appoint the plaintiff as operator of a gas station provided that the plaintiff signed the operator's agreement, one of the conditions of which was that he would purchase from the defendant 150,000 liters of gasoline a month for resale to the public. Plaintiff refused to comply with that condition which was not an impossible one. So the defendant did not appoint him operator of the station. His claim for damages was dismissed. Since he did not comply with his obligation, he could not require the defendant company to comply with its own obligation. His contention that, when he signed the agreement, his mind was in a state of confusion, was not given any weight. The natural presumption is that one always acts with due care and signs with full knowledge of all the contents of a document.[175] Defendant did not violate any provisions of the contract.

Payment to an unauthorized person.—

Where the creditor was the Agricultural and Industrial Bank (AIB) but the debtor paid his debt to the Iloilo Branch of the Phil-

172 Abrasia v. Carian, L-9510, Oct. 31, 957
173 L-2701, Sept. 30, 1957
173a Art. 1116, new Civil Code; Osorio v. Tan Jongko, 51 O.G. 6221; Ongsiaco v. Ongsiaco, L-7510, March 30, 1957
174 L-9511, Aug. 30, 1957
175 Javier v. Javier, 7 Phil. 261; Tan Tua v. Yu Biao Sontua, 56 Phil. 70

ippine National Bank, which was not an agent of the AIB and was not authorized by the AIB to receive payment, such payment did not extinguish the obligation.[176]

Payment by check is effective after it is cashed.—

In *Golez v. Camara*,[177] it appears that Adriano Golez was required to deposit a sum of money as payment for the lands of Carmelo Camara. Golez deposited in court a manager's check for ₱25,000. The check was indorsed by the clerk of court to the provincial treasurer — who deposited it in the bank. The bank honored the check and credited the treasurer with the sum of ₱25,000. It was held that the check was a sufficient payment. Article 1249 of the new Civil Code provides that the delivery of a bill of exchange produces the effect of payment after it has been cashed.

Foreign judgment is payable in Philippine currency.—

Republic Act No. 529, which took effect on June 16, 1950 and which provides that obligations should be paid in Philippine currency (thus abrogating the provision of Article 1249 that debts may be paid in stipulated currency), was applied to a judgment for $53,037 awarded on June 20, 1950 by the New York District Court. It was noted that any agreement to pay said award in a currency other than Philippine currency would be void and that the most that the creditor could demand is payment in Philippine currency measured by the prevailing rate of exchange at the time the obligation was incurred. It was also ruled in that case that, as the New York court did not specify the place where the obligation should be paid, it may be discharged in Manila, the debtor's domicile, pursuant to Article 1251 of the new Civil Code, formerly Article 1171.[178]

When debtor is not liable for exchange tax.—

In *Philippine National Bank v. Zulueta*,[179] it appears that in 1948 the bank granted Jose C. Zulueta a letter of credit for $14,449 for the purchase of an elevator from the Otis Elevator Co. The company drew a 90-day sight draft against Zulueta, which he accepted. By means of a 90-day trust receipt Zulueta was able to take possession of the elevator. *In* 1949 the bank's New York office paid $14,467 to the Otis Elevator Co. Zulueta failed to reimburse the bank. *In* 1951 Congress passed the law imposing the 17% foreign exchange tax. The bank billed Zulueta for the original obligation of $14,467 plus ₱4,955 as exchange tax. Zulueta was willing to pay his original obligation without the exchange tax. Was he liable to pay the tax?

Held: Zulueta was not liable to pay the tax because, as his obligation was incurred prior to the creation of the tax, it cannot be validly burdened with such tax. The exchange tax law cannot impair the obligations already existing at the time of its approval. Four justices dissented. They pointed out that Zulueta was a debtor in bad faith who should answer for all the subsequent damages suf-

176 Gonzaga v. Rehabilitation Finance Corporation, L-8947, Feb. 20, 1957, 54 O.G. 1387
177 L-9160, April 30, 1957, 54 O.G. 46
178 Eastboard Navigation, Ltd. v. Juan Ysmael & Company, Inc., L-9090, Sept. 10, 1957
179 L-7271, Aug. 30, 1957

fered by his creditor and that the majority opinion gave "the bank a costly lesson on the advantages of not considering political influence in the making and collecting of its loans."[180]

Ratification of Treaty of Peace.—

In *Arellano v. Tinio de Domingo*,[181] it was stipulated in a deed of sale of land executed on December 18, 1943 that the sum of ₱50,000 as the balance of the price would be paid by the vendees "within a period of three (3) years counted from the date of expiration of one year after the ratification of the Treaty of Peace concluding the present Greater East Asia War." It was also stipulated that interest on said sum of ₱50,000 would accrue after "one year counted from the date of ratification of the Treaty of Peace concluding the present Greater East Asia War." *Held*: The term "ratification" in the contract does not refer to ratification of the treaty by the Philippines but to ratification of the treaty by a majority of the participating countries, an event which was fulfilled on April 28, 1952. Therefore, the vendees became liable to pay interest beginning April 29, 1953. Since the vendees failed to pay interest beginning that date, notwithstanding the vendor's demands and since the contract provides that nonfulfillment of the conditions of the contract entitles the vendor to foreclose the mortgage, the foreclosure action brought by the vendor on December 12, 1953 was not premature. The Supreme Court ordered the foreclosure of the mortgage. It did not sustain the contention of the vendee that the balance of ₱50,000 was subject to revaluation under the Ballantyne scale. No part of the said sum was payable during the Japanese occupation; hence revaluation was not proper.

Termination of war.—

The phrase "terminacion de la presente guerra en el Asia Oriental mas Grande" was construed in *Kare v. Imperial*,[182] as meaning the official ending of the war in the Philippines on December 31, 1946 as proclaimed by President Truman.[183]

When no revaluation was allowed.—

Where in a *pacto de retro sale* executed on June 12, 1944 it was stipulated that the redemption would be effected within one year after six months from the termination of the Greater East Asia War, said redemption price should be paid peso for peso without revaluation under the Ballantyne scale.[184]

Surcharge for tax delinquency is mandatory.—

Article 1154 of the old Civil Code, now Article 1229, which provides that "the judge shall equitably mitigate the penalty if the prin-

180 See Philippine National Bank v. Union Books, Inc., L-8490, Aug. 30, 1957, reiterating the holding in the Zulueta case.
181 L-8679, July 26, 1957
182 L-7906, Oct. 22, 1957
182 L-7906, Oct. 22, 1957
183 Citing Navarro v. Barredo, L-8660, May 1, 1956 and De la Paz v. Moreno, L-6386, March 29, 1955. See Mercado v. Punsalan, L-8366, April 27, 1956 and Dizon v. Paras, CA 52 O.G. 2027
184 Kare v. Imperial, supra, note 191

cipal obligation should have been partly or irregularly performed by the debtor," does not apply to the 25% surcharge imposed by the internal revenue law as penalty for delinquency in the payment of a business tax. The collection of the surcharge is mandatory.[185] Article 1154 applies to the penalty provided for in contracts.[186]

Reduction of penalty.—

Article 1229 of the new Civil Code, which provides for the reduction of the penalty when the principal obligation has been partly or irregularly performed, was cited in *People v. Felix,* [187] to support the holding that a surety's bail bond should be forfeited only in one-half of its amount, instead of in its entirety, considering that the surety produced the person of the accused within the 30-day period granted to it by the court.

Changes not constituting novation.—

In *North Negros Sugar Co., Inc. v. Compañia General de Tabacos de Filipinas,*[188] it was stipulated in the contract for the sale of copra that the price would be paid upon delivery of the copra at the buyer's bodega. A few days later the buyer made a part payment of the price and the *seller* issued a warehouse receipt wherein it was certified that the copra was in its (seller's) bodega at the disposal of the buyer. *Held:* The issuance of the warehouse receipt and the part payment of the price did not amount to novation of the contract but constituted "a mere modification of the contract as to place of delivery."

Extension of time to pay obligation is not novation.—

The act of giving a debtor more time to pay an obligation is not a novation that will extinguish the original debt. In order to extinguish or discharge an obligation by novation, the intent of the parties to do so (*animus novandi*) must be either expressed or else clearly apparent from the incompatibility on all points of the new and old obligations, as required in Article 1292 of the new Civil Code, formerly Article 1204. This rule, which was laid down in *Zapanta v. Rotaeche,*[189] was applied in *La Tondeña, Inc. v. Alto Surety & Insurance Co., Inc.,*[190] where the plaintiff, after securing a judgment in a foreclosure suit against the judgment debtor and after it had levied upon the latter's properties to satisfy the judgment, agreed to the release of the properties from the levy on condition that the judgment debtor would pay the judgment debt within a certain period of time and that upon its failure to do so, the plaintiff would be at liberty to proceed with the foreclosure. This arrangement did not amount to a novation of the judgment. It simply gave the judgment debtor a method and more time for the satisfac-

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185 Lim Co Chui v. Posadas, 47 Phil. 460, cited in Republic v. Luzon Industrial Corporation, L-7992, Oct. 30, 1957
186 Insular Treasurer v. Rodis, 40 Phil. 850
187 L-10094, May 14, 1957
188 L-9277, March 29, 1957
189 21 Phil. 154 and also in Inchausti v. Yulo, 34 Phil. 978
190 L-10132, July 8, 1957, 53 O.G. 6101

tion of the judgment. It did not extinguish the obligation contained in the judgment.

Effect of subrogation on judgment creditor.—

Article 1302 of the new Civil Code provides that there is legal subrogation "when a creditor pays another creditor who is preferred, even without the debtor's knowledge" and article 1303 of the same Code provides that "subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional redemption." In connection with these provisions, it was held in *La Tondeña, Inc. v. Alto Surety & Insurance Co., Inc.*,[191] that where the subrogation in favor of a surety company (by virtue of its payment of the obligation secured by the first mortgage) did not yet exist when said company obtained an attachment of the mortgaged properties, its rights cannot be held superior to the lien of the second mortgagee, which foreclosed its second mortgage. The latter was entitled to seize and sell the security under its foreclosure judgment, although subject to the first mortgage. The subrogation in favor of the surety company would exist only upon the payment of the debts secured by the first mortgage. The refusal of the surety company to surrender to the second mortgagee the mortgaged properties rendered it liable for damages to the second mortgagee.

CONTRACTS

Advertisements for bidders.—

Article 1326 of the new Civil Code, which provides that "advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears," was applied in *Gutierrez v. Insular Life Assurance Co., Ltd.*[192] It was held in this case that if in the invitation to make proposals, it was not stated that the contract would be awarded to the lowest bidder, no enforceable right was created. The fact that the bidder was required to file a bond in order to qualify as bidder and that it spent money and effort in preparing the bid would not make any difference because he should have known that he was taking chances under the rules of bidding.

Sale of land cannot be annulled on ground of vendor's old age and weakness not amounting to insanity.—

Weakness of mind alone, not caused by insanity, is not a ground for avoiding a contract, for it is still necessary to show that the vendor at the time of executing the sale is not capable of understanding with reasonable clearness the nature and effect of the transaction. It is only when there is great weakness of mind in a person executing a conveyance of land, arising from age, sickness or any other cause, that a person can ask a court of equity to inter-

191 Note 190
192 L-9832, Nov. 29, 1957

vene in order to set aside the conveyance. Even if at the time of the sale the vendor was already of advanced age, yet if he was still physically fit and his mind was keen and clear, as shown by several letters and documents signed and executed by him many months before the execution of the deed of sale, the sale cannot be annulled. This is the holding in *Cui v. Cui.*[193]

Contract executed under mistake and fraud.—

Article 1330 of the new Civil Code, which provides that consent given through mistake or fraud renders the contract voidable, was cited in *Lopez v. Ong,*[194] where the defendant, Jimmy Ong, signed a document, dated September 20, 1951 and written in English, upon the representation of plaintiff Leon Lopez that it evidenced a contract wherein Lopez was being appointed by Ong as theater booker up to December 31, 1951, when in fact it stipulated that Lopez was to work as Ong's booker for five years. Ong claimed that he did not know much English, having reached only the second grade. He dismissed Lopez effective February 1, 1952. Lopez sued him for breach of contract and claimed ₱97,000 as actual and moral damages and attorney's fees.

Held: Ong signed the said document under mistake and through the insidious words and machinations of Lopez. The Supreme Court affirmed the judgment of the trial court dismissing Lopez complaint and sentencing him to pay Ong ₱2,000 as moral damages, ₱1,000 as attorney's fees and ₱655 as damages resulting from the preliminary attachment.

Bank's threat not to extend credit does not constitute duress.—

One of the vices vitiating consent is intimidation. Article 1335 provides that "there is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property or the person or property of his spouse, descendants or ascendants, to give his consent. To determine the degree of intimidation, the age, sex and condition of the person shall be borne in mind. A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent."

In *Berg v. National City Bank of New York,*[195] Ernest Berg after liberation paid to the bank the amount of a prewar loan, which he had guaranteed and which he had already paid during the Japanese occupation to the Bank of Taiwan. He contended that he acted under duress when he agreed to pay again to the bank the amount of the loan. He alleged that the bank threatened to sue him, not to extend further credit facilities to him or his business, and to make use of its influence to prevent him from engaging in business here.

Held: The threat to enforce payment through court action if no payment is made is proper within the realm of law as a means

193 L-7041, Feb. 21, 1957, 53 O.G. 3429, citing III Page on Contracts 2810; Allore v. Jewell, 24 L. Ed. 263. Cf. Dumaguin v. Reynolds, 48 O.G. 3887
194 L-9081, May 31, 1957
195 L-9312, Oct. 31, 1957

to enforce collection. Such a threat cannot constitute duress even if the claim proves to be unfounded as long as the creditor believes that it was his right to do so. Nor is there anything improper in the threat of the bank to decline further credit to any person or entity as a means to enforce the collection of its accounts if that course of action is necessary to protect its investment. In fact, such is the practice followed by most banking institutions for it goes a long way in the determination of the paying capacity of those who deal with them. The compromise is, therefore, valid and binding because it was entered into voluntarily.

To constitute duress, the pressure must be wrongful, and not all pressure is wrongful. The law provides certain means for the enforcement of the claims of creditors. It is not duress to threaten to take these means. Therefore, a threat to bring a civil action or to resort to remedies given by the contract is not such duress as to justify rescission of a transaction induced thereby, even though there is no legal right to enforce the claim, provided the threat is made in good faith; that is, in the belief that a possible cause of action exists. But, if the threat is made with the consciousness that there is no real right of action and the purpose is coercion, a payment or contract induced thereby is voidable. In the former case, it may be said that the threatened action was rightful; in the latter case, it was not.[196]

Liberality as causa; motive may constitute causa.—

The case *Liguez v. Ngo Vda. de Lopez*,[197] discusses the meaning of consideration in contracts of pure beneficence. Article 1350 of the new Civil Code provides that "in contracts of pure beneficence. the mere liberality of the benefactor" is a sufficient consideration. The donor's liberality is deemed a *causa* only in those contract designed solely and exclusively to procure the welfare of the beneficiary, without any intent of producing any satisfaction for the donor, or contract where the idea of self-interest is totally absent on the part of the transferor. For this very reason, Article 1350 provides that in remuneratory contracts, the consideration is the service or benefit for which the remuneration is given. Liberality is not the *causa* in these cases because the contract or conveyance is not made out of pure beneficence but *solvendi animo*. Thus, bonuses granted to employees to excite their zeal and efficiency with consequent benefit to the employer do not constitute donations with liberality as the consideration.[198]

While motive as a rule is different from *causa*, nevertheless, it should be noted that there are contracts that are conditioned upon the attainment of the motives of either party, a "distincion importantisima, que impide anular el contrato por la sola influencia de los motivos a no ser que se hubiera subordinado al cumplimiento de estos como condiciones la eficacia de aquel." The motive may be regarded as *causa* when it predetermines the purpose of the contract.

196 5 Williston, Contracts, pp. 4500-5402
197 L-11240, Dec. 18, 1957
198 Phil. Long Distance Telephone Co. v. Jeturian, L-7756, July 30, 1955

In the *Liguez* case, it appears that Salvador Lopez husband of Maria Ngo, donated a parcel of land on May 18, 1943 to Conchita Liguez, who was then 16 years old. The donation was made as the condition imposed by Conchita's parents in order that Salvador could cohabit with her. *Held*: The donation had an illicit *causa* and was not a contract of pure beneficence but an onerous transaction. Being unlawful, it necessarily tainted the donation.

Reformation.—

An action for reformation of a deed of partition would not prosper if it was not alleged that the said instrument did not express the true intent of the parties that executed it.[199]

Legal heirs, who are not forced heirs, cannot annul or rescind decedent's fraudulent contract.—

The case of *Velarde v. Paez*,[200] reiterates the rule in *Concepcion v. Sta. Ana*,[201] that legal heirs, who are not forced heirs, have no right to annul or rescind a fraudulent contract entered into by the deceased, especially if such legal heirs were not parties to the contract sought to be annulled and were not principally or subsidiarily bound thereby, and the action did not have the proper venue.[202]

Unregistered judgment cannot affect sale of land by judgment debtor to purchaser in good faith.—

The rule in article 1387 of the new Civil Code, that "alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued," was held inapplicable to a case where the judgment debtor, after the rendition of final judgment for a sum of money, sold a parcel of land registered under the Torrens system to a purchaser in good faith. The judgment had not been annotated on the title of the land. Thus in *Abaya v. Enriquez*,[203] it was held that "when the judgment rendered against the defendant, in an action *in personam*, has not been entered in the record of the register of deeds, relative to an immovable belonging to the judgment debtor, the subsequent sale of said property, by the latter, shall not be rescinded upon the ground of fraud, unless the complicity of the buyer in the fraud imputed to said vendor is established by other means than the presumption of fraud" in article 1387. This holding is based on Article 1637 of the new Civil Code, which provides that sales of realty are subject to the provisions of the Mortgage Law and the Land Registration Law. Section 34 of the Spanish Mortgage Law provides that "los contratos que se otorguen por quien aparezca en el Registro con derecho para ello, una vez inscritos, no se invalidaran en cuanto a los que con aquel hubieran contratado por titulo oneroso, aunque despues se resuelva el derecho del otorgante en virtud de causas que no consten claramente del

199 Ongsiaco v. Ongsiaco, L-7510, March 30, 1957
200 L-9208-16, April 30, 1957
201 L-2277, December 29, 1950
202 See Reyes v. Court of Appeals, L-5620, July 31, 1954
203 L-8988, May 17, 1957

mismo Registro." A final judgment or a writ of attachment does not prejudice the purchaser when not annotated on the title of the land sold. In other words, the presumption of fraud in Article 1387 does not arise when, according to the certification of the Register of Deeds, the land sold is free from any encumbrance at the time the supposed fraudulent alienation took place. The Civil Code is a general law which must yield to the Mortgage Law, a special law. *Generalia specialibus non derogant.*

In the *Abaya* case, it appears that judgment was rendered on *July* 24, 1950 against Roberto Enriquez in a suit for foreclosure of a chattel mortgage over a house which Pascuala Abaya had instituted against him. The writs of execution against Enriquez were returned unsatisfied. The house was sold and the proceeds of sale were applied in partial satisfaction on the judgment debt of ₱15,000. On September 13, 1950, Gliceria Enriquez, the wife of the judgment debtor Roberto Enriquez, sold, with Roberto's consent, two lots located in Caloocan, Rizal to the spouses Artemio Jongco and Nera Jongco. The judgment creditor Pascuala Abaya sued the Enriquez and and Jongco spouses for the annulment of the sale. *Held*: The sale cannot be rescinded. There is no evidence whatsoever that the Jongcos had acted in bad faith. The Jongcos and the Enriquez spouses are not related to each other and were not known to each other before the sale. The judgment in favor of Abaya was not annotated on the title of the lots. There was therefore no evidence that the Jongcos conspired with the Enriquez spouses to defraud Abaya. Articles 1387 and 1637 do not apply to a sale of land unless the final judgment in favor of the creditor seeking to rescind the sale "has been duly annotated in the records of the corresponding register of deeds."

The holding in the *Abaya* case is also fortified by the provision in Article 1385 of the new Civil Code, formerly Article 1295, that "neither shall rescission take place where the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith." It has been held that the presumption in Article 1387 is rebuttable and that it may be rebutted by proof that the purchaser acted in good faith although the vendor (judgment debtor) acted in bad faith.[204] But if the purchaser, who purchased the property of the judgment debtor after final judgment was rendered against him, acted in bad faith, that is to say, the sale was fictitious or simulated, the sale may be rescinded.[205] The purchaser would be in bad faith if at the time of the purchase the attachment was already annotated in the title of the land bought by him.[206]

Contracts completely performed by one party within a year are outside the Statute of Frauds.—

The provision of the Statute of Frauds, now found in Article 1403 of the new Civil Code, that "an agreement that by its terms is not to be performed within a year from the making thereof" should

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204 Buencamino, Jr. v. Bantug and De Dios Ocampo, 58 Phil. 521 (1933); Gatchalian v. Manalo, 68 Phil. 708 (1939)

205 Onglengco v. Ozaeta, 70 Phil. 43 (1940); Gaston v. Hernaez and Chong Veloso, 58 Phil. 823 (1933); Saavedra v. Martinez, 58 Phil. 767 (1933); Gonzales v. Garcia, CA 53 O.G. 2198

206 Rael v. Provincial Government of Rizal, 67 Phil. 654

be evidenced by some note or memorandum, was construed in *Babao v. Perez*.[207] This case adopts the rule that "contracts which by their terms are not to be performed within one year may be taken out of the statute through performance by one party thereto. All that is required in such case is *complete performance* within one year by one party, however many years may have to elapse before the agreement is performed by the other party. But nothing less than full performance by the other party will suffice, and it has been held that, if anything remains to be done after the expiration of the year besides the mere payment of money, the statute will apply."[208] The *Babao* case also relies on the rule that the "Statute of Frauds applies only to agreements not to be performed on either side within a year from the making thereof. Agreements to be fully performed on one side within the year are taken out of the operation of the statute."[209]

It was also held in the *Babao* case that the Statute of Frauds is based on equity and that part performance of the oral agreement would take remove it outside the operation of the Statute of Frauds only when the oral agreement is certain, definite, clear, unambiguous and unequivocal in its terms. The oral contract must be fair, reasonable, and just in its provisions for equity to enforce it on the ground of part performance. Clearly, the doctrine of part performance taking an oral contract out of the Statute of Frauds does not apply so as to support a suit for specific performance where both the equities and the statute support the defendant's case.[210]

In the *Babao* case, it was alleged that Celestina Perez and Santiago Babao (who married a niece of Celestina) orally agreed that Babao would improve the 156-hectare land of Celestina by levelling it and clearing all the trees standing thereon and planting on it coconuts, rice, corn and other crops. Babao would act as administrator of the land during the lifetime of Celestina. All the expenses for labor and materials would be borne by him. Celestina allegedly in turn bound herself to convey to Babao or his wife ½ of the land together with all the improvements thereon upon her death. It was further alleged that Babao fulfilled his part of the oral contract. Celestina died in 1947. Before her death she conveyed to other persons around 127 hectares of the land in question. Babao died in 1948. The administrator of his estate sued the administrator of Celestina's estate and the transferees of a portion of the land for the recovery of ½ of the land plus damages.

Held: The oral agreement in question is covered by the Statute of Frauds. It was one which by its terms would not be performed within one year from the making thereof. It took Babao 23 years to make the alleged improvements on the land. His part performance of the alleged contract would not take it outside the Statute of Frauds because it was not complete performance on his part. If the agreement should be regarded as involving the sale of land, Babao's

207 L-8334, Dec. 28, 1957
208 27 C.J. 356, cited in Shoemaker v. La Tondeña, Inc., 68 Phil. 20 (1939)
209 National Bank v. Philippine Vegetable Oil Co.
210 49 Am. Jur. 729

part performance also would not remove it outside the operation of the Statute of Frauds, because the agreement was ambiguous.

The *Babao* case indicates that the agreements which by their terms are not to be performed within one year from the making thereof do refer to agreements whose performance *would not commence within one year* from the making thereof, but rather agreements which *would take more than a year to perform.*[211]

Case where the parties were not in pari delicto.—

The rule of in *pari delicto melior est condition defendentis*[211a] has been interpreted as barring any party from pleading the illegality of the bargain either as a cause of action or as a defense. *Nemo auditor propriam turpitudinem allegans.*[212] Where the husband donated a parcel of land to a 16-year old girl so that he could cohabit with her, the donation has an illegal consideration, but the illegality cannot be set up by the heirs of the donor to defeat the action of the donee for the recovery of the land. As the donee was only 16 years old, while the donor was a mature person, and as the donation was agreed upon between the donor and the girl's parents, it cannot be said that the donor and the donee are in *pari delicto.*[213]

NATURAL OBLIGATIONS

Prescribed obligation may be renewed.—

The rule in *Villaroel v. Estrada,*[214] that a debt already prescribed may be revived by means of an acknowledgment of liability, was followed in *Sambrano v. Collector of Internal Revenue,*[215] a tax case, to support the view that if the taxpayer acknowledged his liability for taxes which had already prescribed, he is liable for the payment of said taxes because he had waived the plea of prescription. An obligation, which has already prescribed, is a natural obligation, according to Articles 1424 and 1425 of the new Civil Code. Prescription already obtained may be renounced according to Article 1112 of the new Civil Code.

ESTOPPEL

Equitable estoppel.—

There can be no estoppel *in pais* if the person allegedly estopped did not deliberately and intentionally lead another to believe a particular thing to be true. Estoppel applies to questions of facts.[216]

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211 Arroyo v. Azur, 76 Phil. 493 (1946)
211a Arts. 1411 and 1412, New Civil Code
212 Perez v. Herrans, 7 Phil. 693 (1907)
213 Liguez v. Ngo Vda. de Lopez, L-11240, Dec. 18, 1957
214 71 Phil. 140 (1940)
215 L-8652, March 30, 1957, 53 O.G. 4839
216 Tañada v. Delgado, L-10520, Feb. 28, 1957

TRUSTS

No constructive trust.—

Article 1456 of the new Civil Code, which provides that "if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes," does not apply to a parcel of land held by a donee in case the donation was revoked but the donee was not apprised of the revocation. The donee acquired the land legally and her subsequent breach of the conditions of the donation does not taint her previous acquisition of the land, nor does it deprive her of the protective mantle of the Statute of Limitations that runs even against trusts created by implication of law (constructive trusts).[217]

Art. 1544 does not apply to a double sale of land if the second sale was cancelled.—

Article 1544 of the new Civil Code, which provides for the rules to be applied in the case of land is sold twice, was not applied in *Casica v. Villaseca,*[218] where a piece of land was sold first to Rosa Casica and later to the spouses Teofilo Villaseca and Nicasia Nicolas. The second sale was registered on January 6, 1949, while the first sale was registered on *June* 28, 1949. However, on *August* 29, 1949, Teofilo Villaseca executed an unregistered "quitclaim deed," wherein he cancelled the sale of said land to himself and his wife. The price paid by Villaseca was returned to him in view of the cancellation of the sale. Under these facts, it was held that the sale to Rosa Casica should be respected, although on January 26, 1950 the seller executed a private instrument, stating that the "quitclaim deed" was in turn cancelled by Villaseca.

Right of redemption.—

The right of conventional redemption is not an obligation. It is an option. To effect the redemption, judicial consignation of the redemption money is not necessary.[219] Therefore, the rule in article 1249 of the new Civil Code, regarding the effect of payment by means of check, does not apply to the redemption in cases of conventional redemption.[220]

Pactor de retro sales is a conveyance.—

The word "conveyance" in section 119 of the Public Land Law, which provides that "every conveyance" of a homestead is subject

217 Ongsiaco v. Ongsiaco, L-7510, March 30, 1957. As to running of prescriptive period in implied trusts, see Claridad v. Benares, L-6438, June 30, 1955; Mirabiles v. Quito, 52 O.G. 6507 (1955); Cf. Bancairen v. Diones, L-8013, Dec. 20, 1955; Sevilla v. Angeles, 51 O.G. (1955); Balo v. Balo, CA 53 O.G. 2511.

218 L-9590, April 30, 1957

219 Golez v. Camara, L-9160, April 30, 1957; Cordero v. Siasoco 43 O.G. 4664; Rosales v. Reyes, 25 Phil. 495; Paez v. Magno, 46 O.G. 5424; Javellana v. Mirasol, 40 Phil. 761; But according to Rivero v. Rivero, 81 Phil. 802, consignation is necessary in pacto de retro sales. Also Rumbao v. Arzaga, 47 O.G. 1827; Ocampo v. Potenciano, CA 48 O.G. 2230

220 Salvante v. De la Cruz, L-2531, Feb. 28, 1951; Del Rosario v. Sandico, 47 O.G. 2866; Arzaga v. Rumbaoa, L-3839, June 26, 1952

to repurchase by the homesteader, his widow or legal heirs within the period of "five years from the date of the conveyance," was construed in *Monge v. Angeles*,[221] as referring not only to an absolute sale but also to a mortgage or any other transaction. It signifies "every instrument by which any estate or interest in real estate is created, alienated, mortgaged, or assigned."[222] It includes a *pacto de retro* sale.[223]

Sales of reality.—

Article 1637 of the new Civil Code, which provides that the provisions on sales "are subject to the rules laid down by the Mortgage Law and the Land Registration Law with regard to immovable property," was cited in *Abaya v. Enriquez, Jr.*,[224] to support the opinion that the sale by a judgment debtor of a parcel of land registered under the Torrens System, which sale was effected after final judgment was rendered against him for the payment of a sum of money, cannot be rescinded if the judgment or attachment was not annotated on the title of the land and the purchaser acted in good faith.

Buyer suffers loss of goods after delivery.—

One familiar legal maxim is *res perit domino* (property destroyed is lost to its owner). As applied in sales, it means that before delivery of the determinate thing sold to the buyer, the loss of thing due to a fortuitous event should be borne by the seller. In such a case he cannot demand the payment of the price, or he should return the price to the seller if it has already been paid. This is the rule found in articles 1480, 1504, and 1538 of the new Civil Code. As a corollary, the buyer bears the loss of the thing after it has been delivered to him and, therefore, notwithstanding the loss of the thing, he would still be liable to pay the price or he cannot recover the same from the buyer if he has already paid it.

The same rule is found in article 331 of the Code of Commerce which provides that "the loss or impairment of the goods before their delivery, on account of unforeseen accidents or without the fault of the vendor, shall entitle the purchaser to rescind the contract, unless the vendor has constituted himself the depository of the merchandise, in accordance with article 339, in which case his liability shall be limited to that arising by reason of the deposit."

The rule was applied in *North Negros Sugar Co., Inc. v. Compañia General de Tabacos de Filipinas (Tabacalera)*.[225] In this case, it appears that on October 14, 1941 the Tabacalera agreed to sell to the Luzon Industrial Corporation 500 tons of copra. The price was to be paid upon the delivery of the copra at the *buyer's* bodega sometime in January or February 1942. A few days later, the buyer paid ₱50,000 on account and the Tabacalera issued a warehouse receipt

221 L-9558, May 25, 1957
222 13 C.J. 900; 18 C.J.S. 92
223 Monge v. Angeles, supra citing Blanco v. Bailon, L-7342, April 28, 1956; Galasinao v. Austria, L-7918, May 25, 1955; Galanza v. Nuesa, L-6628, Aug. 31, 1954
224 L-8988, May 17, 1957
225 L-9277, March 29, 1957

stating that the copra was deposited in *its seller's bodega* in Cebu at the disposal of the buyer. In September 1942 the Japanese forces commandeered the copra while it was in the Cebu bodega of the Tabacalera. Between December 4, 1941 and August 1942, correspondence was exchanged between the parties regarding the copra. The Tabacalera carried the transaction in its books as a partly consummated sale, while the Luzon Industrial Corporation demanded the return of the ₱50,000 paid on October 18, 1941. In 1948, the North Negros Sugar Co., Inc., as assignee of the Luzon Industrial Company, sued the Tabacalera for the recovery of the ₱50,000.

Held: The copra was delivered to the buyer when the warehouse receipt was issued. The change of the place of delivery and the partial payment of the price did not amount to a novation of the sale. The loss of the copra due to force majeure while in the hands of the depository should be borne by the depositor. Moreover, under article 1451 of the old Code, now article 1480, "if fungible things should be sold for a price fixed with relation to weight, number of measure, they shall not be at the vendee's risk until they have been weighed, counted or measured, unless the vendee should be in default." Since the copra in question was already segregated, when it was commandeered by the Japanese forces, the loss thereof must be borne by the vendee. The vendee may be regarded as in default for having failed to take actual possession thereof.

The *North Negros* case is similar to that of *Song Fo & Co. v. Oria*,[226] and *Milan v. Rio y Olabarrieta*,[227] where the loss of the determinate thing sold occurred after its delivery to the buyer. On the other hand, in *Roman v. Grimalt*[228] the loss occurred before the perfection of the sale. The loss in that case was born by the prospective seller.

Vendor in installment sale of personalty may enforce judgment for balance of price against vendee's other properties.—

The case of *Tajanlangit v. Southern Motors, Inc.*[229] reiterates the rule in *Southern Motors, Inc. v. Magbanua*,[230] that where the vendor in an installment sale of personal property chose the remedy of specific performance, he may enforce execution of the judgment rendered in his favor for the unpaid balance of the price, not only against the personal property sold to the vendee but mortgaged to the vendor under a chattel mortgage, but also against the vendee's *other properties*.

Under article 1484 of the new Civil Code, which was taken from article 1454-A of the old Civil Code, as inserted by Act No. 4122, otherwise known as the Recto Law, the vendor of personal property whose price is payable in installments has three remedies: (1) exact

226 33 Phil. 3
227 45 Phil. 718
228 6 Phil. 96
229 L-10789, May 28, 1957
230 52 O.G. 7252 (1956)

fulfillment of the obligation; (2) cancellation of the sale (rescission); and (3) foreclosure of the chattel mortgage if any. If should be noted that the first remedy, i.e., specific performance was not in provided for in article 1454-A of the old Code; but, according to *Bachrach Motor Co. v. Millan*,[231] Act 4122 does not preclude the vendor from resorting to the remedy of specific performance. This first remedy, as construed by the Supreme Court in the *Southern Motors cases*, seems to be more favorable to the vendor than the remedy of foreclosure of the mortgage. If the vendee would choose the foreclosure of the mortgage, it would have no right to recover the deficiency.[232] But if the vendor chooses specific performance, obtains a judgment for the unpaid balance of the price and attaches the mortgaged personal property, the object of the sale, it can still attach the other properties of the vendee, should the proceeds of the sale of the mortgaged property be insufficient to cover the judgment.

In the *Tanjanlangit* case, it appears that the spouses Tanjanlangit bought machinery from the Southern Motors, Inc. for ₱24,755. The price was payable in installments. Payment was secured by a chattel mortgage on the machinery. It was stipulated that failure to pay one installment would render the unpaid balance due and demandable. The purchasers did not pay any installment. The company sued them for specific performance. Judgment was rendered in the company's favor for ₱24,755 plus interest and attorney's fees. To enforce the judgment a writ of execution was issued against the machinery in question. It was sold at public auction for ₱10,000. To satisfy the deficiency, the company asked for an alias writ of execution. The writ was granted and it was enforced against the other properties of the spouses. To prevent the auction sale of their other properties, they filed a separate action to annul the alias writ of execution. The question was whether the company could enforce the unsatisfied balance of the judgment against the other properties of the said spouses after it had bought the machinery at the auction sale.

Held: The company could elect specific performance instead of foreclosure of the chattel mortgage. Under Article 1484 the prohibition against recovery of the deficiency applies only to the case where the vendee chose the remedy of foreclosure of the chattel mortgage. In choosing specific performance, the vendee was not thereby limited to the proceeds of the sale on execution of the mortgaged machinery.[233] The issuance of the alias writ of execution was proper.

Purchase by an agent of thing entrusted to him for sale.—

Article 1491 of the new Civil Code provides that agents cannot purchase the property whose administration or sale may have been intrusted to them, "unless the consent of the principal has been given." The exception is an illustration of an auto contract. This provision is different from that of the old Code, which does not

231 6 Phil. 409 (1935)
232 Manila Motor Co. v. Fernandez, L-8377, Aug. 28, 1956; Pacific Commercial Co. v. De la Rama, 72 Phil. 380
233 Manila Trading & Supply Co. v. Reyes, 62 Phil. 461 (1935); Macondray & Co. v. Eustaquio, 64 Phil. 446 (1937); Manila Motor Co. v. Fernandez, L-8377, Aug. 28, 1956

expressly allow the agent to purchase the thing entrusted to him for sale if the principal consents to the purchase. The new provision in Article 1491 was given a retroactive effect in a case where the father in 1946 sold a piece of land to his son, who was his attorney-in-fact at the time of the sale. No vested right was impaired by giving the provision a retroactive effect.[234]

Tradicion simbolica.—

Where the copra sold was originally intended to be delivered at the place of the *buyer,* but later the seller issued to the buyer a warehouse receipt, stating that the copra was in the *seller's warehouse* and was at the disposal of the buyer, it was held that by the execution of the warehouse receipt there was delivery of the copra to the buyer "because the parties thereby intended that the copra sold was placed then and there under the control of the buyer, following Article 1063 of the old Civil Code, now Article 1499, which provides "that the delivery of movable property may likewise be made *by the mere consent or agreement of the contracting parties,* if the thing sold cannot be transferred to the possession of the vendee at the time of the sale x x x."[235] The buyer, therefore, as the owner of the deposited copra, must suffer the loss thereof due to force majeure (commandeering by the Japanese forces).[236]

Nemo dat quod habet.—

The case of *Bustamante v. Azarcon,*[237] reiterates the fundamental rule in sales "that the purchaser generally gets no better title than his seller had" (*nemo dare potest quod non habet*), a rule which is recognized in Article 1505 of the new Civil Code, which provides that, if the seller is not the owner of the thing, "buyer acquires no better title to the goods than the seller had." The new Civil Code in its Articles 1458, 1477, 1495 and 1496 repeatedly provides that the vendor must transfer to the buyer the ownership of the thing sold. The maxim that "no man can transfer to another a better title than he has himself" obtains in the civil as well the common law. A sale *ex vi termini* imports nothing more than that a bona fide purchaser succeeds only to the rights of the vendor.[238]

In the *Bustamante* case, it appears that Maria Azarcon and Segunda del Rosario compromised a litigation over a building by agreeing that one apartment of the building would belong to Maria Azarcon and the other apartment would be adjudicated to Segunda del Rosario. Maria assigned her share to her grandchildren named Norberto, Leticia and Jose Azarcon, who were the legally acknowledged natural children of her deceased son, Francisco Azarcon. These children of Francisco later sued Segunda del Rosario for the recovery of the whole building on the theory that Francisco in reality

234 Cui v. Cui, L-7041, Feb. 21, 1957, 53 O.G. 3429
235 North Negros Sugar Co., Inc. v. Compañia General de Tabacos de Filipinas, L-9277, March 29, 1957
236 Lizares v. Hernaez and Aluna, 40 Phil. 981: Obejera and Intak v. Iga Sy, 76 Phil. 580 (1946)
237 L-8939, May 28, 1957
238 U.S. v. Sotelo, 28 Phil. 147, 158 (1914); De los Santos v. McGrath, L-4818, Feb. 28, 1955; Ozoa v. Montaño, L-8621, Aug. 27, 1956; Cruz v. Pahati, 52 O.G. 3053 (1956); Masiclat v. Centeno, L-8420, May 31, 1956

was the owner thereof and Segunda had no interest therein whatsoever. While the case was pending, Segunda sold the building to the spouses Aurea Bustamante and Maximo Salvatierra. The court ultimately decreed that the building was owned by Francisco Azarcon and that upon his death, it was inherited by his mother Maria and his acknowledged natural children. The Salvatierras then brought an action against the Azarcons. They claimed that they were the owners of the house.

Held: The Salvatierras could have no better right to the building than their transferor Segunda del Rosario. As the latter was not the owner of the building, the Salvatierras acquired no interest therein. Their remedy is to sue Segunda on her warranty against eviction. Moreover, "a transferee of real property in litigation is bound by a judgment rendered against his predecessor in interest."[239] Under Article 1381 of the new Civil Code, a transfer of property in litigation without the consent or the knowledge and approval of the litigants or of competent judicial authority is rescindible. The good faith of the Salvatierras is of no moment.[240]

No retroactive effect.—

Article 1606 of the new Civil Code, which was taken from Article 1508 of the old Code, contains a new provision, which states that "the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase." This provision cannot be given retroactive effect to a *pacto de retro* sale, wherein the title had already been consolidated in the vendee before the new Civil Code took effect, because to do so would impair the vendee's vested right.[241]

Parol evidence is admissible to prove that pacto de retro sale is a usurious sale.—

In a criminal case for violation of the usury law, parol evidence may be introduced to prove that a document, purporting to be a *pacto de retro* sale, is in reality a usurious loan secured by a mortgage. "The form of the contract is not conclusive. Parol evidence is admissible to show that a written document though legal in form was in fact a device to cover usury. If from a construction of the whole transaction it becomes apparent that there exists a corrupt intent to violate the usury law, the court should, and will, permit no scheme, however ingenious, to becloud the crime of usury."[242]

LEASE

Lease of lot with agreement that lessor would become owner of building constructed by lessee.—

In City of *Manila v. Chan Kian*,[243] there was stipulation in the

239 Fetalino v. Sans, 44 Phil. 691
240 Olsen v. Yearsley, 11 Phil. 178
241 De la Cruz v. Acosta, L-9402, Oct. 31, 1957
242 People v. Abbas, L-10573, April 29, 1957, citing U.S. v. Tan Quingco, 39 Phil. 552; Cuyugan v. Santos, 34 Phil. 113
243 L-10276, July 24, 1957

lease contract over a lot executed between the City of Manila and Chan Kian that after the termination of the lease the 3-story building constructed by the lessee on the lot would be donated by the lessee to the city. The term of the lease was 7-1/2 years. When the term expired in 1954, the city asked Chan Kian to execute the proper deed of donation for the building. The lessee refused. So the city brought this action to compel the lessee to execute the donation. *Held*: The lessee should comply with the stipulation of the contract. He was ordered to execute the proper deed of donation.[244] In this connection, it should be noted that under Article 1678 of the new Civil Code, if there is no stipulation as to the disposition of the useful improvements made in good faith on the thing leased, the lessee, who is not reimbursed 1/2 of the value of said improvements by the lessor, may remove the same even if in doing so he would cause injury to the thing leased.

Premium for lease of premises is not a loan.—

In *Teng Giok Yan v. Court of Appeals*,[245] judicial sanction was given to the practice of requiring prospective lessees to pay a "premium or goodwill" for the lease of store space. In that case, the lessee of a stall in a textile center paid ₱7,500 in 1947 to the lessor, in addition to the monthly rentals of ₱500. The issue was whether the sum of ₱7,500 was a "loan by the lessee to the lessor" or a "premium." Under the facts of the case it was held the amount was a "premium" and not a loan because no provision was made for its repayment and in fact no receipt was issued to the lessee for said amount. Judicial notice was taken of the fact that "shortly after the last Pacific War, in view of the scarcity of store space and the great demand for the same, it was not unusual for owners of store space to require of prospective tenants to pay a certain amount as a premium for the privilege of renting store premises in preference to other applicants."

Art. 1687 *does not apply to lease with a fixed term.—*

Article 1687 of the new Civil Code, which empowers the courts to fix a longer term under certain conditions, in the case of a lease without fixed term, obviously cannot apply to a lease with a fixed term which expired before the institution of the ejectment suit.[246]

Where the parties orally agreed that the lessee would vacate the premises as soon as the lessor would need the premises, the period of the lease is deemed fixed. Such a case is not governed by Article 1687. Neither is it governed by Article 1197 of the new Civil Code, which provides that the court may fix the term of an obligation, for which no period has been fixed, if from its nature and the circumstances, it can be inferred that a period was intended. Article 1197 refers to a case where the term of the lease has been left to the

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244 See Go Bun Kim v. Liongson, L-9617, Dec. 14, 1956, regarding forfeiture of lessee's building in favor of lessor.

245 L-9929, Nov. 18, 1957

246 Tiangco v. Concepcion, L-10036, Aug. 30, 1957

will of the lessee, the debtor, who is obliged to return the thing leased. The lessor is the creditor or obligee. He has the right to recover possession of the leased premises.[247]

LABOR LAW

Owner is liable for workmen's compensation to injured carpenter hired through an intermediary.—

Two 1957 cases, *Caro v. Rilloraza*[248] and *Cruz v. Manila Hotel Company,*[249] discuss the vexed question of when a person is to be regarded as an employer, employee or an independent contractor. The *Caro* case involves the Workmen's Compensation Law, while the *Cruz* case concerns the grant of a gratuity to employees. A review of prior rulings on the question may be useful as background for the holding in the *Caro* and *Cruz* cases.

Section 39 of Act 3428 defines an employer as including "the owner or lessee of a factory or establishment or place of work or another person who is virtually the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an *independent contractor* in the same, or for any other reason, is not the direct employer of laborers employed there." The same law defines an employee or laborer as "every person who has entered the employment of, or works under a service x x x for an employer. It does not include a person whose employment is *purely casual and is not for the purposes of the occupation or business of the employer.*"

The term "business" refers to the "habitual or regular occupation that the party was engaged in, with a view to winning a livelihood or some gain."[250] It is synonymous with "occupation" or the means which a party habitually or regularly earns a "livelihood or some gain." It has been held that the owner of a building who rented it for income purposes and maintained the building in repair for that purpose is liable to an employee of a contractor repairing the building, as maintenance of the building may be considered as part of the owner's business.[251] Where the home owner rents out the second floor, he is engaged in a business for a pecuniary profit and hence liable for injuries sustained by claimant who fell from a scaffold which had been set up to rebuild a chimney on the house.[252]

In a sawmill, for example, if a power unit running the mill gets out of order and a mechanic is contracted to fix the engine, the work of the mechanic would be considered as purely casual because the repair of the mill is not the actual business of the sawmill but the sawing of lumber.[253]

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247 Lim v. Legarda Vda. de Prieto, L-9189, March 30, 1957; 52 O.G. 7678, citing Eleizegui v. Lawn Tennis Club, 2 Phil. 309
248 L-9569, Sept. 30, 1957
249 L-9110, April 30, 1957, 53 O.G. 8540
250 Larson, Law of Workmen's Compensation, pp. 738-739
251 Davis v. Industrial Com. 130 N.E. 33
252 Reibold v. Doll, 128 N.Y.S. 2d 45
253 Mansal v. Cochero Lumber Co., L-8017, April 30, 1955

In determining the existence of employer-employee relationship, the following elements are generally considered: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct. The last element is the most important.[254]

On the other hand, an independent contractor is defined as follows:

> "An independent contractor is one who is rendering services, exercises an independent employment or occupation and represents the will of his employer only as to the results of his work and not as to the means whereby it is accomplished; one who exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work; and who engages to perform a certain service for another, according to his own manner and method free from the control and direction of his employer in all matters connected with the performance of the service, except as to the result of the work."[255]

> "Among the factors to be considered are whether the contractor is carrying on an independent business; whether the work is part of the employer's general business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of the work to another; the power to terminate the relationship; the existence of a contract for the performance of a specified piece of work; the control and supervision of the work; the employer's powers and duties with respect to the hiring, firing, and payment of the contractor's servants; the control of the premises; the duty to supply the premises, tools, appliances, material and labor; and the mode, manner, and terms of payment."[256]

An independent contractor is one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of the work. An intermediary between the employer and certain laborers is not an independent contractor. A person who possesses no capital or money of his own to pay his obligations to the laborers, who files no bond to answer for any fulfillment of his contract with his employer and is specially subject to the control and supervision of his employer, falls short of the requisites or conditions necessary for an independent contractor.[257]

Under the law, the owner or lessee of a factory or place of work or the owner or manager of the business therein carried on, may be bound to pay workmen's compensation, despite the intervention of an independent contractor. Although the owner of the factory is not the direct employer of the laborers employed therein because there is an independent contractor in the factory, the owner of the factory is nevertheless to be considered for the purposes of the Workmen's Compensation Act as the employer of the laborers working under the independent contractor, but that is true only with respect to laborers doing work which is in the *usual course of the owner's busi-*

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254 Viaña v. Al-Lagadan, L-8967, May 31, 1956; 35 Am. Jur. 445
255 56 C.J.S. 41-43, citing Cruz v. Manila Hotel Co., 53 O.G. 8542
256 56 C.J.S. 46, citing Cruz v. Manila Hotel Co., 53 O.G. 8542
257 Andoyo v. Manila Railroad Company, supra, 56 Phil. 852 (1932) citing In re Idoma, 23 Hawaii 291

ness. If the owner of a factory were not liable for the injuries sustained by the employees of an independent contractor engaged in the usual business of the owner, the owner of the factory, by the mere subterfuge of an independent contractor, could relieve himself of all liability and completely defeat the purposes of the law. On the other hand, to make the owner of the factory liable for injuries to the employees of an independent contractor not engaged in the usual business of the owner would be to make him liable for injuries to workmen over whom he has no control.[258]

In the *Javier* case, it appears that Gregorio Javier was going to buy and sell hogs and to establish a plant for curing hams. He engaged a contractor named Fructuoso Esquillo to construct a corral for hogs and an office for the person in charge of the corral. The price agreed upon was ₱500. The contractor was to furnish the labor. The work was to be finished in 15 days. Bonifacio de los Santos was one of the workmen engaged by the contractor. He was paid by the contractor and was subject to the contractor's orders. Javier had no direct intervention in the work. While Santos was engaged in placing a beam, he fell from a scaffold and received injuries which caused him death. *Held*: Santos was not an employee of Javier. Javier's business was to buy and sell hogs and cure hams. He was not a building contractor. It was not part of his business to construct buildings. Javier was not liable to pay workmen's compensation to the heirs of Santos.

The rule in the *Javier* case was followed in *Philippine Manufacturing Co. v. Santos Vda. de Geronimo*,[259] where the company engaged Eliano Garcia to paint its tank for a stipulated price. Garcia hired Geronimo as laborer to paint the tank. While painting the tank, Geronimo fell and died as a result of the fall. *Held*: The company was not liable for workmen's compensation for Geronimo's death because he was not working for the company but for an independent contractor. Garcia, the contractor, was adjudged to pay the compensation due to the heirs of Geronimo.

But the *Caro* case was distinguished from the *Javier* and *Philippine Manufacturing Company* cases and was decided on the authority of the *Andoyo* case and *Mansal* cases.

In the *Mansal* case,[260] it appears that the claimant was a member of a group of laborers working under a contractor in the lumber yard of defendant company. The laborers stacked the lumber in the yard at the rate of ₱4 per 1,000 board feet (piece work or *pakiao*). The contractor collected the compensation in behalf of the laborers and distributed it among them. They were not employed directly by the company. They performed similar jobs for other lumber companies. The lumber company was under no obligation to call upon the contractor and his gang of laborers to stack lumber in its yard everytime there was work of that kind to be done. It could call other contractors or groups of laborers. The claimant was injured while stacking lumber in defendant's yard.

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258 De los Santos v. Javier, 58 Phil. 82 (1933)
259 L-6968, Nov. 29, 1954
260 Supra, note 254

Held: Claimant was an employee or laborer of defendant for purposes of the workmen's compensation law. His employment was not purely casual. The contractor representing the group of laborers was not an independent contractor. The case was considered similar to that of the stevedores unloading cargo from a ship who work under the control of a contractor who pays them, who may work for different vessels and whose work covers short periods of time as to each vessel. Such stevedores are considered laborers or employees of the steamship company owning the vessel. The contractor is considered an agent of the steamship company or of the captain.[261]

In another case, it was held that, where one Ora rented his truck to a firm but at the same time Ora was employed as *capataz* of the firm, charged with the duty of directing the loading and transportation of lumber in his truck, and in the course of such work a piece of lumber fell from the truck and struck a 7-year old boy, who died in consequence of the injuries, the firm is liable for damages to the father of the boy. Ora was not an independent contractor because the firm retained the power of directing and controlling his work of transporting the lumber in his truck[262]

In the *Idoma* case,[263] it appears that a sugar company asked a contractor to build a road bed on its plantation to be used in its business. It furnished the contractor with camps, tools, and appliances. The work was to be accomplished to the satisfaction of the company's engineers. A workman, employed by the contractor, who alone had the right to discharge him, was injured while working on the roadbed. He filed a claim for compensation against the company. The company was held liable for compensation. The workman was considered its employee within the language and intent of the law.

In the *Caro* case,[264] it appears that Lucas Rilloraza, a carpenter, while constructing the window railing of a building, owned by Mrs. Ramon Caro and administered by her husband Ramon Caro, fell to the ground and broke his leg, when the wooden platform on which he and another carpenter were working collapsed. The injury produced a temporary disability. Caro resisted Rilloraza's claim for compensation on the ground that Rilloraza was hired by Daniel Cruz, who was an independent contractor, with whom Caro had contractual relations and who assumed responsibility for any accident that might occur during the repair of the building.

Held: Caro was liable for workmen's compensation as Rilloraza's employer. Cruz was not an independent contractor but only a mere "intermediary." The building being repaired was intended or used for rental purposes. Caro had control of the building. Its repair was part of the usual business of administration. When one's business is to lease houses for income purposes, the repair, maintenance and painting thereof, with a view to attracting or keeping tenants

261 Flores v. Cia. Maritima, 57 Phil. 905. Cf. Philippine Manufacturing Co. v. Santos, L-6968, Nov. 29, 1954
262 Cuison v. Norton & Harrison, 55 Phil. 18 (1930)
263 Supra, note 257
264 Supra, note 248

and of inducing them to pay a good or increased rental is, most certainly, part of said business.

Four justices dissented. They relied on *Catalla v. Tayabas Lumber Co.*,[265] where the company was engaged in the cutting of lumber. It used to haul its timber through the "kaingins" occupied by Martinez and Mercurio. To facilitate passage, Martinez and Mercurio and the company entered into a contract whereby the two men undertook to open a trail over their "kaingins," clear it of underbrush and trees and maintain the same, in consideration of ₱50 a year. The two men received as three years' advance payment. They hired Mariano Oriel to help them cut the brush and trees found on the proposed trial. While working, a tree fell on Oriel and killed him. His heirs filed a claim against the company. *Held*: The company was not liable. There was no contractual or juridical relation between Oriel and the company. The dissenting justices also relied upon the *Cruz, Geronimo,* and *Javier* cases. They also opined that Rilloraza's employment was "purely casual."

Case where musicians performing in a hotel were regarded as independent contractors, not employees for gratuity purposes.—

In the *Cruz* case[266] it was held that "one who is engaged to furnish music, according to his own manner and method, free from the control and direction of his employer in all matters connected with the performance of the service, except as to the result of the work, and for a certain price daily, is an independent contractor within the meaning of the law of master and servant."

In the *Cruz* case, it appears that the Manila Hotel Company and Tirso Cruz, an orchestra leader, entered into a contract whereby the hotel engaged the services of Cruz's orchestra composed of 15 musicians at the rate of ₱250 a night. The orchestra was to play from 7:30 p.m. up to closing time. What pieces the orchestra would play and how the music would be arranged or directed, the intervals and other details were left to the orchestra leader's discretion. The musical instruments, the music papers and other paraphernalia were not furnished by the hotel; they belonged to the orchestra, which in turn belonged to Tirso Cruz. The individual musicians and the instruments handled by them were not selected by the hotel. It reserved no power to discharge any musician. The salaries to be paid to the musicians were left entirely to the orchestra leader and no direct payment of compensation was made by the hotel to the musicians. It paid only a lump sum compensation to Cruz. *Held*: Tirso Cruz was an independent contractor. His musicians were not employees of the hotel. They could not claim gratuity because they were not hotel employees.

When injury sustained outside working hours is compensable.—

The case of *La Mallorca Taxi v. Guanlao* [267] applied the following rules:

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265 57 Phil. 835 (1933)
266 Supra, note 249
267 L-8613, Jan. 30, 1957, 53 O.G. 8063

(1) An injury sustained by an employee outside his regular working hours or during a temporary stoppage or cessation of work may, nevertheless, under some circumstances, be compensable as arising out of and in the course of employment, and is generally held to be so where the employee was at the time engaged in the performance of some service for the benefit of the employer in connection with his usual duties.[268]

(2) If an employer places boys as coworkers with others in a hazardous employment, he is charged under the statute with what may happen for their curiosity, zeal, vigor, or boyishness as for an injury arising out of the employment.[269]

In the *Guanlao* case it appears that between 1:30 and 2 p.m. of November 15, 1952 Gonzalo Guanlao, an employee of La Mallorca Taxi, was shot with a Thompson gun near the window of the firm's stock room by his co-employee, Rolando Jayme. He died a few days later. Guanlao had gone to the stock room in order to get some "jabilla" which he intended to use in his work as latheman. *Held*: The death was compensable under the Workmen's Compensation law, although the shooting took place outside of working hours, because the deceased was in the performance of his duties when he was shot. While it may be true that prior to the shooting and during lunchtime Guanlao had played a joke upon Jayme by getting his soup, nevertheless, that act of Guanlao did not amount to notorious negligence. Guanlao did not foresee that that Jayme would be in a position to seize a Thompson gun in the stock room and with it shoot him (Guanlao) when he went to the stock room. On the other hand, the employer was negligent in assigning Jayme, a minor, in the stock room where the Thompson gun was accessible to him.

In the *Guanlao* case, the Supreme Court did not discuss the applicability of Article 1712 of the new Civil Code, which provides that "if a fellow-worker's intentional or malicious act is the only cause of the death or injury, the employer shall not be answerable, unless it should be shown that the latter did not exercise due diligence in the selection or supervision of the plaintiff's fellow worker." If the *Guanlao* case is to be justified under Article 1712, it would be on the theory that the employer was negligent in the selection or supervision of Jayme, a minor.

Other rulings on workmen's compensation.—

(1) Where a company supervised the work of construction through its manager, supplied the materials and contracted for the labor, it is deemed to be an employer of the laborers and is liable for workmen's compensation to a laborer injured in the course of construction.[270]

(2) Under the Workmen's Compensation Law, before it was amended by Republic Act No. 722, it was held that an agreement executed before a notary public and approved by the court, wherein

268 Mosley v. Royal Indemnity Co., 68 F 2d 220
269 Kansas City Fibre Box Co. v. Connel, 43 ALR 478
270 Shellborne Hotel v. De Leon, L-9149, May 31, 1957

the claim for workmen's compensation, arising from the death of a seaman, was compromised for ₱332, constitutes *res judicata* and is a bar to the claim of a larger amount.[271]

(3) While labor laws should be construed liberally in favor of the laborer, on the other hand, the fundamental principle of due process of law should be sternly applied alike on both the poor and the rich in order to attain proper justice. Following this principle, the employer should be given an opportunity to present evidence that an injury in the eye of the laborer was the cause of his insanity. It is necessary that there be direct evidence of the insanity being a result of the accident — something more than the insanity being an event subsequent to the accident.[272]

(4) But where the company belatedly filed a notice of accident required in Section 37 of Act No. 3428 and it did not file any notice that it would controvert the right to compensation, as required by Section 45 of the same law, it is deemed to have renounced its right to controvert the employee's right to compensation, unless reasonable grounds for the failure to make the necessary reports are submitted.[273]

(5) An employer is liable for additional workmen's compensation to a laborer who suffered the loss of the sight of his right eye after he lost the sight of his left eye when it was pierced by a flying piece of metal while he was sharpening an auger on the grinding machine of defendant's shop. The agreement between the employer and the laborer as to the amount of workmen's compensation was not binding because "any contract, regulation or devise of any sort intended to exempt the employer from all or part of the liability created" by the Workmen's Compensation Law is void.[274]

(6) A claim for workmen's compensation by a laborer of the Bureau of Public Works should be directed against the Republic of the Philippines and not against the Bureau. The Solicitor General should be notified of the claim.[275]

(7) The average earnings for a particular unit of time is ordinarily arrived at by dividing the actual earnings during such period by the number of such units embraced therein; but the allowance is usually made for cases in which the employment has not been continuous throughout such period "because of the employee's absence from work for various causes."[276]

(8) Under the amendment to Act 3428 introduced by Republic Act No. 772, which took effect on June 20, 1952, all employees or laborers, regardless of the amount of remuneration, are entitled to the benefits of the Workmen's Compensation Law. The amendment cannot be given retroactive effect to the case of an employee, who before June 20, 1952 was afflicted with tuberculosis and who was

271 Castillo and Canino v. Madrigal Shipping Co., Inc. L-10708 and 10709, Nov. 21, 1957
272 Magalona & Co. v. Workmen's Compensation Commissioner, L-101338, April 30, 1957, 53 O.G. 7251
273 Victorias Milling Co., Inc. v. Compensation Commissioner, L-10533, May 13, 1957
274 Manimtim v. Co Cho Chit, L-7310, Dec. 28, 1957
275 Republic v. De Leon, G.R. No. L-9868, June 28, 1957, 54 O.G. 663
276 58 Am. Jur. 794 cited in National Shipyards & Steel Corporation, L-9561, Sept. 30, 1957

then receiving a weekly pay in excess of ₱42. Under the old law, if the remuneration of an employee or laborer exceeds ₱42, he is not entitled to the benefits of the Workmen's Compensation Law.[277]

(9) The amendment introduced by Republic Act No. 772 to Section 18 of Act 3428 authorizes the Workmen's Compensation Commissioner to reopen a case.[278]

(10) An injured employee may recover compensation for both temporary total and permanent partial disability.[279]

(11) The mining industry is not a small industry within the meaning of Section 42 of Act 3428. The requirement that the employer should have a gross income of ₱20,000 during the preceding year, means preceding business year. If the accident occurred in 1945 and the employer had no operations during the Japanese occupation, its income for 1941 should be the one considered. The employer is not exempt from paying workmen's compensation during its first year of operation. The death of a carpenter while transporting UNRRA goods for a mining corporation is compensable.[280]

(12) Where affidavits were introduced to prove that the claimant was an employee of the respondent employer and the latter introduced no countervailing evidence, it can be presumed that the employer-employee relationship exists. There is a presumption that a claim for compensation comes within the provisions of the law. The mere fact that a separate civil action was filed for the recovery of the workmen's compensation, which action was later dismissed upon agreement of the parties, does not bar the claim for compensation. The rights and remedies granted by the Workmen's Compensation Act to employees by reason of personal injury excludes all other rights and remedies against the employer accruing to the employees' personal representatives, dependents or nearest of kin under the Civil Code and other laws.[281]

Right to strike.—

It is unquestionable that laborers have the right, through concerted action by means of strike, to attempt to secure the attainment of any of the lawful objects for which they may combine. It is settled that workmen have the right to organize for the purposes of securing improvement in the terms and conditions of labor and to quit work as a means of compelling or attempting to compel employers to accede to their demands for better terms and conditions. Indeed, the reason for a strike may be based upon any one or more of the multifarious considerations which in good faith may be believed to tend towards the advancement of the employees. That most of the laborers' demands were rejected did not make the strike less

277 Wack Wack Golf & Country Club, Inc. v. Workmen's Compensation Commission, L-9641, May 24, 1957; 54 O.G. 1345; National Shipyard & Steel Corporation v. Santos, L-9561, Sept. 30, 1957. See Note 4

278 Avecilla Building Corporation v. Carpeso, L-10668, Sept. 26, 1957

279 Central Azucarera de Don Pedro v. De Leon, L-10036, Dec. 28, 1957 citing Cañete v. Insular Lumber Co., 61 Phil. 592; Garcia v. Philippine Education Co., 62 Phil. 634

280 Pan Philippine Corporation v. Frias, L-9807, April 17, 1957; 53 O.G. 4467

281 Uy Kiva, L-9232, May 31, 1957

legitimate, as they do not appear to have been done in bad faith or for an unlawful purpose.[282]

The circumstance that the strike, although with a lawful purpose, was prematurely staged may justify the denial of backpay to the strikers,[283] but it would not mean the loss of their jobs. The declaration of a strike is not a renunciation of the employment relation.[284]

The strike breakers employed during the strike may be ousted from their jobs because "when a strike breaker accepts the position of a striker, he should know that his employment is merely temporary in nature, subject to the outcome of the strike.[285]

The Angat River Irrigation System is a part of the Government exercising governmental functions. It has no juridical personality. It cannot be sued without the consent of the Government and its employees cannot strike. It is outside the jurisdiction of the Court of Industrial Relations.[286]

Peaceful picketing for a lawful purpose is free speech and cannot be enjoined.—

In 1947, in the case of *Mortera v. Court of Industrial Relations*,[287] the Supreme Court announced the rule that there could be no blanket prohibition against picketing because "only illegal picketing, that is, picketing through the use of illegal means" can be enjoined, but "peaceful picketing cannot be prohibited" because "it is part of the freedom of speech guaranteed by the Constitution." No authority was cited for this ruling but anyone familiar with Federal labor law knows that the ruling was based on the cases decided by the U.S. Supreme Court,[288] which announced the novel doctrine indentifying picketing with free speech.

This doctrine has crystallized as a settled rule in this jurisdiction in two 1957 cases, *De Leon v. National Labor Union*[289] and *Cruz v. Cinema, State and Radio Entertainment Free Workers (FEW)*[290] which categorically held that "picketing peacefully carried out is not illegal even in the absence of employer-employee relationship, for peaceful picketing is part of the freedom of speech guaranteed by the Constitution." What is remarkable in this ruling is that there may be picketing even in the absence of employer-employee relationship. This part of the ruling is based on the definition of a labor dispute in section 2(j) of the Industrial Peace Act, which provides

282 31 Am. Jur. 934-935 cited in Radio Operators Association of the Philippines v. Philippine Marine Radio Officers Association, No. L-10112, Nov. 29, 1957
283 Philippine Marine Radio Officers v. Court of Industrial Relations, L-10095, Oct. 31, 1957; Id. Radio Operators Association of the Philippines v. Philippine Marine Radio Officers Association, supra, note 282
284 Rex Taxicab Co. v. Court of Industrial Relations, 70 Phil. 621 (1940).
285 National City Bank of New York v. National City Bank Employees Union, L-6843, Jan. 31, 1956
286 Angat River Irrigation System v. Angat River Workers' Union (Plump), L-10943-4, Dec. 28, 1957
287 79 Phil. 345, People v. Carballo, CA 53 O.G. 5232
288 Senn v. Tile Layers Protective Union, 301 U.S. 468; Thornhill v. Alabama, 310 U.S. 88; American Federation of Labor v. Swing, 312 U.S. 321; Bridges v. California, 314 U.S. 252; Bakery and Pastry Drivers v. Wohl, 315 U.S. 769; Shelley v. Kramer, 334 U.S. 1
289 L-7586, Jan. 30, 1957, 53 O.G. 2151
290 L-9581, July 31, 1957

that a labor dispute may exist "regardless of whether the disputants stand in the proximate relation of employer and employee."[291]

It should be noted that Section 9(a) of the Magna Charta of labor recognizes the right of the laborers to give "publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling, or by any method not involving fraud or violence." An injunction against lawful picketing is a denial of a fundamental right. "What may be enjoined is the use of violence or the act of unlawful picketing, such as the commission of acts of violence or intimidation against employees or those who want to see the shows." There is a dictum in the *Cruz* case that picketing for the purpose of forcing a person to discharge his own employees and hire the picketers is unlawful. As already stated, picketing to accomplish an unlawful purpose may be enjoined.[292] Picketers resorting to violence may be guilty of grave coercion.[292a]

Requisites for enjoining picketing should be followed.—

Where steamship companies pay the wages of watchmen whose services they contracted through watchmen agencies, and said watchmen want a collective bargaining agreement, the refusal of the companies to enter into such an agreement constitutes a labor dispute. Picketing in consequence of said labor dispute can be enjoined only under the condition mentioned in Section 9 of the Magna Charta of Labor, Republic Act No. 875. Where an injunction against such picketing was issued without complying with the conditions laid down in Section, the injunction is improper.[293]

The case of *SMB Box Factory Workers' Union-Paflu v. Victoriano,*[294] reiterates the rule laid down in *National Garments and Textiles Workers' Union-Paflu v. Caluag,*[295] that 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 Section 9(d) of Republic Act No. 857 (Magna Charta of Labor).[296]

No mesada for employee dismissed for just cause.—

Republic Act No. 1052, which took the place of Article 302 of the Code of Commerce, regarding the *mesada*, provides that "in cases of employment, without a definite period, in a commercial industrial or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance," and "the em-

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291 Philippine Association of Free Labor Unions (PAFLU) v. Barot, 52 O.G. 6544 (1956); Phil. Association of Free Labor Unions (PAFLU) v. Tan, 52 O.G., 5836; Reyes v. Tan, 52 O.G. 6187 (1956)

292 70 C.J.S. 1056

292a People v. Carballo, CA 53 O.G. 5232

293 Associated Watchmen and Security Union (PTWO) v. U.S. Lines, L-10333, July 25, 1957, citing PAFLU v. Tan, 52 O.G. 5836 (1956); Reyes v. Tan, 52 O.G. 6187 (1956); National Garments and Textiles Workers' Union v. Caluag, L-9104, Sept. 10, 1956; PAFLU v. Barot, 52 O.G. 6544 (1956)

294 L-12820, Dec. 1957

295 L-9104, Sept. 1956

296 Philippine Association of Free Labor Union (PAFLU) v. Tan, L-9115, Aug. 31, 1956. Same holding in Allied Free Workers' Union v. Apostol, L-8876, Oct. 31, 1957, 54 O.G. 981

ployee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of termination of his employment." These provisions were construed in *Arcas de Marcaida v. Philippine Education Co.*,[297] where it was held that Republic Act No. 1052, which is limited in its operation to cases of employment without a definite period, does not apply to the case of an employee employed without a definite period who was dismissed for insubordination. It would not apply when the separation is due to malfeasance, misfeasance or negligence. For instance, if the employment is terminated on account of embezzlement committed by the employee or serious physical injuries illegally inflicted by him upon the employer, the one month advance notice is not necessary for dismissing the employee.

Under Article 302 of the Code of Commerce, it was held that employees dismissed without fault on their part are entitled to the *mesada*.[298]

Republic Act No. 1052 makes reference to the "termination" or employment, instead of dismissal, precisely to exclude employees separated from the service for causes attributable to their own fault.

The rule in *Dee C. Chuan v. Nahag*,[299] that employee separated from the service on account of the closing of the employer's business are entitled to a separation pay, must be restricted to cases in which the employee is separated for causes of independent of his will. It was noted in the *Marcaida* case that, if an employee is employed *for a fixed term*, his employer may terminate the employment before the expiration of the stipulated period, should there be a substantial breach by the employee of his obligations,[300] and in such a case the employee is not entitled to advance notice or separation pay. It would be patently absurd to grant separation pay to the employee guilty of the same breach of obligation, when the employment is *without a definite period*, for that would mean that he would be entitled to greater protection than the employee engaged for a fixed duration.

In the *Marcaida* case, it appears that Rosita Marcaida, who was a sales clerk in the store of Philippine Education Co. since 1947, was asked on August 7, 1954 by the assistant manager of the retail department and later by the manager himself to work in another section of the store because some employees were absent. Rosita refused to obey the order of her immediate superiors. She said she should not be pushed around. In view of her refusal, she was dismissed that same day August 7th. She then sued for the one month separation pay. *Held*: Rosita was dismissed for a just cause. She was not entitled to the one month separation pay.

It should be noted that Republic Act No. 1787, which took effect on June 21, 1957 and which amended Republic Act No. 1052, enumerates the causes for terminating an employment.

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297 L-9960, May 29, 1957, 53 O.G. 8559
298 Lopez v. Roces, 73 Phil. 605 (1942); Sanchez v. Harry Lyons Construction, Inc., 48 O.G. 605; Del Puerto v. Gregg Car Company Inc., 40 O.G. 12th Supp. 103
299 L-7201, Sept. 22, 1954
300 Arts. 1169 and 1198, new Civil Code; Pabalan v. Velez, 22 Phil. 29; Hodges v. Grandada, 49 Phil. 429; De la Cruz v. Legaspi, 51 O.G. 6212; Gonzalez v. Haberer, 47 Phil. 380

Recovery of compensation for overtime work.—

The right to extra compensation for overtime work cannot be validly waived and the action for its recovery is not barred by laches or estoppel.[301] But this does not mean that such action is imprescriptible, for the principles underlying prescription on the one hand and laches and estoppel on the other are not exactly the same. There may be cases where the silence of the employee or laborer who lets time go by for quite a long period without claiming or asserting his right to overtime compensation may favor the inference that he had not worked overtime or that his extra work has been duly compensated.[302]

Congress by the enactment of the law for the recovery of overtime compensation could not have intended that an employee might, before bringing his action, wait until the passing of time had destroyed all the documentary evidence and the memory of witnesses had faded or become dim,[303] for that would render the action practically indefensible and might cause such great accumulation of unpaid overtime wages as would bankrupt an employer who is ordered to pay them and necessitate the closure of business to the detriment of the employees themselves.

Since the Eight-hour Labor Law does not provide for any prescriptive period, the provisions of the new Civil Code on prescription may be applied pursuant to Article 18 thereof which makes the Code applicable to special laws.[304] As the contracts of employment are oral, the actions on such contracts should be brought within six years pursuant to Article 1145 of the new Civil Code, formerly Article 43 of the Code of Civil Procedure. The period should be counted from the day the actions of the laborers could have been brought, that is, at the end of each regular day period when payment of overtime compensation became due.[305]

It should be noted that Republic Act No. 1993, which amended the Eight-Hour Labor Law and which took effect on June 22, 1957, provides that "any action to enforce any cause of under this Act shall be commenced within three years after the cause of action accrued, otherwise such action shall be forever barred: *Provided, however,* That actions already commenced before the effective date of this Act shall not be affected by the period herein prescribed."

Other rulings on labor law.—

(1) The rule in Article 1702 of the new Civil Code, that in case of doubt labor legislation shall be construed in favor of the decent living of the laborer, applies only if there is a doubt. If the labor law is clear, the rule in Article 1702 cannot be applied.[306]

(2) The employer may close its branch establishments due to

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301 Flores v. San Pedro, L-8580, Sept. 30, 1957 citing Detective & Protective Bureau v. Court of Industrial Relations, 48 O.G. 2725
302 Luzon Stevedoring Co., Inc. v. Luzon Marine Department, L-9265, April 29, 1957
303 157 ALR 546
304 Leyte A. & M. Oil Co. v. Block, Johnstone & Greenbaum, 52 Phil. 429
305 Flores v. San Pedro, supra, note 301
306 Tamayo v. Manila Hotel Co., L-8975, June 29, 1957

considerable losses and disregard the seniority rule in the laying off of employees.[307]

(3) Rice rations received by laborers on days when they did not work constitute debts of the laborers which may be set off against their differential in pay, both debts being demandable, liquidated and due.[308]

(4) The Court of Industrial Relations has no power to impose a fine on an employer for an unfair labor practice. That power is lodged in the ordinary courts. But the Court of Industrial Relations can order the reinstatement of an employee who was dismissed because of his union activities.[309]

(5) Where in a collective bargaining agreement the employer and two unions agreed that certain union members may be dismissed by the employer upon the union's recommendation, the dismissal of certain laborers upon such recommendation does not constitute unfair labor practice.[310]

(6) For a union to acquire proper representation as the sole bargaining agency, such union must be selected or designated by a majority of the employees and an employer may even request reasonable proof that such union represents a majority of the employees and in the absence of the same may refuse to bargain if the employer in good faith doubts the union's majority.[311]

(7) To constitute nonworking hours for the purpose of the Minimum Wage Law, the laborer or employee need not leave the premises of the factory, shop or establishment in order that his period of rest shall not be counted. It is enough that he ceases to work, may rest completely and leave or may leave at his will the spot where he actually stays while working to go somewhere else, whether within or outside the premises of said factory, shop or establishment. If these requisites are complied with, such period shall not be counted.[312]

(8) The grant of additional compensation to those working at night is justified for hygienic, medical, moral, cultural and sociological reasons. Night work is more strenuous than daytime work.[313]

(9) Vacation leave with pay is not a right granted to employees or laborers by any statute, but it depends upon any bargaining agreement entered into between labor and management, or by virtue of a court order upon petition of the laborers and after hearing. Consequently, in the absence of any previous bargaining agreement as to vacation leave and where the enjoyment thereof is founded entirely

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307 Association of Drugstore Employees v. Martinez, L-10263, Dec. 17, 1957
308 Arts. 1279, New Civil Code; Atok-Big Wedge Mutual Benefit Association v. Atok-Big Wedge Mining Co., Inc.
309 Hotel & Restaurant Free Workers (FFW) v. Kim Cafe & Restaurant, L-8100, Nov. 29, 1957 reiterating the rule in Scoty's Department Store v. Micaller, 52 O.G. 5119 (1956)
310 Ang Malayang Manggagawa Ng Ang Tibay Enterprises v. Ang Tibay, L-8259, Dec. 23, 1957
311 Isaac Peral Bowling Alley v. United Employees Welfare Association, L-9831, Oct. 30, 1957
312 Isaac Peral Bowling Alley case, supra, note 311
313 Isaac Peral Bowling Alley case, supra, note 311, citing Shell Co. of the P.I. v. National Labor Union, 81 Phil. 315 (1948); Deter and Protective Bureau, Inc. v. United Employees Welfare Association, 52 O.G. 7288 (1956)

upon a grant or award made by the Industrial Court, based on the agreement of the management after the filing of the petition therefor, said grant should be made effective only as of the date of the award, or of the agreement, or at most, of the petition, but surely not before.[314]

(10) The certification election requested by one union cannot be suspended pending determination of the complaint for unfair labor practice against the employer. There is no showing that the charge of unfair labor practice concerns the domination by the employer of a rival union.[315]

(11) A public service operator has a right to refuse employment or to terminate the services of an employee who has been convicted of offenses mentioned in Section 47 of the regulations of the Public Service Commission. The requirement that the operator's employees must be courteous and of good moral character is necessary because public service operator deals directly with the patronizing community and the nature of such undertaking necessarily demands of the company the employment of a person with unquestionable moral character.[316]

(12) An employee, who was dismissed because he wrote letters to the parent company and thus created misunderstanding between it and the local management, is not entitled to back wages upon reinstatement.[317]

(13) There is no law which entitles a laid-off employee or laborer to reinstatement as a matter of right. In order that such a right may be accorded, it is necessary that there be a judgment to that effect which, in turn, depends upon facts and circumstances which may warrant reinstatement as the court may find to be established by the evidence.[318] Back pay is something which may be waived by the party concerned especially if he has been reinstated. The conditions of reinstatement may depend upon some factors which are not generally bared before the court.[319]

(14) The strikers' return to work, with the consequent ending of the strike, does not imply a waiver of their demands.[320]

(15) A craft union has the right to bargain collectively as provided in Section 9(f) of the Industrial Peace Act.[321]

(16) Where the strikers never expressed a desire or willingness to return to their work and left that matter to the court's discretion, the denial of backpay in case they are reinstated is justified, especially considering that the strike was declared not because of any illegal

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314 Earnshaw Docks & Honolulu Iron Works v. Court of Industrial Relations and National Labor Union, L-8896, January 23, 1957, 53 O.G. 2778

315 Standard Cigarette Workers' Union v. Standard Cigarette Factory, L-9908, April 22, 1957

316 Pangasinan Transportation Co., Inc. v. Pangasinan Employees, Laborers & Tenants Association, L-9736, May 20, 1957

317 Lakas ng Pagkakaisa sa Peter Paul v. Peter Paul (Phil.) Corp., L-10180, Sept. 30, 1957

318 Dimayuga v. Cebu Portland Cement Co., L-10213, May 27, 1957

319 Dimayuga v. Cebu Portland Cement Co., supra, note 318. See Western Mindanao Lumber Co., Inc. v. Mindanao Federation of Labor, L-10170, April 25, 1957, 54 O.G. 1005

320 Bisaya Land Transportation Co., Inc. v. Philippine Marine Radio Officers Association, L-10114, Nov. 26, 1957

321 Id., Bisaya Land Transportation Co., Inc., supra.

act or unfair labor practice of the employer, but was resorted to as an economic weapon to compel the employer to grant the strikers an improvement in their working conditions. Under the circumstances, the grant of backpay is governed by the general principle of "fair day's wage for a fair day's labor."[322]

17) Upon certification by the President under Section 10 of Republic Act 875, the case comes under the operation of Commonwealth Act No. 103, which enforces compulsory arbitration in cases of labor dispute in industries indispensable to the national interest when the President certifies the case to the Court of Industrial Relations. The evident intention of the law is to empower the said court to act in such cases, not only in the manner prescribed under Commonwealth Act 103, but with the same broad powers and jurisdiction granted by that Act.[323]

(18) The Philippine National Red Cross, Inc. is not subject to the Eight-Hour Labor Law.[324]

(19) An employer should not be compelled to continue an employee in the service if a justifiable cause for his discharge exists. But the determination of whether a justifiable cause for removal exists in any given case is a matter that cannot be left entirely to the employer. Consequently, the Court of Industrial Relations, in the settlement of labor disputes, is empowered to reduce excessive punishments meted out to erring employees.[324a]

LAW OF COMMON CARRIERS

Proximate cause of accident in a transportation contract.—

The term "proximate cause," which "has grown to be a part of the livery of the law of negligence," is an unsatisfactory phrase, difficult to define. "It has not only troubled the unlearned, but has vexed the erudite." Speculating on the doctrine of proximate and remote cause in supposed or hypothetical cases seems to have been a sort of intellectual recreation with text writers on the subject. Attempts to define proximate cause appear in text and case to the very limit of a busy man's time to read, and far beyond the limits of his time separately to discuss. There has been produced a great amount of legal literature and numberless opinions on this subject of proximate cause which it is impossible and undesirable to attempt to review.[325]

The case of *Villanueva v. Medina*,[326] adopts the following definition of proximate cause.

> "x x x that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and with-

322 Philippine Marine Radio Officers' Association v. Compañia Maritima, L-10095 and L-10115, Oct. 31, 1957
323 Philippine Marine Radio Officers' Association case, supra, note 322
324 Marcelo v. Philippine National Red Cross, L-9448, May 23, 1957
324a Standard Vacuum Oil Co. v. Katipunan Labor Union, L-9666, Jan. 30, 1957; Tidewater Associated Oil Co. v. Victory Employees and Laborers' Association, 47 O.G. 2863
325 50 C. J. 836-837 footnotes
326 L-10126, Oct. 28, 1957

> out which the result would not have occurred. And, more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close casual connection with its immediate predecessor, the final event in the chain immediately affecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first even should as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person person might probably result therefrom."[327]

In an early case, proximate cause was defined as that cause "which sets the others in motion and is to be distinguished from a mere preexisting condition upon which the effective cause operates, and must have been adequate to produce the resultant damage without the intervention of an independent cause."[326]

In the *Villanueva* case, it appears that, while a bus was running at a high speed, its front tires burst. It began to zigzag until it fell into a canal on the right side of the road and turned turtle. Some of the passengers were able to get out of the bus. After the bus overturned, gasoline began to leak and escape from its tank on the side of the chassis, spreading over and permeating the body of the bus and the ground under and around it. Half an hour later, the lighted torch borne by the persons in the vicinity, who had appeared on the scene of the accident in order to give succour to the injured passengers, set the truck on fire. Four passengers near the driver's seat, who were trapped inside the truck, were burned to death. Among them was Juan Bataclan, whose heirs have brought the instant action for damages. The bus was speeding at the time of the blowout as shown by the fact that from the point where one of the front tires burst up to the canal where the bus overturned after zigzagging, there was a distance of 150 meters. The driver, after the blowout, must have applied the brakes in order to stop the bus, but because of the velocity at which the bus was running, its momentum carried it over a distance of 150 meters before it fell into the canal and turned turtle. Was the proximate cause of Bataclan's death the overturning of the bus or the first that burned it and the trapped passengers?

Held: It may be that ordinarily, when a bus overturns and pins down a passenger merely causing him injuries, if through some event, unexpected and extraordinary, the overturned bus is set on fire, say, by lightning, or some highwaymen after looting the vehicle sets it on fire, and the passenger is burned to death, one might contend that the proximate cause of his death was the fire and not the overturning of the vehicle.

But in the instant case the proximate cause of Bataclan's death was the overturning of the bus. When the bus turned turtle, the gasoline leaked as a consequence. The coming of the men with the lighted torch was in response to the call for help. The rescuers had to carry a light with them because it was dark. The torch was the

327 38 Am. Jur. 695-696
328 Atlantic Gulf Co. v. Insular Government, 10 Phil. 166, 172. See Republic v. Pedrosa, L-9527, Aug. 22, 1957

only available light to them in a rural area. It was natural that they would innocently approach the overturned vehicle to extend aid. The driver and conductor of the should have known about the spilled gasoline and warned the rescuers not to come near the truck with the torch.

The owner of the bus was ordered to pay the heirs of Bataclan ₱6,000 as compensatory, moral and other damages, ₱100 for the lost merchandise and ₱800 as attorney's fees.

The Court of Appeals has ruled that a tire blowout is an inevitable accident or *caso fortuito* to which no liability for damages can be imputed.[329]

Carrier is not liable for damages if it exercised extraordinary diligence to avoid the accident.—

The case of *Isaac v. A. L. Ammen Transportation Co., Inc.*[330] lays down certain principles regarding the liability of common carriers in the transportation of passengers. According to the *Isaac* case, it may be inferred from Articles 1733, 1755 and 1756 of the new Civil Code, read in the light of the observations of the Code Commission in its report, that (a) the common carrier breaches its contractual obligation if it fails to exert extraordinary diligence as required by the circumstances of the case; (b) a carrier is obliged to carry its passengers with the utmost diligence of very cautious persons, having due regard for all the circumstances; (c) it is presumed to be at fault or to have acted negligently in case of death of, or injury to, passengers, it being its duty to prove that it exercised extraordinary diligence; (d) the carrier is not an insurer against all risks of travel; and (e) if the carrier proves that it exercised the utmost diligence of a very cautious person but the passenger is nevertheless injured, the carrier is not liable.

Also applied in the *Isaac* case was the rule that "where a carrier's employee is confronted with a sudden emergency, the fact that he is obliged to act quickly and without a chance for deliberation must be taken into account, and he is not held to the same degree of care that he would otherwise be required to exercise in the absence of such emergency but must exercise only such care as any ordinary prudent person would exercise under like circumstances and conditions, and the failure on his part to exercise the best judgment the case renders possible does not establish lack of care and skill on his part which renders the company liable."[331]

In the *Isaac* case, it appears that Cesar Isaac boarded defendant's bus on May 31, 1951 at Ligao, Albay bound for Pili, Camarines Sur. The bus collided with a pickup truck coming from the opposite direction. As a result, Isaac's left arm was completely severed and fell inside the bus. He was the only one injured in the collision. He sued the defendant for damages. The court found that

329 Rodriguez v. Red Line Transportation Co., Inc., 51 O.G. 3006; People v. Hatton, CA 49 O.G. 1866
330 L-9671, Aug. 23, 1957
331 13 C.J.S. 1412; 10 C.J. 970

the collision occurred because of the negligence of the driver of the pickup truck. The bus driver exercised due diligence to avoid the collision. Defendant was held not liable for damages.

Contributory negligence of injured bus passenger.—

In the *Isaac* case,[332] it was held that, while under Article 1762 of the new Civil Code, the passenger's contributory negligence would not bar recovery for damages if the carrier is negligent, nevertheless, if the carrier *is not negligent,* the passenger's contributory negligence would strengthen the judgment barring recovery. It appears in the Isaac case that the injured passenger seated himself on the left side of the bus, resting his left arm on the window sill in such a way that his left elbow was outside the window. This explains why his left arm was severed when the collision took place and why he was the only passenger injured. He was found guilty of contributory negligence. Reliance was placed on the rule that it is negligence *per se* for a railway passenger voluntarily or inadvertently to protrude his arm, hand, elbow, or any other part of his body through the window of a moving car beyond the outer edge of the window or outer surface of the car, so as to come in contact with objects or obstacles near the track, and that no recovery can be had for any injury which for such negligence would not have been sustained.[333]

Stipulation that carrier is not liable for loss of goods while in the custody of customs authorities is valid.—

Under Articles 1734, 1735 and 1736 of the new Civil Code, a common carrier, as a rule, is responsible for the loss, destruction or deterioration of the goods unless the same is due to any of certain specified causes. If the goods are lost or destroyed or have deteriorated for causes other than those specified by law, the common carrier is presumed to have been at fault or to have acted negligently, unless it proves that it has observed extraordinary diligence in their care. This extraordinary liability lasts from the time the goods are placed in the possession of the carrier until they are delivered to the consignee or "to the person who has the right to receive them." These rules according to the case *Lu Do & Lu Ym Corp. v. Binamira,*[334] apply only when the loss, destruction or deterioration takes place while the goods are *in the possession of the carrier and* not after it has lost control of them. The reason is obvious. While the goods are in its possession, it is but fair that it should exercise extraordinary diligence in protecting them from damage. If loss occurs, the law presumes that it was due to the carrier's fault or negligence. This is necessary to protect the interest of the owner who is its mercy. However, if it was stipulated in the bill of lading that the carrier would not be liable for the loss of the goods when they are not in its actual custody and that the goods would be considered delivered to the consignee and be at his own risk when taken into the custody of customs or other authorities, then the carrier would not be liable

332 Supra, note 331
333 10 C.J. 1139; Malakia v. Rhode Island Co., 89 Atl. 337
334 L-9840, April 22, 1957, 53 O.G. 4821

for their loss if the loss occurred while the goods were in the custody of the customs authorities. Such a stipulation is valid. It is not immoral. The parties may agree to limit the liability of the carrier, considering that the goods have still to go through the inspection of the customs authorities before they are actually turned over to the consignee. This is a situation where the carrier loses control of the goods because of a customs regulation. It is unfair that the carrier should be responsible for what might happen to the goods during the time that they were in the custody of the customs authorities. The carrier is not therefore liable if the loss occurred after the shipment had been delivered to the customs authorities.

Presumption that carrier was negligent.—

Article 1756 of the new Civil Code, which provides that "in case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently," was cited in *Brito Sy v. Malate Taxicab & Garage, Inc.*[335] to support the opinion that in an action for damages by an injured passenger against the carrier, it is not necessary for the court to make an express finding of fault or negligence on the part of the carrier's driver. The case of the common carrier is an exception to the general rule that negligence must be proved. The onus is on the carrier to prove that it exercised extraordinary diligence in the transportation of the passenger.

PARTNERSHIP

Partnerships for income tax purposes are not ordinary partnerships.—

In *Evangelista v. Collector of Internal Revenue*,[336] it was held that the partnerships, which for income tax purposes are treated as corporations, are not necessarily "partnerships" in the technical sense of the term. The term "corporation" under the income tax law includes "partnerships, *no matter how created or organized.*" This qualifying expression clearly indicates that a joint venture need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships in order that it could be deemed constituted for purposes of the income tax on corporations. Joint accounts (*sociedad de cuentas en participation*) and "associations," which have no personality separate and distinct from the members thereof may be treated as a taxable corporation under the income and residence tax laws. In American law the term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated association which carries on any business, financial operation or venture. Only duly registered general copartnerships (*companias colectivas*), which constitute one of the most typical forms of partnerships in this jurisdiction, are expressly exempted from income tax.

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335 L-8937, Nov. 29, 1957, 54 O.G. 658
336 L-9996, Oct. 15, 1957, 54 O.G. 996; Collector of Internal Revenue v. Batangas Transportation Co., L-9692, Jan. 6, 1958

In the *Evangelista* case, it appears that three sisters, Eufemia, Manuela and Francisca Evangelista, borrowed from their father ₱59,000, which together with their own monies, they used in the purchases of four pieces of real property in 1943 and April 1944. In 1945 their brother Simeon managed the properties and they collected ₱9,000 as gross rentals therefrom. In 1946 they realized therefrom ₱24,700 as gross rentals. The Collector of Internal Revenue regarded the juridical relation among the three sisters as a partnership for income, residence and real estate dealer's tax purposes. The question was whether the three sisters had formed a partnership.

Held: The three sisters have formed a partnership within the meaning of Article 1767 of the new Civil Code because they contributed money to a common fund and agreed to divide the profits among themselves. The contention of the sisters that they were merely coowners was not sustained. They are subject to internal revenue taxes as a partnership or corporation.

Old Law.—

A civil partnership, dedicated to the exploitation of two haciendas, is exempt from income tax if it has adopted the form of a general copartnership under the Code of Commerce (*compañia colectiva*), although its articles of copartnership designates it as a "sociedad agricola *limitada*," which is not the same as a limited partnership or *sociedad en comandita*.[337]

AGENCY

Agent, not independent contractor.—

Where it appears that the operator of a gasoline and service station owed his position to the oil company and the latter could remove him at will; that the service station belonged to the company and bore its tradename and the operator sold only the products of the company; that the pieces of equipment used by the operator belonged to the company and were not just loaned to the operator and the company took charge of their repair and maintenance; that an employee of the company supervised the work of the operator and conducted periodic inspection of the company's gasoline and service station; that the price of the products sold by the operator was fixed by the company and not by the operator; and that the receipts signed by the operator indicated that he was a mere agent, *Held*: That the operator was an agent of the company and not an independent contractor, and, consequently, the company is liable for the damages suffered by the car owner when the car fell from the hydraulic lift of the gas service station while it was being washed and greased.[338]

Husband must have special power to compromise.—

Article 1878 of the new Civil Code, which provides that a spe-

337 Collector of Internal Revenue v. Isasi, L-9186, April 29, 1957
338 Shell Company of the Phil., Ltd. v. Firemen's Insurance Co. of Newark, L-8169, Jan. 29, 1957, 53 O.G. 6084

cial power of attorney is necessary "to compromise" was cited in *Vda. de Mejia v. Lohla*,[339] where an action was filed by the vendee against the husband and wife, as vendors, for the recovery of the possession of the lot sold. Plaintiff and defendant husband (without the wife's intervention) agreed to compromise the case under the condition that defendant spouses would have a period of time within which to repurchase the lot from the plaintiff at a certain price and if no repurchase was made during that period, the spouses would be bound to deliver the possession of the lot to the plaintiff. In the *Mejia* case, it was held that the wife was bound by the compromise because she had executed a special power of attorney in favor of her husband for the disposal and encumbrance of her properties and, moreover, she had tacitly ratified the compromise.

ALEATORY CONTRACTS

Fidelity bond as an insurance contract.—

Fidelity and surety contracts executed for profit have been held and considered as insurance contracts only for purposes of interpretation of their uncertain or ambiguous provisions and not for the purpose of holding fidelity and surety companies answerable for all the obligations imposed by law on insurance companies. Section 2 of Republic Act No. 487 regarding payment of interest by non-life insurance companies in cases of unreasonable delay in the payment of claims does not apply to surety companies.[340]

COMPROMISE

Compromise has force of res judicata.—

The familiar rule in Article 2037 of the new Civil Code is that "a compromise has upon the parties the effect and authority of *res judicata*." Where a case involving fraud or lesion in a partition was compromised in 1939 and then in 1951 another action was brought regarding the same matter, the action is not only barred by prescription but also by the rule of *non quieta movere*.[341]

As according to Article 2028 of the new Civil Code, "a compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced," the obligations arising from the compromise have the force of law between the parties.[342] This means that neither party may unilaterally and upon his own exclusive volition evade his obligations under the contract, unless the other party has assented thereto, or unless for causes sufficient in law and pronounced adequate by a competent tribunal. So, where in 1950 a labor union and an employer reached an amicable settlement of their industrial dispute pending in the Court of Industrial Relations, the settlement, being in the nature of a compromise, cannot be terminated by the employ-

339 L-9354, Feb. 15, 1957
340 Philippine Surety & Insurance Co., Inc. v. Royal Oil Products, Inc., L-9981, Oct. 31, 1957
341 Ongsiaco v. Ongsiaco, L-7510, March 30, 1957
342 Art. 1159, New Civil Code

er without notice to the other party and without hearing. Section 17 of Commonwealth Act No. 103, regarding the effectiveness of an award of the Court of Industrial Relation, does not apply to such a compromise.[343]

Illustration of a compromise that has the force of res judicata.—

The rule is that "the compromise of any matter is valid and binding, not because it is the *settlement of a valid claim,* but because it is the *settlement of a controversy.*" In order to effect a compromise, there must be a definite proposition and an acceptance. As a question of law, it does not matter from whom the proposition of settlement comes; if one is made and accepted, it constitutes a contract, and in the absence of fraud, it is binding on both parties. Compromises are favored, without regard to the nature of the contraversy compromised. They cannot be set aside just because the event shows all the gain to have been on one side, and all the sacrifice on the other, if the parties have acted in good faith, and with a belief of the actual existence of the rights which they have respectively waived or abandoned. If a settlement be made with regard to such subject, free from fraud or mistake, whereby there is a surrender or satisfaction, in whole or in part, of a claim upon one side in exchange for or in consideration of a surrender or satisfaction of a claim in whole or in part, or of something of value, upon the other, however baseless may be the claim upon either side or harsh the terms as to either of the parties, the other cannot successfully impeach the agreement in a court of justice. Where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctable as such in equity, cannot afford a basis for setting a compromise aside or defending against a suit brought thereon. A compromise of conflicting claims asserted in good faith will not be disturbed because by a subsequent judicial decision in an analogous case it appears that one part had no rights to forego.[344]

The foregoing rules were applied in *Berg v. National City Bank of New York,*[345] where it appears that before the war the Red Star Stores, Inc. was indebted to the National City Bank of New York in the sum of $19,956.75. The obligation was guaranteed by Ernest Berg. During the Japanese occupation Berg paid the debt to the Bank of Taiwan. After liberation, the National City Bank of New York demanded the payment of the obligation from Berg. On February 1, 1946 Berg agreed to compromise the case by paying the principal of the debt if the bank would condone the interest. The bank accepted the offer. Berg signed an acknowledgment of debt in the bank's favor and an agreement relative to its payment. Full payment of the obligation was made by Berg in 1946. On April 9, 1948 the Supreme Court in *Haw Pia v. China Banking Corporation,*[346] validated the payments of prewar obligations made during

343 Katipunan Labor Union v. Caltex (Phil.) Inc. L-10337, May 27, 1957
344 5 RCL 877, 879, 883-4, cited in McCarthy v. Barber Steamship Lines, 45 Phil. 488, 498 (1923)
345 L-9312, Oct. 31, 1957. Cf. Chiu Chiong & Co. v. National City Bank of New York, 52 O.G. 5806 (1956)
346 80 Phil. 604

the Japanese time. In view of the *Haw Pia* ruling, Berg on September 27, 1948 demanded from the bank the refund of his payment. The bank refused to make the refund. Berg filed the instant action for the recovery of his payment plus damages.

Held: The binding compromise agreement between Berg and the bank has the authority of *res judicata*. There was a real compromise when the bank waived the interest amounting to $4,000. Berg's charge of fraud and duress allegedly practiced by the bank was not proven.

ARBITRATION

Arbitration should be encouraged.—

Congress, in enacting Republic Act No. 876, the Arbitration Law, has thereby adopted "the more intelligent view that arbitration, as an inexpensive, speedy and amicable method of settling disputes, and as a means of avoiding litigation, should received every encouragement from the courts which may be extended without contravening sound public policy or settled law."[347] Congress thus abandoned the view that "a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitrators and to them alone, is contrary to public policy and cannot oust the courts of jurisdiction."[348] This is the conclusion reached by the Supreme Court in *Eastboard Navigation, Ltd. v. Juan Ysmael & Co., Inc.*[349] It also noted that "to afford the public a cheap and expeditious procedure of settling not only commercial but other kinds of controversies most of the states of the American union have adopted statutes providing for arbitration, and American businessmen are reported to have enthusiastically accepted the innovation because of its obvious advantages over the ordinary court procedure." In the *Eastboard Navigation* case, our courts ordered the enforcement of an arbitration award made in New York and confirmed by its District Court.

When arbitrator exceeds his powers.—

The court may vacate an award of an arbitrator when he has exceeded his powers, according to section 24(d) of the Arbitration Law, Republic Act No. 876, which provision may be applied retroactively because it is procedural in character. This rule was applied in *Lopez v. Fajardo*,[350] where two groups of heirs agreed that a committee of two perosns would appraise the controverted land and the improvements and plantings thereon and that, in case of conflict between the two appraisers, one Edgardo Villavicencio, "actuara como arbitro" and his "decision sera decisiva y final." The two appraisers could not agree on the valuation; so Villavicencio made his own report, wherein he found that the first group of heirs should pay to the second group ₱44,539. The trial court assumed that Villavicencio's report was final. *Held*: The trial court was in error. The

347 3 Am. Jur. 835
348 Manila Electric Co. v. Pasay Transportation Co., 57 Phil. 600-3
349 L-9090, Sept. 10, 1957
350 L-9324, Aug. 30, 1957

arbitration agreement did not empower the arbitrator to award to any heir any sum of money. The committee was formed in order to appraise the estate as a step leading to its just and fair partition among the heirs. The arbitrator's award was merely recommendatory in character. It was not final. What was final was the appraisal. The trial court should hold a hearing to adjust the respective claims of the two groups of heirs.

Court action to enforce award.—

A compromise is different from an arbitration agreement. The Supreme Court has not promulgated rules on arbitration, but Congress enacted an arbitration law, Republic Act No. 876, effective December 1953, which supplements, not suplants, the Civil Code provisions on arbitration. Under the new Civil Code the parties may select an arbitrator without court intervention. Republic Act No. 876 does not mean that there can be no arbitration without a previous court actuation; it means that court intervention is required if, there being a previous agreement to arbitrate, one party neglects or refuses to arbitrate or the arbitrator has not been selected by the parties. Where the parties have agreed that the arbitrator should be the Wage Administration Service, they are bound by the decision of that office. Where an award has been made by the arbitrator selected by the parties and the losing party refuses to comply with the award, court action would be necessary to enforce the award.[351]

GUARANTY

Principal's liability for the premium.—

Article 2048 of the New Civil Code provides that "a guaranty is gratuitous, unless there is a stipulation to the contrary" and Article 2051 of the same Code provides that "a guaranty may be x x x gratuitous, or by onerous title." Suretyship, as a form of guaranty, is usually onerous. "The premium is the consideration for furnishing the bond or the guaranty. While the liability of the surety to the obligee subsists, the premium is collectible from the principal." As long as the loan and interest are not paid, the surety continues to be bound to the creditor-obligee, and as a corollary its right to collect the premium on the bond also continues. This is the holding in *Arranz v. Manila Fidelity & Surety Co., Inc.*[352]

In the *Arranz* case, it appears that in 1949 the surety company acted as surety of Melecio Arranz for the payment of ₱90,000 to the Manila Ylang Ylang Distillery. The bond clearly provided that the surety company and Arranz were solidarily liable to pay the debt to the distillery. Arranz executed a second mortgage over certain properties in favor of the surety company. When the debt became due, the surety company could not pay the same because it had no money. In view of this default, the distillery filed a suit for the collection of the debt. The surety company was able to pay only ₱20,000.

351 Umbac v. Yap, L-5933, Feb. 28, 1957
352 L-9674, April 29, 1957, 53 O.G. 7247

As the surety company could not pay fully the debt, Arranz negotiated a loan with a bank to be secured by a mortgage on the properties which had been already mortgaged to the surety company. But the bank wanted the cancellation of the mortgage in favor of the surety company before it would grant the loan. The surety company would not cancel the mortgage unless Arranz paid first to the surety company ₱20,000 as reimbursement and ₱3,045 as premiums plus attorney's fees. Arranz paid said amounts. The surety company cancelled the second mortgage and the properties were mortgaged again to the bank. Arranz then sued the surety company for the recovery of ₱7,200 as premiums and ₱7,000 representing attorney's fees. The question was whether Arranz was obligated to pay the premiums on the bond in spite of the fact that the surety company failed to pay the debt which had been secured. *Held*: The complaint of Arranz was dismissed.

The Supreme Court found that there was "no allegation in the complaint or in any other paper in the case that the surety promised the principal that it will pay the loan or obligation contracted by the principal for the latter's account. In the contract of suretyship the creditor was given the right to sue the principal, or the latter and the surety at the same time. This does not imply, however, that the surety covenanted or agreed *with the principal* that it will pay the loan for the benefit of the principal. Such a promise is not implied by law either." The "failure or refusal of the surety to pay the debt for the principal's account did not have the effect of relieving the principal of his obligation to pay the premium on the bond furnished." The justness of the decision in the *Arranz* case is doubtful.

Strict construction of surety bond.—

The rule in Article 2055 of the new Civil Code, that a guaranty "cannot extend to more than what is stipulated therein," was applied in *Manila Terminal Co., Inc. v. Far Eastern Surety & Insurance Co., Inc.*[353] to a contract of suretyship. It was held in this case that "contract of suretyship is strictly construed against the creditor when the intention of the parties is not clearly expressed. The *Manila Terminal* case cites the ruling that "a bond or contract of suretyship is strictly construed and cannot be extended beyond its specified limits"[354] and that it is "ordinarily not to be construed as retrospective.[355] In the *Manila Terminal* case it appears that on May 29, 1947 the Far Eastern Surety & Insurance Co., Inc. executed a bond in favor of the Manila Terminal Co., Inc. to secure the payment of the arrastre charges "that may have arisen or due on all and every goods, wares and merchandises which may be imported into or exported from the Philippines" by Jesus Hiponia. It was held that the surety was not liable under its bond to pay the arrastre charges which *had already accrued at the time it executed its bond.* Said bond cannot be given a retroactive effect, since the intention to give it retroactive effect is not clear from the contract of suretyship. The ambiguity of the bond should be construed against the creditor.

353 L-10793, May 24, 1957
354 El Vencedor v. Canlas, 44 Phil. 699
355 Bank of the P.I. v. Forester, 49 Phil. 843

However, it should be noted that there is a tendency now to apply the rule of strict construction of the surety's liability to the accommodation surety and not to the compensated surety.

Rule of strictissimi juris does not apply to the compensated surety.—

The rule that the surety is a favorite of the law and that his contract is construed *strictissimi juris* commonly refers to the *accommodation surety,* who acts without motive of pecuniary gain. He should be protected against unjust pecuniary impoverishment by imposing on the principal duties akin to those of a fiduciary. This cannot be said of the *compensated corporate surety,* which is a business association organized for the purpose of assuming classified risks in large numbers, or for profit and on an impersonal basis, through the medium of standardized written contractual forms drawn by its own representatives with the primary aim of protecting its own interests. The law does not have the same solicitude for corporations engaged in giving indemnity bonds for profit as it does for the individual surety who voluntarily undertakes to answer for the obligations of another. Although calling themselves sureties, such corporations are in fact *insurers.* In determining their rights and liabilities, the rules peculiar to suretyship do not apply. These pronouncements were made in the case of *Pacific Tobacco Corporation v. Lorenzana.*[356]

Justice J. B. L. Reyes in a concurring opinion observed that it is time to abandon the application of the *strictissimi juris* rule to the contracts of professional or compensated guarantors. The rule of strict interpretation of contracts of guaranty was born out of sympathy elicited by the situation of a gratuitous guarantor who ran all the risks and received no advantages whatever from his guaranty, which almost always is given out of friendship.

But the rule loses all *raison d'etre* in the case of guarantors that make a profession or trade out of their practice of undertaking to answer for the debt or default of others for a price and who, in addition, protect themselves against all loss by requiring counter-bonds. In these cases, the guarantors practically run no risk because the amounts they may be required to pay are later collected from the counter-guarantors who are also made responsible for the corresponding premiums. Surely the law could not have intended that those guarantors should receive the same treatment as that accorded to the lone individual who answers gratuitously for the debt of another at no profit to himself.[357]

The rule of strict construction of the surety bond was not followed in *Price Stabilization Corporation v. Quimson,*[358] where the bond provided that the surety's liability should not exceed ₱3,000. It was held that this provision did not mean that the credit which could be extended to the principal debtor would not exceed ₱3,000. It was also noted in that case that the provision in the bond that the purchases made by the debtor should be paid within seven days did

356 L-8086, Oct. 31, 1957
357 Philippine Surety & Insurance Co., Inc. v. Royal Oil Products, Inc., L-9981, Oct. 31, 1957
358 L-9429, May 31, 1957

not mean that the surety would be relieved if there was no payment within seven days. The precise purpose of the bond was that the surety would pay if the principal debtor defaulted in his obligation.

Material alteration of principal contract releases surety.—

A material alteration of a contract is such a change in the terms of the agreement as either imposes some new obligation on the party promising or takes away some obligation already imposed. A change in the form of the contract which does not effect one or the other of these results is immaterial and will not discharge the surety. To be material, the alteration must change the legal effect of the original contract, or result in injury, loss or prejudice to the surety. Where the distributor of merchandise was required to post a bond which "shall answer for the faithful settlement of the account of the distributor with the company," it was held that "the addition or diminution of the territories covered" by the previous assignment of the distributor did not constitute an alteration of the contract as to release the surety of the distributor.[359]

But where the surety obligated himself to answer for the debt, which the principal might incur as selling agent in a *particular municipality* and, subsequently, the agency was changed, without the surety's knowledge, in such a manner as to extend the agency to various other places not mentioned in the original contract, it was held that there was a material alteration in the contract which released the surety.[360]

Any agreement between the principal debtor and the creditor which essentially varies the terms of the principal contract, without the surety's consent, will release the surety from liability. Where the credit of the principal debtor was increased without the consent of the surety who had guaranteed the debtor's obligation, the surety is released.[361]

In *Philippine Surety & Insurance Co., Inc. v. Royal Oil Products, Inc.*[362] it appears that in an agency contract it was stipulated that failure on the part of the agent to comply with his duties and obligations would give the principal, the Royal Oil Products, Inc., the right to rescind the agency and take appropriate action in the premises, but that the company's failure to enforce strictly any of its rights would "not be construed as a waiver of such rights." In the surety bond posted by the agent and the surety company, it was provided that if the agent duly and fully observed the covenants and conditions of the bond, it would become void; otherwise, it would remain in full force and effect.

It was contended by the surety company that the failure of the Royal Oil Products, Inc. to notify the surety company of the defalcation committed by the agent and the action of the oil company in thereafter retaining the agent in its employment and giving him

359 Pacific Tobacco Corporation v. Lorenzana, L-8086, Oct. 31, 1957
360 Asiatic Petroleum Co. v. Hizon and David, 45 Phil. 532 (1932)
361 Philippine National Bank v. Veraguth, 50 Phil. 253
362 L-998, Oct. 31, 1957

additional merchandise to sell released the surety company from its liability. This contention was not sustained. The bond did not contain any stipulation obligating the oil company to notify the surety company of any defalcation committed by the agent.

Art. 2071 applies to the surety.—

Article 2071 of the new Civil Code, which provides that the guarantor, even before having paid, may proceed against the principal debtor, in the cases specified therein, for the purpose of obtaining a "release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor," was held in *Manila Surety & Fidelity Company, Inc. v. Batu Construction & Company*,[363] to be applicable to a surety. Said the court in the *Manila Surety* case:

> "A guarantor is the insurer of the solvency of the debtor; a surety is an insurer of the debt. A guarantor binds himself to pay if the principal is unable to pay; a surety undertakes to pay if the principal does not pay. The reason which could be invoked for the non-availability to a surety of the provisions of the last paragraph of Article 2071 of the new Civil Code would be the fact that guaranty like commodatum is gratuitous. But guaranty could also be for a price or consideration as provided for in Article 2048. So, even if there should be a consideration or price paid to a guarantor for him to insure the performance of an obligation by the principal debtor, the provisions of Article 2071 would still be available to the guarantor. In suretyship the surety becomes liable to the creditor without the benefit of the principal debtor's excussion of his properties, for he (the surety) may be sued independently. So, he is an insurer of the debt and as such he has assumed or undertaken a responsibility or obligation greater or more onerous than that of a guarantor. Such being the case, the provisions of Article 2071, under guaranty, are applicable and available to a surety. The reference in Article 2047 to the provisions of Section 4, Chapter 3, Title I, Book IV of the new Civil Code, on solidary or several obligations, does not mean that suretyship which is a solidary obligation is withdrawn from the applicable provisions governing guaranty."

Where the surety was sued for payment by the creditor of the principal debtor, the surety may avail itself of the remedy provided for in Article 2071.

Surety may demand reimbursement only upon payment.—

An action by the guarantor against the principal debtor for reimbursement before the guarantor has paid the creditor is premature. While it is true that under Article 2071 of the new Civil Code the guarantor may proceed against the principal debtor even for having paid the debt, as long as said debt has become demandable, nevertheless, it should be noted that in such a case the only action which the guarantor can file against the debtor is "to obtain release from the guaranty, or to demand a security that shall protect him from any proceeding by the creditor and from the danger of insolvency of the debtor." Where the surety sued the principal debtor for reimbursement of what it had paid to the creditor, but the debtor denied knowledge of alleged payment to the creditor, summary judgment

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363 L-9353, May 21, 1957, 53 O.G. 8836

cannot be decreed in the creditor's favor. The fact of payment to the creditor by the surety must be proved because unless there is such payment, it would be premature to sue the debtor for reimbursement.[364] The *Alvarez* case should be distinguished from a case, where it was stipulated between the surety and the principal debtor in the indemnity agreement that the principal debtor would become liable to the surety as soon as the creditor made a *demand* for payment upon surety.[364a]

Extension of time as a mode of extinguishing guaranty.—

In *La Tondeña, Inc. v. Alto Surety & Insurance Co., Inc.*,[365] it was noted that the rule in Article 2079 of the new Civil Code, that "on extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty," implies that an extension of time does not constitute a novation which extinguishes the old obligation. If it were a novation, then Article 2079 would have been unnecessary, since Article 2076 of the new Civil Code already provides that guaranty is extinguished for the same causes as all other obligations, one of which is novation.

Other rulings on guaranty.—

(1) Where the bond filed by a surety company to indemnify the employer against loss resulting from the employee's dishonesty does not require actual conviction in a criminal case, the surety is liable on such bond even if the employee has not been convicted of estafa, as long as there is positive proof that the employee had misappropriated the money of the employer received by the employee in trust.[366]

(2) Whether the contract between a company and the consignee of its goods is one of agency or sale, the surety company is liable on its bond to the company because it guaranteed the payment by the consignee to the company of all shipments to the consignee.[367]

(3) In *Luzon Surety Co., Inc. v. Teodoro*,[368] the surety was not held liable because it appears that the proposed supersedeas bond which it had filed pending appeal was cancelled by the court upon agreement of the parties. The appeal was never perfected.

MORTGAGE

Preferential right of mortgagee to attaching creditor.—

In *Metropolitan Insurance Co. v. Pigtain*,[369] it appears that on *June* 3, 1952 Daniel Jordan mortgaged to the Metropolitan Insurance Co. a parcel of land as security for the payment of a loan of ₱12,000. On *January* 15, 1953 the mortgaged property was attached by Elino

364 General Indemnity Co., Inc. v. Alvarez, L-9434, March 29, 1957, 53 O.G. 8850
364a Alto Surety & Insurance Co., Inc. v. Aguilar, L-5624, March 16, 1954
365 L-10132, July 18, 1957, 53 O.G. 6101
366 Chung Tee & Company v. Luzon Surety Co., Inc. L-107900, Oct. 31, 1957, 54 O.G. 622
367 Pearl Island Commercial Corporation v. Lim Tan Tong, L-10517, 54 O.G. 625
368 L-10710, May 29, 1957
369 L-9336, Aug. 30, 1957

Pigtain in connection with a suit which he had brought against Jordan. Jordan failed to pay the mortgage loan to the company. The mortgage was extrajudicially foreclosed and the mortgaged land was sold at public auction to the mortgagee on *December* 15, 1953. The one year period within which to redeem the land expired without any redemption having been made. The mortgagee as purchaser registered the final deed of sale in its favor. It then filed a petition in the land registration record of the land for the cancellation of the attachment in favor of Pigtain. *Held*: The attachment should be cancelled. Pigtain did not redeem the land. His offer to redeem made on *February* 17, 1955 was made out of time. The mortgage credit was preferred to that of the lien created by the attachment.[370]

Confirmation of sale.—

Confirmation of a sale of mortgaged property in a judicial foreclosure can be refused where the purchase price is shown to be unconscionable to the judicial conscience.[371]

CHATTEL MORTGAGE

Chattel mortgage of car must be registered in Motor Vehicles Office.—

Article 2140 of the new Civil Code provides that "by a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation." This concept of chattel mortgage, which makes registration indispensable to its validity, is different from the concept of chattel mortgage in the Chattel Mortgage Law, which requires registration as a requisite for the validity of the mortgage against third persons. If the personal property mortgaged is a motor vehicle, the mortgage, to affect third persons, "should also be recorded in the Motor Vehicles Office, as required by Section 5(e) of the Revised Motor Vehicles Law." A *mortgage* of a motor vehicle, not reported to the Motor Vehicles Office, cannot prevail over the *subsequent sale* to a purchaser in good faith of the same vehicle, which sale was registered in the Motor Vehicles Office. This is the ruling in *Borlough v. Fortune Enterprises*.[372]

The chattel mortgage must be entered in the Chattel Mortgage Register. It is not sufficient registration to inscribe it in the Day Book.[373] Registration is an essential requisite for the validity of a chattel mortgage. If the chattel is located in one province and the mortgagor resides in another province, the registration must be made in the chattel mortgage registry of both provinces.[374]

Mortgage lien subsists as long as foreclosure judgment is not satisfied.—

Where the chattel mortgage has not been renounced, actually

370 Compare with El Hogar v. Philippine National Bank, 64 Phil. 582 (1937)
371 Tiaoqui v. Chaves, L-10086, May 20, 1957, citing National Bank v. Green, 52 Phil. 491; Philippine National Bank v. Gonzalez, 45 Phil. 693; National Bank v. Pineda, 72 Phil. 316
372 L-9451, March 29, 1957, 53 O.G. 4070
373 Asso. Ins. & Surety Co. v. Lim, CA 52 O.G. 5218
374 Malonzo v. Luneta Motor Co., CA 52 O.G. 5566

or constructively, the mortgage lien could not be considered released merely because the execution levy made pursuant to the judgment in the foreclosure action brought by the mortgagee was discharged, with the mortgagee's consent, without the credit or judgment debt being satisfied. The theory that the judgment lien absorbed (and thereby extinguished) the mortgage lien ignores the fact that the judgment lien depends upon the levy, while, on the other hand, the mortgage lien arises upon the registration of the mortgage. The very purpose of the mortgage lien is to assure that a judgment for the amount of the debt would remain collectible and would be satisfied from the proceeds of the sale of the mortgaged property. Hence, the purpose of the mortgage lien would be defeated unless it is allowed to stand as long as the foreclosure judgment is in force and not satisfied. Until then the mortgage cannot become *functus officio*.[375]

QUASI - CONTRACTS

No solutio indebiti.—

In *Berg v. National City Bank of New York*,[376] where a prewar obligation of the Red Star Stores, Inc. to the National City Bank of New York amounting to $19,956.75 was paid *during the Japanese occupation* by Ernest Berg to the Bank of Taiwan, it was held that the payment of the same amount to the bank *after liberation* as a compromise of the bank's claim did not constitute *solutio indebiti*. The compromise was arrived at when there was still uncertainty as to the validity of the payment of prewar obligations made to the Bank of Taiwan.

No *solutio indebiti* was likewise adjudged in a case where the defendant was ordered to pay to the plaintiffs the sum of ₱583,813, as it appears in the books of the corporation as of August 31, 1951, plus interest at the rate of 5% per annum from the filing of the complaint," although it appears that the complaint was admittedly filed on *March 21, 1951* and the said sum of ₱583,813 already included the interest up to *August 31, 1951*. The Supreme Court just the same construed its judgment as including the payment of interest from *March 21 to August 31, 1951* because the judgment had already become final and the defendant did not call the court's attention to the fact that the said amount already included the interest from March 21 to August 31, 1951. It was too late to correct the error after the judgment had become final.[377]

QUASI - DELICTS

Employer's liability for damages
Caused by its employees is
primary and need not be reserved
in criminal action against the employee.—

Article 2177 of the new Civil Code, which provides that responsibility for tortious fault or negligence "is entirely separate and dis-

375 La Tondeña v. Alto Surety & Insurance Co., Inc., L-10132, July 18, 1957, 53 O.G. 6101
376 L-9312, Oct. 31, 1957
377 Pirovano v. De la Rama Steamship Co., L-9431, May 17, 1957

tinct from the civil liability arising from negligence under the Penal Code," meaning that quasi-delictual negligence or *culpa aquiliana* is different from criminal negligence (a quasi-offense), was relied upon in *Bachrach Motor Co., Inc. v. Gamboa*[378] to support the holding that the employer is primarily and solidarily liable to the person injured by the act of the employee, which act is delictual and quasi-delictual in character.

It was noted in the *Bachrach* case that the employer's vicarious liability for the tortious acts of its employees and servants under article 2180 of the new Civil Code, formerly article 1903, is not subsidiary but primary and direct, rooted in the employer's own negligence (*culpa aquiliana*) in selecting and supervising the employees who caused damage to the plaintiff.[379] The employer's liability is not based on *respondent superior*, which is the rule applicable to agency, but on the relationship of *paterfamilias*, or the employer's failure to observe *diligentissimi patrisfamilias* (*culpa in vigilando*) to prevent damage.[380] Such primary liabilitry of the employer under the Civil Code in independent of his subsidiary liability under article 103 of the Revised Penal Code and no reservation in the criminal action is required to institute an action to enforce such primary liability.[381]

In the *Bachrach* case, it appears that, as a result of a fire which broke out in the office of the Rural Transit in Cabanatuan City on April 1, 1947, two employees of the Bachrach Motor Co., Inc., which owns the Rural Transit, were convicted of arson. No civil liability was adjudged in the criminal case. On April 17, 1952 Santiago Gamboa, one of the persons damaged by the fire, sued the company and the two employees, who were then serving their sentence, for the recovery of the damages. The Court of Appeals sentenced the company to pay Gamboa damages amounting to ₱25,000, but made the company's liability subsidiary upon the insolvency of the two employees.

Held: Since Gamboa's action sought to enforce the employer's primary liability for its negligent selection of its employees or its faulty supervision over them and is not predicated on the master's subsidiary liability under the Penal Code for their criminal acts, in case they are insolvent, the employer's liability is primary and direct. However, since Gamboa did not appeal from the judgment of the Court of Appeals, he is bound by that court's judgment making the company's liability subsidiary.[382]

Independent civil action based on culpa aquiliana.—

Article 2177 was also cited in *Dyogi v. Yatco*,[383] to support the

378 L-10296, May 21, 1957
379 Cangco v. Manila Railroad Co., 38 Phil. 768 (1918)
380 Cuison v. Norton & Harrison Co., 55 Phil. 18 (1930)
381 Barredo v. Garcia and Almario, 73 Phil. 607 (1942); Tan v. Standard Vacuum Oil Co., 48 O.G. 2745 (1952)
382 For other cases on whether the remedy chosen is tort or the subsidiary civil liability of the employer see Connel Bros. v. Aduna, L-4057, March 31, 1952; Diana v. Batangas Transportation Co., 48 O.G. (1952); Dyogi v. Tatco, L-9623, Jan. 22, 1957; San Jose v. Del Mundo, L-4450, April 28, 1952, Dionisio v. Alvendia, L-10567, Nov. 26, 1957
383 L-9623, Jan. 22, 1957

view that where a pedestrian was run over by a car due to the negligence of its driver, an action for damages against the driver and the owner of the car may be filed and tried without awaiting the result of the criminal action against the driver for homicide through reckless imprudence. The demand for damages is separate and apart from the criminal proceeding since it is based on *culpa aquiliana.*[384]

Owner of car is liable to injured pedestrian although owner is not engaged in any business or industry.—

The rule in article 2180 of the new Civil Code, that an employer shall be liable for the damages caused by his employee acting within the scope of his assigned task, even if the employer is not engaged in any business or industry, was applied in *Ortaliz v. Echarri,*[385] to the case of a pedestrian who was bumped by a car driven negligently by its driver. The owner was not inside the car at the time of the accident. It was held that the owner could be held liable for damages because article 2184 of the new Civil Code provides that in motor vehacle mishaps, "if the owner was not in the motor vehicle, the provisions of article 2180 are applicable." As already noted, under article 2180 in relation to article 2176, the car owner is liable even if he is not engaged in any industry. Under article 1903 of the old Code, which is now article 2180, only "owners or directors of an establishment or business" are liable for the tortious acts of their employees. Under 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 (the owner) was not inside the vehicle. He is not among the persons mentioned in article 1903.[386] This rule is no longer good under article 2180 of the new Civil Code, which contains a new provision making all employers liable for the damages caused by their employees.

Registered owner of vehicle is liable.—

The registered owner of a truck is responsible for the civil liability arising from the reckless operation thereof, but he may have recourse to the real owner of the truck for reimbursement.[387]

Proximate cause.—

The rule that the act of the defendant who is sought to be held liable for damages must be the proximate cause thereof was applied in *Republic v. Pedrosa.*[388] The proximate cause of an event is "that which sets the others in motion and is to be distinguished from a mere preexisting condition upon which the effective cause operates and must have been adequate to produce the resultant damage with-

384 Diana v. Batangas Transportation Co., 49 O.G. 2238; Barredo v. Garcia, 73 Phil. 607
385 L-9331, July 31, 1957
386 Johnson v. David, 5 Phil. 663; Chapman v. Underwood, 27 Phil. 374; Marquez v. Castillo, 68 Phil. 568 (1939); Diuquino v. Araneta, 74 Phil. 690 (1944); Campo v. Camarote, L-9147, Nov. 29, 1956
387 Erezo v. Jepte, L-9605, Sept. 30, 1957
388 L-9527, Aug. 22, 1957. See Villanueva v. Meding, L-10126, Oct. 22, 1957, Note

out the intervention of an independent cause."[389] A distinction must be made between the *accident and injury*, between the event itself, without which there could have been no accident, and those acts of the victim not entering into it, independent of it, but contributing to his own proper hurt.[390] In order that an act or omission may be the proximate cause of an injury, the injury must be the natural and probable consequence of the act or omission and such as might have been foreseen by an ordinarily responsible and prudent man, in the light of the attendant circumstances, as likely to result therefrom.[391]

In the *Pedrosa* case, it appears that the Supreme Court affirmed a decision of the trial court and the Commissioner of Customs imposing upon Tranquilino Rovero a fine equal to three times the sum of ₱23,736, representing the appraised value of certain pieces of smuggled jewelry.[392] However, after the judgment had become final, Commissioner of Customs Alfredo Jacinto and Secretary of Finance Pio Pedrosa reappraised the jewelry at ₱9,880. Rovero paid a fine equal to three times the reappraised value, which, together with the tax, duties and other charges, amounted to ₱38,303.

The total judgment in the Rovero case amounted to ₱107,791. The execution against Rovero yielded only ₱550, which added to ₱38,303, previously paid by him, left an unsatisfied balance of ₱68,-933. The Government instituted the instant action against Pedrosa and Jacinto for the recovery of ₱68,933. The trial court dismissed the complaint on the ground that, while Pedrosa and Jacinto, acted improperly in reappraising the jewelry and thus interfering with a final judgment, nevertheless, the fine was imposed, not upon Rovero, but "upon the property" and that, had the jewelry been sold at public auction, the proceeds of the sale would not have exceeded ₱23,736. Plaintiff appealed.

The Supreme Court affirmed the judgment of dismissal. It held that there was no evidence that the alleged misconduct of Pedrosa and Jacinto was the proximate cause of the Government's failure to recover Rovero's original liability of ₱107,791. The casual relation between defendants' alleged fault and the damages suffered is an indispensable requirement for the recovery of such damages. To prove the damages, it was not enough that the Government should show that Rovero could be held personally answerable for the difference between the original and the subsequent appraisal of the jewelry. The Government should have proven that it could have recovered such difference from Rovero but was prevented from doing so because of the acts of Pedrosa and Jacinto. There was no such proof in this case.

Truck owner is not responsible for reckless negligence of a stranger who drove his truck.—

The rule on proximate cause was applied in *Delgado Vda. de Gregorio v. Co Chong Bing*[393] to the vicarious liability of the em-

389 Atlantic Gulf & Pacific Co. v. Insular Government, 10 Phil. 166
390 Rakes v. Atlantic, Gulf & Pacific Co., 7 Phil. 359, 374; Taylor v. Manila Electric Co., Phil. 8, 29
391 Algarra v. Sandejas, 27 Phil. 284, 292 (1914)
392 Republic v. Rovero, L-3281, June 28, 1951
393 L-7663, Dec. 2, 1957

ployer and other persons mentioned in Article 2180 of the new Civil Code which is based on the failure to exercise *diligentissimi patrisfamilias* to prevent the damage (*culpa in vigilando*). In order that a person may be held liable for damage through negligence, it is necessary that there be an act or omission on the part of the person who is to be charged with the liability and that the damage is produced by said act or omission. There must be a relation of cause and effect between the act or the omission and the damage. The latter must be the direct result of one of the first two. The damage must result immediately and directly from an act performed culpably and wrongfully, necessarily presupposing a legal ground for imputability.[394] As held in the *Taylor* case, there must be some negligence by act or omission of which the defendant personally, or some person for whose acts it must respond, was guilty, and the damages to the plaintiff resulted from said negligence.

In the *Delgado* case, it appears that Go Chong Bing instructed Francisco Romera his driver's helper, to drive his truck. A policeman took the wheel from Romera. Romera gave the wheel to the policeman out of fear of, or respect for, him. While the policeman was driving the truck, it run over a pedestrian.[395]

Principal is liable for its employee's breach of undertaking.—

Article 2180 of the new Civil Code provides that owners of an establishment or enterprise are responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions. Employers are liable for the damages caused by their employees acting within the scope of their assigned tasks. In *Shell Company of the Phil., Ltd. v. Firemen's Insurance Co. of Newark*,[396] it was held that "as the act of the agent or his employees acting within the scope of his authority is the act of the principal, the breach of the undertaking by the agent is one for which the principal is answerable." In the *Shell* case the company was held liable for the damages caused to a car which fell from the grease rack of a gas station while it was being washed and greased. The car fell from the grease rack because of the defective hydraulic lift. The gas station was owned by the gas company. Its operator was its agent. It was negligent in not inspecting the hydraulic lift.

Father is liable for minor son's tortious act.—

Article 1903 of the old Code, now Article 2180, which provides that "the father, and in, in case of his death or incapacity, the mother, are liable for any damages caused by the minor children who live with them," was applied in *Exconde v. Capuno*,[397] to support the holding that the father of a 15-year old boy, who was convicted of homicide through reckless imprudence, is solidarily liable with the boy for the civil liability arising from the offense amounting to ₱2,959.

394 Taylor v. Manila Electric Railroad & Light Co., 16 Phil. 8
395 See Duquilo v. Bayot, 67 Phil. 131 (1939); Marquez v. Castillo, 68 Phil. 568 (1939); Diuquino v. Araneta, 74 Phil. 690 (1944)
396 L-8169, Jan. 29, 1957, 53 O.G. 6084
397 L-10184, June 29, 1957

According to that case, the civil liability, which the law imposes upon the father, and, in case of his death or incapacity, the mother, for any damages that may be caused by the minor children who live with them, is obviously a necessary consequence of the parental authority which they exercise over them and which imposes upon the parents the duty of supporting them, keeping them in their company, educating them and instructing them in proportion to their means. Such parental authority gives them the right to correct and punish their minor children moderately.[398] The only way by which they can relieve themselves of this liability is by proving that they exercised the diligence of a good father of a family to prevent the damage. It was noted that the other provision of Article 1903, now Article 2180, regarding the responsibility of teachers and directors of arts and trades for the damages caused by their pupils and apprentices applies only to institutions of arts and trades and *not to academic educational institutions.*

In the *Capuno* case, it appears that Dante Capuno was a member of the Boy Scouts organization and a pupil in a barrio elementary school in San Pablo City. On March 31, 1949 he attended a parade in honor of Rizal upon instruction of the school supervisor. From the school Dante with the other pupils boarded a jeep, and after it started to run, he took hold of the wheel and drove it while the driver sat on his left side. They had not gone far, when the jeep turned turtle, and two of its passengers, Amado Ticzon and Isidoro Caperiña, died as a consequence. Delfin Capuno, Dante's father, was not with Dante at the time of the accident. He came to know of the accident only when Dante told him about it. Dante was convicted of homicide through reckless imprudence. The offended party, the mother of Isidoro Caperiña, reserved her right to bring a separate civil action for damages. She then sued Dante and his father Delfin.

Held: The father is solidarily liable for the damages resulting from the negligent act of Dante.[399] Three justices dissented. They opined that the school supervisor or teacher in charge of the pupils attending the parade should be the one held liable because Article 1903 applies to teachers of *academic institutions.* The words "arts and trades" qualify "directors" in Article 1903 and "heads of establishments," in Article 2180, and not "teachers."

Mother is only alternatively liable for minor child's tortious act.—

In another 1957 case also involving the same provision of Article 2180, it was held that the responsibility of the father and mother is not simultaneous, but alternative, the father being primarily responsible, and the mother answering only in case of his death or incapacity. In an action for damages resulting from the homicide through reckless imprudence committed by a minor child, the mother is not a necessary party if the father is alive and not incapacitated.[400]

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398 Arts. 154 and 155, old Civil Code, now Arts. 311 and 316

399 See Gutierrez v. Gutierrez, 56 Phil. 177 (1931); Romano v. Pariñas, 53 O.G. 7245 and Dyogi v. Yatco, L-9623, Jan. 22, 1957

400 Romano v. Pariñas, L-10129, April 22, 1957, 53 O.G. 7245

DAMAGES

When injured employees, who were paid damages by third party, may still sue employer for workmen's compensation.—

In *Alba v. Bulaong*,[401] it appears that one morning Horacio Bulaong ordered his five employees to go to a certain barrio to thresh palay. They rode on a tractor which was pulling a threshing machine. Suddenly, a speeding bus of the Victory Liner collided with the thresher, which in turn hit the tractor. As a result, two employees died and the three others suffered injuries. The injured employees and the heirs of the deceased employees received various amounts of money from the Victory Liner under the agreement that they could still claim from Bulaong workmen's compensation. They filed their claims against Bulaong in the Workmen's Compensation Commission. Bulaong refused to pay their claims on the ground that they had already been paid damages by the Victory Liner. He invoked the following provisions of the Workmen's Compensation Law, Act No. 3428:

> "SECTION 6. **Liability of third parties.** — In case an employee suffers an injury for which compensation is due under this Act by any other person besides his employer, it shall be optional with such injured employee either to claim compensation from his employer, under this Act, or sue such other person for damages, in accordance with law; and in case compensation is claimed and allowed in accordance with this Act, the employer who paid such compensation or was found liable to pay the same, shall succeed the injured employee to the right of recovering from such person what he paid: **Provided,** That in case the employer recovers from such third person damages in excess of those paid or allowed under this Act, such excess shall be delivered to the injured employee or any other person entitled thereto, after deduction of the expenses of the employer and the costs of such proceedings. x x x (As amended by Act 3812)."

Held: The intent of the law is that the claimants should not receive payment twice for the same injuries (from the third party and from the employer). However, where the claimants received payments of damages from the third party with the express reservation that they could claim workmen's compensation from their employer, they could still go after their employer, who in turn can demand reimbursement from the third party. But the amounts received from the Victory Liner should be deducted from the sums due from Bulaong.

In connection with the *Bulaong* case, it should be noted that the court did not make any reference to Article 2196 of the new Civil Code, which provides that the rules found in Title XVIII on Damages of the Code "are without prejudice to special provisions on damages formulated elsewhere" in the Code and that "compensation for workmen and other employees in case of death, injury or illness is regulated by special laws." Also not discussed was Section 5 of Act 3428, which provides that the "rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing

401 L-10308-etc., April 30, 1957

to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury."

It should also be noted that the indemnity granted to the heirs of the deceased employee in a criminal case does not affect the liability of the employer to pay workmen's compensation to said heirs.[402]

Damages recoverable in case of insured property.—

Article 2207 of the new Civil Code provides: "If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury."

Article 2207 was applied for the first time in *Philippine Air Lines, Inc. v. Heald Lumber Company,*[403] where it appears that defendant company chartered plaintiff's helicopter to make a flight from Nichols Field to the company's camp at Mankayan, Mountain Province. While flying in the company's logging areas, the helicopter collided with the company's tramway steel cable. The helicopter was destroyed and its pilot and officer were killed. Plaintiff collected ₱120,000 on the insurance of the helicopter and of its pilot and officer. Claiming that it suffered additional damages amounting to ₱103,000 not covered by insurance, plaintiff sued defendant for the recovery of said additional damages and of the sum of ₱120,000. Plaintiff sued for the recovery of the sum of ₱120,000 on the theory that it was a trustee for the London insurers. The trial court dismissed the portion of plaintiff's action regarding the sum of ₱120,000. Plaintiff appealed, relying on the rule in American jurisprudence that the insured can sue the third person as trustee of the insurer.

Held: As stated by the Code Commission in its report, the rule in Article 2207 is different from the rule in American jurisprudence. Article 2207 is controlling. The real party in interest as to the insurance money already paid is the insurer. Since there was no express trust, plaintiff could not sue as trustee of the insurer. Article 2207 would not produce multiplicity of suits, since the insurer and the insured can join in one action in suing the third person which caused the damage.

Attorney's fees.—

(1) To recover attorney's fees under paragraph 5 of Article 2208 of the new Civil Code, which refers to a case "where the de-

402 Marinduque Iron Mines Agents, Inc, v. Workmen's Compensation Commission, L-8110, June 30, 1956; Nava v. Inchausti, 57 Phil. 715; Martha Lumber Mill, Inc. v. Lagradante, L-7599, June 27, 1956

403 L-11497, Aug. 16, 1957

fendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim," evidence should be introduced to prove defendant's bad faith. If there is no such evidence, no attorney's fees can be awarded on that ground.[404]

(2) The respondent in a quo warranto case, who filed a counterclaim against the petitioner, is not entitled to attorney's fees, when the quo warranto petition was dismissed, because said respondent should have been defended by the Governments lawyer, not by a private counsel. Moreover, there was a vigorous dissent to the dismissal of the petition and, consequently, it cannot be said that the action was clearly unfounded.[405]

(3) No attorney's fees can be awarded in a case where the injured passenger sued the taxicab company for an exorbitant amount of moral damages and where it appears that the company was willing to compromise the case if the passenger would reduce to his claim for damages a reasonable amount.[406]

(4) The attorney's fees awarded to an oil company in its action against the surety company which guaranteed the obligations of the oil company's agent were justified under Article 2208, because the surety company unjustifiably refused to pay plaintiff's valid claim.[407]

(5) While previously a party could not claim attorney's fees as damages unless there was a stipulation to that effect, Article 2208 has changed the rule. Now attorney's fees may be recovered, in the absence of the stipulation to the contrary, and one of the cases allowing such recovery is "when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest."[408]

Interest.—

(1) Creditors suing on a surety bond may recover from the surety company as part of their damages interest at the legal rate even if the surety would thereby become liable to pay more than the total amount stipulated in the bond. The surety company is liable for interest because it failed to pay the obligation upon demand and thus compelled the creditor to resort to the courts to obtain payment. It is also liable to pay attorney's fees because the principal debtor openly admitted his liability to pay his obligation and the surety knew that fact.[409]

(2) If the obligation consists in the payment of a sum of money, the only damage a creditor may recover, if the debtor incurs in delay, is the payment of the interest agreed upon, or the legal interest, unless the contrary is stipulated. However, the creditor may now claim other damages, such as moral or exemplary damages, in

404 Eastboard Navigation, Ltd. v. Juan Ysmael & Company, Inc. L-9090, Sept. Sept. 10, 1957
405 Angara v. Gorcspe, L-9230, April 22, 1957, 53 O.G. 4480
406 Cachero v. Manila Yellow Taxicab Co., Inc., L-8721, May 23, 1957
407 Phil. Surety & Ins. Co., Inc. v. Royal Oil Products, Inc., L-9981, Oct. 31, 1957
408 Reyes v. Yatco, L-11425, 53 O.G. 2773
409 Plaridel Surety & Ins. Co. v. P. L. Galang, 53 O.G. 1449, L-9542, Jan. 11, 1957

addition to interest. The propriety of such a claim will be determined from the evidence adduced during the trial.[410]

(3) Article 2209 of the new Civil Code, which provides that in obligations to pay money the damage collectible is the interest due, if any, or the legal rate of interest, does not apply to a case where there is a stipulation for liquidated damages and attorney's fees.[411]

Premature action for damages.—

Defendant tenant, during the pendency of an unlawful detainer case, cannot file an action for damages allegedly resulting from the unwarranted institution of said detainer case. The action for damages is premature.[412]

Carrier is not liable for moral damages to injured passengers.—

The case of *Cachero v. Manila Yellow Taxicab Co., Inc.*[413] is authority for the rule that, if the action of the injured passenger against the carrier is based on breach of contract (*culpa contractual*) and not on delict or quasi-delict, he is not entitled to moral damages because the case is not among those enumerated in Article 2219 of the new Civil Code. If the employer of the negligent driver is sued by the injured passenger, the action cannot be considered based on delict because the author of the criminal negligence is the driver and not his employer.

In the *Cachero* case, it appears that Attorney Tranquilino Cachero boarded a taxicab. The driver drove it against an electric post and, as a result, the cab was badly smashed. Cachero fell out of the vehicle and was thrown to the ground. He suffered slight physical injuries. He demanded from the taxicab company ₱79,245 as damages. The company was willing to settle the case amicably, but Cachero was inclined to make only a small reduction in his claim. He reduced his claim to ₱72,050. Cachero filed an action for damages against the company. He claimed ₱77,050 as damages.

The court found that Cachero suffered a contusion in the chest and a sprain in the shoulder. He was never hospitalized. The Supreme Court eliminated from the judgment of the trial court the sum of ₱2,000 which was awarded to Cachero as moral damages. The taxicab company was sentenced to pay Cachero ₱700 for medical fees and transportation expenses and ₱2,200 as professional fees which he failed to earn due to the accident. No attorney's fees were awarded.

The Supreme Court said that it could not look with favor on Cachero's claim of ₱72,050 as damages for the slight sprain on his shoulder and the insignificant contusion on his chest. There was no semblance of reasonableness in said claim.[414]

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410 Reyes v. Yatco, supra, note 408
411 Price Stabilization Corporation v. Quimson, L-9429, May 31, 1957
412 Brown v. Bank of the P.I., L-10688, April 29, 1957
413 L-8721, May 23, 1957
414 "Courts in the tempered atmosphere of afterglow" should reduce gargantuan claims for damages according to Justice Sanchez in Baluyot v. Lopez, CA 51 O.G. 784.

It should be noted that Article 1766 of the new Civil Code provides that damages for violation of the contract of carriage may be awarded in accordance with the provisions of Title 18 of Book Four on Damages and that Article 2206 on actual damages in case of death "shall also apply to the death of a passenger caused by the breach of contract by a common carrier." The effect of the ruling in the *Cachero* case is that, with respect to the claim for moral damages, a distinction should be made between a case where the passenger is merely injured and a case where the passenger died due to the reckless negligence of the driver. In the first case, the carrier is not liable for moral damages if the action is based on breach of contract of carriage and in the second case, "the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased," as allowed by Article 2206.[415]

The case of the injured passenger should be distinguished from the case of the injured pedestrian. In the latter case moral damages may be recovered.[416]

The fallacy of the *Cachero* ruling is that, while it is true that the action of the injured passenger against the carrier is based on *culpa contractual* and not on delict or quasi-delict, the ineluctable fact is that the act constituting *culpa contractual* is also a delict or quasi-delict.

The ruling in the *Cachero* case abrogates the holding in *Castro v. Acro Taxicab Co.*,[417] a case decided under the old Code, where the passenger of a taxicab who was injured on July 14, 1939 when it collided with another taxicab owned by the same company, was awarded an indemnity of ₱4,000: ₱1,000 for medical expenses and ₱3,000 as compensation for his sufferings and for his incapacity for labor during the period when he was under treatment.

The *Cachero* case also abrogate the holding in *Layda v. Brillantes*,[418] where a bus passenger was injured when it collided with the side of a mountain due to the driver's negligence. He was awarded ₱4,000 as moral damages, in addition to ₱915 as actual damages. The accident in that case accurred on November 25, 1948.

The *Cachero* ruling was applied by the Court of Appeals in *Peñalosa v. Eastern Tayabas Bus Co.*[419]

But in *Salamat v. Isidro*,[420] the Court of Appeals rendered a ruling which contradicts the Supreme Court's interpretation of Article 2219 as announced in the *Cachero* case. The *Salamat* case was an action based on *culpa contractual* brought by the passenger of

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415 See Cabrera Ejercito v. Pasay Transportation Co. 47 O.G. 1335 (1949) where the carrier was ordered to pay an indemnity of ₱12,000 to the heir of a deceased passenger; Montoya v. Ignacio, 50 O.G. 108 (1953) where a jeepney owner was sentenced to pay the heirs of a deceased passenger damage, amounting to ₱31,000; also Belisario v. Mindanao Bus Co., CA 52 O.G. 694561

416 Alcantara v. Surro, 49 O.G. 2769 (1953); San Jose v. Del Mundo, L-4450, April 28, 1952; Lilius v. Manila Railroad Co., 59 Phil. 758 (1934); Gutierrez v. Gutierrez, 56 Phil. 177 (1932)

417 82 Phil. 359 (1938)

418 L-4487, Feb. 29, 1952

419 CA 58 O.G. 8137

420 CA-G.R. No. 15788-R, May 21, 1957, 53 O.G. 5657

a bus against the owner thereof in consequence of injuries which she suffered when the bus collided with a Buick car. The bus was negligently driven by its conductor when the collision occurred. Its driver had left the bus and answered a call of nature. The bus conductor was charged with physical injuries through reckless imprudence. The injured passenger was awarded ₱2,000 as moral damages in addition to actual damages. Basis of the award was paragraph 2 of Article 2219 which allows moral damages in cases of quasi-delicts.

In *Brito Sy v. Malate Taxicab & Garage, Inc.*,[421] the injured passenger was granted by the trial court ₱4,200 as actual, compensatory and moral damages and attorney's fees. In that case the question of whether the passenger was entitled to moral damages was not raised on appeal.

Retroactive effect.—

In *Co Tao v. Vallejo*,[422] the Supreme Court affirmed a ruling of the Court of Appeals giving retroactive effect to the provisions of the new Civil Code on moral damages in a case for support filed by the mother of an adulterous child against the father of the child. The child was born in 1948. The action for support was filed in 1951. The Court of Appeals held that to give retroactive effect to the provisions of the new Civil Code on moral damages would not impair any vested rights. Articles 2252 and 2253 of the new Code were cited. Attorney's fees were also awarded, in addition to the allowance for support and moral damages. Article 2208 was cited.[423]

Liquidated damages may be reduced.—

In connection with the provision of Article 1229 of the new Civil Code, that the penalty may be reduced if "it is iniquitous or unconscionable" and the provision of Article 2227, that "liquidated damages, whether intended as an indemnity or penalty, shall be equitably reduced if they are iniquitous or unconscionable," it was held in *Yulo v. Can Pe*,[424] that a penal clause by its nature is not limited to create an effective deterrent against breach of the obligation, by making the consequence of such breach as onerous as it may be possible.

In the *Yulo* case, it appears that the parties executed a lease contract for a term of five years. The lessee made a deposit of ₱6,000. It was agreed that during the last three years of the contract the lessor was to deduct ₱100 a month from said deposit and apply it to the payment of the monthly rental of ₱450 and that if the lessee defaulted in the payment of the rentals, the lessor would be entitled to confiscate, "as damages," the advance payment of ₱6,000. The lessee defaulted in the payment of rentals totalling ₱3,900. The

421 L-8937, Nov. 29, 1957, 54 O.G. 658
422 L-9194, April 25, 1957
423 Ayson v. Arambulo. L-6501, May 31, 1955; Velayo v. Shell Co. of the P.I., L-7817, Oct. 31, 1956
424 L-10061, April, 22, 1957, 53 O.G. 5633

question was whether the lessor could collect said back rentals of ₱3,900 and at the same time confiscate the sum of ₱5,700, the balance of the lessor's deposit. *Held*: The stipulation for confiscation of the deposit was in effect a penal clause. The lessee violated his contractual obligation in a wanton manner. The stipulation for the confiscation of his deposit is not contrary to morals, good customs, public order or public policy. However, although the lessor was allowed to confiscate the deposit of ₱5,700, he was not allowed to collect the rentals of ₱3,900. The penalty was in effect reduced to ₱1,800.

Exemplary damages.—

Exemplary damages were awarded in a case where a surety company deliberately ignored plaintiff's just and valid demands and refused to honor its bond by purposely withholding payment thereof and thus compelled the plaintiff to resort to a long, tedious and costly litigation. Its conduct was oppressive.[425]

TRANSITIONAL PROVISIONS

Provisions of new Civil Code cannot be given retroactive effect if vested rights would be impaired.—

(1) Article 2252 of the new Civil Code was cited in *Pan Philippines Corporation v. Frias*,[426] a workmen's compensation case, where the laborer was killed in an accident on December 25, 1945. On February 3, 1955, or nearly ten years after the accident, the Workmen's Compensation Commission took cognizance of the claim for compensation filed in 1949 by the laborer's widow. The employer contended that the claim could only be filed within six years or from December 25, 1945 up to December 25, 1951, as provided in Section 43 of the Code of Civil Procedure and that its vested right was impaired when the Commission applied the 10-year prescriptive period provided in Article 1144 of the new Civil Code. This contention was not sustained because the employer had no vested right as yet when the new Civil Code took effect in 1950. The six-year period had not yet expired when the new Code took effect.

(2) The new provision of Article 166 of the new Civil Code that the wife's consent is necessary to the husband's alienation of conjugal real estate cannot be given retroactive effect to a sale effected before the new Civil Code took effect because to do so would impair the purchaser's vested right.[427]

(3) To apply the last paragraph of Article 1606 of the new Civil Code to a *pacto de retro* sale whose period of redemption had expired before the new Code took effect would impair the vendee a *retro's* vested right.[428]

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425 Phil. Surety & Ins. Co., Inc. v. Royal Oil Products, Inc., L-9981, Oct. 31, 1957
426 L-9807, April 17, 1957, 53 O.G. 4457
427 Tabunan v. Marigmen, L-9727, April 29, 1957
428 De la Cruz v. Acosta, L-9402, Oct. 31, 1957; Uson v. Del Rosario, L-4963, Jan. 29, 1953; Mendoza v. Cayas, 52 O.G. 200

(4) In *Velayo v. Shell Company of the P.I. Ltd.*,[429] a case involving transactions which occurred before the new Civil Code took effect, it was held that Article 19, 21, 2142, 2143, 2229, 2232, and 2234 of the new Civil Code, which were cited in that case to justify the imposition of compensatory and exemplary damages, are applicable to the case, although the case was tried in the lower court on the theory that it was a case under the Insolvency Law.

(5) Article 2266 of the new Civil Code was cited in *Ongsiaco v. Ongsiaco*,[430] regarding the retroactive effect of the provisions on actions to quiet title and reformation of instruments.

Right declared for the first time by the Code.—

(1) The new provision in Article 1491 of the new Civil Code, which allows the agent to buy the things placed in his hand for sale, provided that his principal consents to the sale, may be given retroactive effect to a sale of land, which was executed before the new Civil Code took effect if no vested right would be impaired thereby. This is allowed by Article 2253 of the new Civil Code, which provides that if a right should be declared for the first time in the new Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right of the same origin. The said provision of Article 1491 creates a new right. The children of the vendor cannot claim a vested right because their right to inherit said property before the vendor's death was a mere expectancy.[431]

(2) The provisions of the new Civil Code on moral damages sanction a right declared for the first time in the Code and, therefore, pursuant to Article 2253, they can be given retroactive effect because no vested right would be impaired thereby.[432]

When old law should be applied.—

(1) Where a person in 1949 made an extrajudicial partition of his estate among his heirs, without making a will, as required by Article 1056 of the old Civil Code, the partition is void, although said person died in 1952, when the new Civil Code was already effective, and under Article 1080 of the new Code, a partition *inter vivos* may be made by a "person," not necessarily by a "testator." The validity of the 1949 partition must be decided under the law then in force which was Article 1056 of the old Code. Article 2256 of the new Civil Code provides that acts and contracts under the regime of the old Code shall be effective only if validly executed in accordance with the old Code. Article 1080 is not made retroactive

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429 L-7817, Oct. 31, 1956; Res. of July 30, 1957
430 L-7510, March 30, 1957
431 Cui v. Cui, L-7041, Feb. 21, 1957, 53 O.G. 3429; See Quizana v. Redugerio, L-6620, May 7, 1954, regarding facultative obligations.
432 Co Tao v. Vallejo, L-9149, April 25, 1957, Velayo v. Shell Co., note 429, supra, note 429; Ayson v. Arambulo, L-6501, May 31, 1955. See Gatus v. Sy, CA 53 O.G. 8866; Victorino v. Nora, CA 52 O.G. 911; Galane v. Yu Chiang, CA 54 O.G. 687.

by the new Code. Article 4 of the new Civil Code provides that laws shall have retroactive effect only if so expressly provided. And according to Article 2263 of the new Civil Code, prior dispositions made by a person who dies when the new Code is already in force shall be respected insofar as not incompatible with the provisions of the new Code.[433]

(2) An action for the recovery of income taxes paid by a general commercial partnership for the fiscal years from July 1, 1948 to June 30, 1950 accrued before the effectivity of the new Civil Code and should therefore be governed by the old Code, pursuant to article 2253 of the new Code. The provisions of the Code of Commerce on partnerships would also apply to the case, although they were repealed by article 2270 of the new Civil Code.[434]

(3) Article 2256 of the new Civil Code was cited to support the view that private nuisances can be acquired by prescription prior to the new Civil Code. The rule in article 698 of the new Code, that lapse of time does not legalize a private nuisance, cannot retroactively apply to a private nuisance, whose abatement had already prescribed under the old Code. [435]

(4) Article 2258 of the new Civil Code was cited in the *Ongsiaco* case,[436] to support the view that article 1116 of the new Civil Code on prescription controls the rule in article 2258, which is general in character.[437]

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433 Romero v. Villamor, L-10580, Dec. 20, 1957
434 Collector of Internal Revenue v. Isasi, L-9186, April 29, 1957
435 Ongsiaco v. Ongsiaco, note 430, supra
436 Note 430, supra
437 Osorio v. Tan Jongko, 51 O.G. 6221 (1955)