ANNUAL SURVEY OF 1958 SUPREME COURT DECISIONS
PART II

CIVIL LAW—1958

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Certain 1958 precedent-setting decisions involving adoption, separation of property of the spouses, support, classification of property, easements, holographic wills, *reserva troncal*, application of payments, and chattel mortgage fortify the view that controversial legal issues are only set at rest when they are finally resolved by the Supreme Court as the final arbiter on legal questions or as the "court of last conjecture."

Since the courts ultimately fix the meaning of codal or statutory rules, law has been defined as simply a prediction of what the courts will do or as something which the court actually does. According to Holmes, a Supreme Court judge for nearly fifty years, it is not the syllogism alone that has shaped the rules governing mankind but also "the felt necessities of the time, the prevalent moral and political theories, the intuitions of public policy avowed or unconscious, even the prejudices which judges share with their fellowmen". He says that the law embodies the story of a nation's development through many centuries and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. Therefore, "a page of history is worth a volume of logic". This explains his theory that "the life of law has not been logic; it has been experience."

But, of course, one accustomed to legal reasoning or to the arguments which judges take pains to adduce in support of their conclusions cannot reconcile himself to the oversimplified notion that history or experience is the predominant factor that has directed the path of the law. It would perhaps be more credible and judicious to observe that the life of the law has been the logic of experience.

Many of the 1958 rulings on civil law are mere reaffirmations of settled rules, but they have to be noted down just the same because they are a part of civil law jurisprudence, and jurisprudence, as Scaevola said, is "la clinica del derecho." As in previous surveys, the digested rulings are correlated with the pertinent codal provisions and past doctrines.

EFFECTS AND APPLICATION OF LAWS

Publication of Administrative regulations.—

The case of *Lim Hoa Ting v. Central Bank of the Philippines* [1] reiterates the rule that the word "laws" in article 2 of the new Civil Code includes administrative regulations and, therefore Central Bank regulations should be published in the Official Gazette to become effective and binding.[2]

Prospective effect of laws.—

Following the rule in article 4 of the new Civil Code, that laws shall have no retroactive effect unless the contrary is provided, it was held that the new

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[1] G.R. No. L-10666, Sept. 24, 1958, 55 O.G. 1006.
[2] People v. Que Po Lay, 50 O.G. 2850.

requirement in article 161 of the new Civil Code that the obligations contracted by the husband should be for the benefit of the conjugal partnership in order that they may be enforced against the conjugal assets, cannot be given retroactive effect to obligations already incurred by the husband when the new Civil Code took effect.[3]

Act done contrary to law is void.—

Article 5 of the new Civil Code provides that "acts executed against the provision of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Thus, the registration of a writ of attachment, which was enforced against lots mortgaged to the Agricultural and Industrial Bank and which is contrary to section 26 of Commonwealth Act No. 459, was considered void. It may be assailed by any party adversely affected thereby.[4]

In another 1958 case, it was held that the husband's donation of conjugal assets in violation of article 1413 of the old Civil Code is not illegal in the sense contemplated in article 4 of the old Code, now Article 5. It is a fraudulent donation.[5]

HUMAN RELATIONS

Public official must not neglect performance of his duty without just cause.—

Article 27 of the new Civil Code, which provides that "any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary action that way be taken," was invoked in *Zulueta v. Nicolas*.[6] In this case Senator Jose Zulueta filed a complaint for damages against Nicanor Nicolas, the provincial fiscal of Rizal, based on the alleged failure of Nicolas to file a criminal action for libel against the provincial governor of Rizal and the staff members of the Free Press. Nicolas did not file the libel action because in his opinion there was no *prima facie* case.

In dismissing Zulueta's complaint for damages the Supreme Court relied on the ruling in *Bagalay v. Ursal*,[7] that article 27 "contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty." The refusal of the fiscal to prosecute, when after an investigation he finds no sufficient evidence to establish a *prima facie* case, is not a refusal without just cause to perform an official duty.

It was also noted in the *Zulueta* case that, as a general rule a public prosecutor, being a quasi-judicial officer empowered to exercise discretion or judgment, is not personally liable for resulting injuries when acting within the scope of his authority and in the line of his official duty. Thus, it was held that public officials charged with the performance of legislative or quasi-judicial duties are not liable for the consequences of their acts, unless they acted wilfully and maliciously and with the express purpose of inflicting injury upon the plaintiff.[8]

Actions based on quasi-delict.—

Article 31 of the new Civil Code, which provides that "when the civil action is based on an obligation not arising from the act or omission complained

[3] Laperal v. Katigbak, G.R. No. L-11418, Dec. 27, 1958. Same holding as to Art. 144 in Camporedondo v. Cruz Aznar, G.R. No. L-11483, Feb. 14, 1958.
[4] Geonanga v. Hodges, G.R. No. L-11823, April 21, 1958.
[5] Ligues v. Court of Appeals, G.R. No. L 11240, Feb. 18, 1958.
[6] G.R. No. L-8252, Jan. 31, 1958, 54 O.G. 6412.
[7] 50 O.G. 4281.
[8] Mendoza v. De Leon, 33 Phil. 508, 513; 42 Am. Jur. 256.

of as a felony, such civil action may be brought independently of the criminal proceedings and regardless of the result of the latter," was invoked in *Paulan v. Sarabia*[9] to support the view that an action based on tort may be brought independently of the criminal action arising from the tortious act. The filing of the criminal action does not interrupt the prescriptive period for filing the civil action.

Article 31 was also applied in *Chan v. Yatco*,[10] where the basis of plaintiff's action for damages was *culpa aquiliana*, as provided in articles 2176, 2177 and 2180 of the new Civil Code, and not the criminal liability of the reckless driver of the passenger bus which bumped the plaintiff's freight truck. The trial court was in error in suspending said civil action for damages based on quasi-delect during the pendency of the criminal action against the driver of the defendant. The *Chan* case reiterates the rule laid down in previous cases.[11]

Independent civil action in estafa cases.—

Article 33 of the new Civil Code provides that in cases of fraud a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Recovery in an independent civil action of the civil liability arising from estafa is illustrated in *Tiaoqui v. Cu Unjieng*.[12]

The case of *Calo v. Peggy*,[13] reiterates the rule that an independent civil action may be brought for recovery of damages arising from physical injuries as provided also in article 33, notwithstanding the acquittal of the offender in the criminal case.[14]

DIGEST OF RULINGS ON NATURALIZATION

(1) Where the applicant testified that his daughter was enrolled in the Chang Kai-Shek High School and two other children were studying in the Chinese Republic School, but there is no evidence that these private schools are recognized by the Government and that Philippine history, government and civics are taught therein as part of the curriculum, the application must be denied.[15]

(2) Since it was not shown that the Little Flower of Jesus Academy, where petitioner's children studied, is recognized by the Government, it cannot be said that petitioner has complied with the requirement in paragraph 2 of section 6.[16]

(3) Where during the 10-year period of petitioner's residence he had a 17-year old son who was not enrolled in the requisite schools, the petitioner has not complied with the educational requirement, although said son was already of age when he applied for naturalization.[17]

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[9] G.R. No. L-10542, July 31, 1958.
[10] G.R. No. L-11163, April 30, 1958.
[11] Dyogi v. Yatco, G.R. No. L-9623. Jan. 23, 1957; Dionisio v. Alvendia, G.R. No. L-10567, Nov. 26, 1957; Calo v. Peggy, G.R. No. L-10756, March 29, 1958; Tan v. Standard Vacuum Oil Co., 48 O.G. 2744, modifying Parker v. Panlilio, G.R. No. L-4961, March 5, 1952; Diana v. Batangas Transportation Co., 49 O.G. 2238.
[12] G.R. No. L-8418, Oct. 31, 1958.
[13] G.R. No. L-10752, March 29, 1952.
[14] Dyogi v. Yatco, G.R. No. L-9623, March 22, 1957; Ortaliz v. Echarri, G.R. No. L-9331, July 31, 1957; Carandang v. Valenton, 51 O.G. 2878 (1955); Laya v. Paras, CA 52 O.G. 841 (1956); Dionisio v. Alvendia, G.R. No. L-10367, Nov. 26, 1957; Dizon v. Sacoposo, CA 52 O.G. 724.
[15] Sy Chuat Tan Bin Tiong v. Republic, G.R. No. L-10202, Jan. 8, 1958, 54 O.G. 8070.
[16] Lim Kun Se v. Republic, G.R. No. L-10420, Jan. 10, 1958, 54 O.G. 5499.
[17] Ku E alias Tan v. Republic, G.R. No. L-11364, May 28, 1958. Ng Sin v. Republic, G.R. No. L-7590, Sept. 20, 1955; Dy Chan Tiao v. Republic, G.R. No. L-6430, Aug. 31, 1954; Quing Ku Chay v. Republic, G.R. No. L-5477, April 12, 1954.

(5) The requirement in sections 2 and 6 as to enrollment of minor children refers to children of school age.[18]

(6) The fact that the petitioner is a salesman in his father's grocery store with a monthly compensation of P140 free board and lodging constitutes a lucrative calling although there is some discrepancy between said salary and the amount declared in his income tax return.[19]

(7) If the petitioner has a working knowledge of Tagalog, that knowledge is sufficient, although he could not translate into Tagalog the words "Miss" and "Mrs."[20]

(8) It may be true that the petitioner, aside from his desire to become a Filipino citizen could have been moved by the expectation of benefits that he might derive from his naturalization as a Filipino citizen; but the same thing can be said of all the aliens who have applied and been granted Filipino citizenship.[21]

(9) Where during the hearing, it was discovered that the nationality of the petitioner as stated in his residence certificate is "Filipino" and not Chinese and later the petitioner asked the Chief, Residence Tax Section, City Treasurer's Office, Manila to state on the back of the same residence certificate that the duplicate had been changed "as to Chinese citizenship," it was held that such conduct of the petitioner was not reproachable.[22]

(10) Where the testimony on the alleged anti-Filipino attitude of the petitioner was given by witnesses who had an axe to grind against him, said testimony cannot be given credence.[23]

(11) Conviction for violation of a municipal ordinance requiring a permit for playing "mahjong" does not involve moral turpitude and does not involve wilful criminality, nor affect the petitioner's good moral character. It is one of the incidents in one's life which may happen to any Filipino citizen.[24] So is a conviction for speeding.[25]

(12) Where the applicant was convicted of a violation of a Manila ordinance requiring a building permit before a building can be constructed and he was fined P20, but in his declaration of intention he stated that he had not been convicted of any crime and in his petition he alleged that he had conducted himself in a proper and irreproachable manner, it cannot be said that appellant's character has been irreproachable. Moreover, he testified that he had been fined only P10.[26]

(13) Where the petitioner was charged with serious physical injuries and speeding but the cases were provisionally dismissed, and he paid a fine for speeding it was held that these charges did not mean that his character was reproachable.[27]

(14) The circumstance that the applicant has finished his elementary, secondary and collegiate courses in schools recognized by the Government constitutes

[18] Gotauco v. Republic, G.R. No. L-10972, May 28, 1958; Yu Neam v. Republic, G.R. No. L-10559, May 16, 1958.
[19] Joaquin Yap v. Republic, G.R. No. L-11187, April 23, 1958; Ting v. Republic, G.R. No. L-6274, Feb. 26, 1954; Lim v. Republic, 49 O.G. 188.
[20] Edison Chua Young v. Republic, G.R. No. L-11278, May 19, 1958.
[21] Benito Co v. Republic, G.R. No. L-11152, May 28, 1958.
[22] Arriola v. Republic, G.R. No. L-10286, May 28, 1958.
[23] Victoriano Yap Subieng v. Republic, *Supra*.
[24] Pisingan Chiong v. Republic, G.R. No. L-10976, April 16, 1958; Yu Keng v. Republic, G.R. No. L-8780, Oct. 19, 1956; Tan Seng Sin v. Republic, G.R. No. L-9080, May 18, 1957.
[25] Daniel Ng Teng Lin v. Republic, G.R. No. L-10214, April 28, 1958.
[26] Sy Chuat O Tan Bin Tiong v. Republic, G.R. No. L-10202, Jan. 8, 1958, 54 O.G. 8070.
[27] Daniel Ng Teng Lin v. Republic, G.R. No. L-10214, April 28, 1958.

a sufficient showing that he has mingled socially with the Filipinos and that he has learned and imbibed the customs, traditions and ideals of this country.[28]

(15) In *Kim So v. Republic*,[29] the applicant filed his petition for naturalization in 1950. He claimed that he had continuously resided here since 1910. Two of his children who were born in 1919 and 1924 never received the primary and secondary education contemplated in paragraph 6 of section 2. He contended that such a requirement would not apply to his two children because they were already of age when he filed his petition in 1950. *Held:* He was not excused from filing the declaration of intention because he did not comply with the requirement in section 6, which ,unlike section 2, refers explicitly to "all" children of the petitioner. His contention might have been tenable had his children been already of age when he came here in 1910.

(16) Birth in the Philippines may be proven by the Native Born Certificate of Residence issued by the immigration authorities.[30]

(17) The fact that the petitioner has a high school diploma and was allowed to pursue collegiate studies lends credence to this contention that he had finished the elementary course.[31]

(18) The requirement in section 6 of the Naturalization Law as to enrollment of petitioner's minor children does not apply to children who are not of school age.[32]

(19) The petitioner is exempted from filing a declaration of intention if he has continuously resided in the Philippines for more than 30 years and he has enrolled his minor children in the requisite schools.[33]

(20) Even if a copy of the declaration of intention was not attached to the petition, but the Government did not raise this issue in the lower court, the petition for naturalization cannot be denied on that score, especially considering that a copy of the declaration of intention was presented in evidence.[34]

(21) The Law does not require that the witnesses as to the character of the applicant should continuously see and observe an applicant in order to be competent to testify that during the applicant's stay in the Philippines the latter has acted in an irreproachable manner. Knowledge of the conduct and character of the applicant is not obtained by observation alone; the acts of a person ordinarily come to the knowledge of his acquaintances. Character is, besides, something that develops in the community and is best evidenced by reputation. If a person observes a conduct that is not proper, or if he commits acts in violation of the laws or the social rules of the community, these will come to the knowledge of any individual, specially his acquaintances, although the latter did not actually see the act committed. So, where one of the witnesses for the applicant, who had known the applicant since boyhood, was absent from the Philippines for three years, this circumstance does not mean that his testimony about the irreproachable conduct and character of the applicant during his stay in this country is not true.[35]

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[28] Joaquin Yap v. Republic, G.R. No. L-11187, April 23, 1958; Vicente Pang Hok Hua v. Republic, G.R. No. L-5047, May 8, 1952.
[29] G.R. No. L-10420, Jan. 10, 1958, 54 O.G. 5499.
[30] Victoriano Yap Subieng v. Republic, G.R. No. L-10234, Jan. 24, 1958.
[31] Pablo Sy v. Republic, G.R. No. L-10516, March 27, 1958.
[32] Yu Neam v. Republic, G.R. No. L-10559, May 16, 1958; Quezon Ong Tan v. Republic, G.R. No. L-9683, May 30, 1957.
[33] Pisinga Chiong v. Republic, G.R. No. L-10976, April 16, 1958.
[34] Tan Goan v. Republic, G.R. No. L-11385, April 18, 1958.
[35] Lim Ham Chiong v. Republic, G.R. No. L-10235, Feb. 28, 1958.

(22) Where the witnesses for the petitioner failed to testify that the petitioner's conduct was proper and irreproachable during the period of his entire stay in the Philippines, the petition for naturalization should be denied.[36]

(23) Where the witnesses never testified about the petitioner's character and his sincere desire to embrace Filipino customs and traditions, said witnesses are not competent. They evidently do not know the petitioner well enough to qualify them to testify as to his character and good moral conduct. The petition for naturalization should, therefore, be denied.[37]

(24) The witness' lack of knowledge of petitioner's social and civil activities does not mean that he does not know whether petitioner's conduct is irreproachable. The witness and the petitioner may move in different circles.[38]

(25) Where the declarations of the two character witnesses show that they have evinced actual and personal knowledge of the behavior and conduct of petitioner during the many years of their acquaintance, from which it can be inferred that he is a person of good repute and character, as to qualify him to become a Filipino citizen, and where it appears that the petitioner had complied with all the other requirements of the law especially with regard to his educational and social qualifications, it was held that the above mentioned declarations substantially comply with the requirement as to his conduct and behavior more so when no contrary evidence was presented by the Government to dispute them.[39]

(26) The testimony of a witness as to the moral character of the petitioner must be taken in its entirely and minor discrepancies therein may be overlooked.[40]

(27) The Supreme Court is not prone to disturb the findings of fact made by the trial court as to the credibility of witnesses by reason of its opportunity to observe the conduct and demeanor of said witnesses while testifying.[41]

(28) Where the affidavit of one witness stated that he had known the petitioner since 1946 or less than ten years before the petition was filed in 1954, the application cannot be granted even if the same witness testified that the figure "1946" in his affidavit was a clerical error.[42]

(29) Where the affidavits of the witnesses do not contain all the matters required to be alleged by section 7 of the Revised Naturalization Law, the petition should be denied.[43]

(30) The affidavits of the two witnesses are sufficient if they stated that they had known the petitioner since he was a boy. Failure to state in the affidavit that the applicant is not disqualified to become a citizen is of no moment since the sweeping allegation that the petitioner had all the necessary qualifications carried with it the assertion that the petitioner is not in any way disqualified.[44]

(31) Where the petitioner conclusively proved that he was admitted into this country as an immigrant, the finding of the trial court that he was not lawfully allowed to enter is not correct and the denial of his petition for na-

[36] Dy Tian Siong v. Republic, G.R. No. L-10200, April 18, 1958, 55 O.G. 420.
[37] Edison Chia Young v. Republic, G.R. No. L-11278, May 19, 1958.
[38] Yu Neam v. Republic, G.R. No. L-10559, May 16, 1958.
[39] Dionisio Sy v. Republic, G.R. No. L-10472, Feb. 26, 1958, 54 O.G. 5894.
[40] Antonio Te v. Republic, G.R. No. L-10805, April 23, 1958.
[41] Tiu Bon Hui v. Republic, G.R. No. L-8780, Nov. 18, 1957; Yu Neam v. Republic, G.R. No. L-10559, May 16, 1958.
[42] Sy Chuat v. Republic, G.R. No. L-10202, Jan. 8, 1958, 54 O.G. 8070.
[43] Alfredo Ong v. Republic, G.R. No. L-10642, May 30, 1958.
[44] Simeon Tan Lim v. Republic, G.R. No. L-10705, May 28, 1958.

turalization is erroneous, especially considering that this point was not raised during the trial by the Government.[45]

(32) The fact that the petitioner could not produce his original landing certificate is not an obstacle to his naturalization where it appears that he landed here in 1933; he has been registered in the immigration records since 1941; he has married here, acquired property, had his seven children baptized and recorded in the church and then enrolled those of school age, and for 22 years his residence was never questioned by the immigration authorities and they even certify that he is lawfully residing in this country.[46]

(33) The cases of *Celestino Co Y Quing Reyes v. Republic*,[47] and *Ng Bun Kui v. Republic*,[47a] reiterate the rule in *Ong San Cui v. Republic*,[48] that the petition for naturalization should be published three times (not once) in the Official Gazette. Section 9 of the Revised Naturalization Law requires that the publication must be (a) weekly, (b) three times and (c) consecutively. In 1957 the Official Gazette came out twice a month. Since 1958 it has been coming out weekly. So prior to 1958, it was not possible to comply with the requirement that the publication of the application should be made for three consecutive weeks. But the petition should at least be published three times consecutively. Even if the issue regarding insufficient publication was not raised in the lower court, it could be raised on appeal since the decree of naturalization affects the civil status of the applicant and is therefore in the nature of a judgment *in rem*. Three justices dissented.

(34) In the hearing conducted by the trial court after the expiration of the 2-year period, the question of the petitioner's use of aliases may be raised for the first time. The same court that granted the application for naturalization has jurisdiction to conduct a hearing (before the order become final and executory) to determine whether or not the applicant has complied with the requisites provided for in Republic Act No. 530; and any question affecting the purported right of the petitioner or the qualifications of the applicant to become a Filipino citizen may be invoked at any stage of the proceedings.[49]

(35) It is error for the trial court in granting the petition for naturalization to declare the applicant a Filipino citizen by naturalization, since he has still to remain under probation for a period of two years. He becomes a Filipino citizen only after taking the oath of allegiance.[50]

MARRIAGE

Marriage in articulo mortis.—

The case of *De Loria v. Apelan Felix*,[51] discusses certain aspects of marriage in *articulo mortis*. It was held in this case that failure to sign the marriage contract is not among the grounds for annulling a marriage contracted on the point of death. The signing of the marriage contract is required for the purpose of evidencing the act and to prevent fraud. It is not an essential requisite of marriage. The fact of marriage is one thing; the proof by which it may be established is another. Nor is the failure of the priest solemnizing the marriage to execute the affidavit required by law a ground for

[45] Maxwell Tong v. Republic, G.R. No. L-9728, Jan. 21, 1958.
[46] Ong v. Republic, G.R. No. L-11637, Oct. 31, 1958.
[47] G.R. No. L-10761, Nov. 29, 1958.
[47a] G.R. No. L-11172, Dec. 22, 1958.
[48] G.R. No. L-9858, May 29, 1957.
[49] Lim Hok Anselmo Albano v. Republic, G.R. No. L-10912, Oct. 31, 1958; Lim Lian v. Republic, G.R. No. L-8757, Dec. 26, 1950; Yap Chin v. Republic, G.R. No. L-4177, May 29, 1953.
[50] Jose Go v. Republic, G.R. No. L-11384, Dec. 26, 1958.
[51] G.R. No. L-9005, June 20, 1958.

annulling the marriage. That is the obligation of the priest, not of the parties. Since a marriage in *articulo mortis* can be celebrated without license, it follows that if in such kind of marriage, the affidavit was not executed, the marriage would not be void. The affidavit takes the place of the license. Moreover, every intendement of the law leans toward matrimony. The law encourages unions between those who have been living as man and wife for sometime.

HUSBAND AND WIFE

Wife should be supported in conjugal dwelling if there is no ground for separate maintenance.—

The rules in articles 109, 110 and 111 of the new Civil Code, that husband and wife should live together and that the husband is obliged to support the wife were applied in *Atilano v. Chua Ching Beng.*[52] It was held in this case that if the wife refuses to live with the husband without justification, she is not entitled to separate maintenance. She cannot be compelled to live with the husband, but the latter cannot be compelled to support her if she lives outside the conjugal dwelling without justification. In the *Atilano* case the spouses separated because, according to the wife, she and her husband had frequent quarrels and bickerings in the house of his parents. She could not get along with her in-laws. But the husband was willing to support her in a conjugal home apart from the home of his parents. *Held:* He may support his wife in a home separate from the home of his parents and if the wife refused to live with him, he would be released from the obligation to support her.[53]

The solution in the *Atilano* case is different from that in *Del Rosario v. Del Rosario,*[54] where the Court of Appeals granted separate maintenance to the wife on the ground that she cannot be compelled to live with her mother-in-law.

DONATIONS PROPTER NUPTIAS

Proof that donation was in excess of donor's property.—

Article 1331 of the old Civil Code provides that "affianced persons may give to each other in their antenuptial contract as much as 1/10 of their present property". Under Article 130 of the new Civil Code the limitation is 1/5. Article 1331 was invoked in *Mayor v. Millan,*[55] where it appears that Severino Mayor donated a parcel of land to his future wife Iluminada Miraflor. After Mayor's death, his surviving brother contended that the donation was in excess of 9/10 because the land donated was the only property of Severino Mayor.

Held: The 1/10 limitation must be computed on the entire patrimony of the donor. Article 1331 does not restrict the donor to a tenth of each and every item of property he owns. There was no proof that the donation exceeded 1/10 of all the property of Severino. Either he had other real property outside his domicile or that he had personal properties woth nine times the value of the controverted land. It was incumbent upon the brother to produce satisfactory proof to exclude both alternatives, that is to show that the donor had no other property besides the disputed lot. Not having satisfied the *onus probandi*, his cause of action was rightly rejected. This ruling is in consonance with the holding in *Adapon v. Maralit.*[56]

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[52] G.R. No. L-11086, March 29, 1958.
[53] Marcelo v. Estacio, 70 Phil. 215; Arroyo v. Vasquez Arroyo, 42 Phil. 54.
[54] 46 O.G. 6122.
[55] G.R. No. L-10947, March 18, 1958, 54 O.G. 7406.
[56] 74 Phil. 292.

Void donation.—

The case of *Aznar v. Sucilla*,[57] involves a donation made by the husband to his wife during the marriage. It was called a donation *mortis causa*. The donation was declared void because, if it were a donation *mortis causa*, it could not be given effect since it was not made in the form of a will; and if it were a donation *inter vivos*, it could not likewise be given effect because donations between husband and wife are void, according to article 133 of the new Civil Code, formerly article 1334.

CONJUGAL PARTNERSHIP

Property acquired by the wife with her own money is paraphernal.—

Under article 160 of the new Civil Code. "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." On the other hand, according to articles 135 and 148 property acquired by the wife during the marriage by lucrative title is her paraphernal property. The case of *Jose de Villabona v. Court of Appeals* [58] illustrates the rebuttal of the presumption in article 160 by proof that the property acquired during the marriage belonged to the wife and not to the conjugal partnership. In that case, it appears that the spouses Ramon Jose and Simeona Santos were married in 1920. In 1931, the wife entered into a partition agreement over a tract of land and she was given as her share Lot 12-B for which a title was issued in her name "married to Ramon Jose". The partition agreement bears her husband's conformity. She mortgaged the land to three financial institutions. It was held that the land was paraphernal.

Building built with paraphernal funds on paraphernal land is paraphernal.—

In *Jose v. Villabona v. Court of Appeals*,[59] it appears that in 1931 the wife mortgaged her paraphernal land for ₱8,500 and with the proceeds of the loan she built a house on her paraphernal land. The building permit and insurance policy for the building were in her name. The loan account was in her name. The husband did not take part in the execution of the mortgage. He died in 1943. All payments of the loan after the war were in the wife's name. These circumstances indicated that the intention of the spouses was that the loan would be the wife's sole responsibility. However, out of said loan of ₱8,500, the sum of ₱3,000 represented payments from conjugal funds. It was held that the building was paraphernal. The second paragraph of article 1404 of the old Civil Code, now article 158, was not applicable to the case. But the heirs of the husband have a right to the said amount of ₱3,000 which should be borne by the surviving wife, "barring such defenses as may have existed or arisen." [60]

Old rule: property must be acquired through joint efforts.—

Article 144 of the new Civil Code provides that "when a man and a woman live together as husband and wife, but they are not married, x x x the property acquired by *either* or both of them through their work or industry or their wages and salaries shall be governed by the rules of coownership." This is a new provision. As noted by Justice Felix in the *Camporedondo* case, article 144 is a recognition of the existence in our society of a certain kind of relation-

[57] G.R. No. L-10806, Jan. 27, 1958, 54 O.G. 7572.
[58] G.R. No. L-10799, April 28, 1958.
[59] G.R. No. L-10799, April 28, 1958.
[60] Following the rule laid down in Lim Queco v. Ramirez, 71 Phil. 162.

ship brought about by couples living together as husbands and wives without the benefit of marriage, acquiring and bringing properties unto said union, and probably realizing that while the same may not be acceptable from the moral viewpoint, they are as much entitled to the protection of the laws as any other property owners. The ownership contemplated in article 144 requires that the man and woman thus living together must not in any way be incapacitated to contract marriage and that the properties realized during their cohabitation be acquired through their work, industry, employment or occupation of both or either of them.

The rule in article 144 is different from the rule under the old Code, as laid down in *Marata v. Dionio*,[61] that a man and woman, living as husband and wife without benefit of marriage, have an equal interest in the properties acquired through their *joint and mutual labor, efforts and industry*. The implication is that if the properties were not acquired through joint efforts, the same would belong only to the person who acquired the same.[62]

In *Camporedondo v. Cruz Asnar*,[63] it was ruled that article 144 cannot be given retroactive effect to properties acquired before the effectivity of the new Civil Code on August 30, 1950, if to give it retroactive effect would impair vested rights. The rule in the *Marata* case would apply to properties acquired before the effectivity of the new Civil Code. Article 144 would apply only to properties acquired after the new Civil Code took effect.

In the *Camporedondo* case, it appears that in 1917 Bernarda Camporedondo, a young unmarried girl, started working as assistant cook in the plantation at Padada, Davao of Edward Christensen, a bachelor. They begot two children, Lucy and Helen, born in 1922 and 1934 respectively. They cohabited for many years or until 1950, when they parted ways. Bernarda claimed a ⅛ share in the $485,000 estate acquired by Christensen and disposed of in his will. She said that the properties constituting said estate were acquired through the joint efforts of Christensen and herself.

The court found that the properties in the name of Christensen were acquired by him alone and not in collaboration with Bernarda. She appears to be an illiterate woman who could not even remember simple things such as the date when she arrived in Davao, when she commenced her relationship with the deceased, not even her approximate age or that of her children. There was no satisfactory evidence that she contributed to the acquisition of the properties in question.

Applying the *Marata* ruling, she is not entitled to any share in said estate of Christensen. Article 144 does not apply to the case.

Fruits of wife's paraphernal property are not liable for husband's obligations which did not redound to family's benefit.—

Article 139 of the new Civil Code, formerly article 1386, provides that "the personal obligations of the husband cannot be enforced against the fruits of the paraphernal property, unless it be proved that they redounded to the benefit of the family." The fruits of the wife's paraphernal property are conjugal. Following the rule in article 139, the obligations incurred by the husband in his commercial ventures, the earning of which were used by him to support th family, may be enforced against the fruits of his wife's paraphernal proper-

[61] G.R. No. L-2449, Dec. 31, 1925, unpublished.
[62] Flores v. Rehabilitation Finance Corporation, 50 O.G. 1029.
[63] G.R. No. L-11483, Feb. 14, 1958.

ties,[64] but the husband's personal debts cannot be enforced against the fruits of the wife's paraphernal assets.[65]

These rulings were applied in the 1958 case of *Laperal v. Katigbak*,[66] where it appears that Roberto Laperal, Jr. delivered to Ramon Katigbak ₱97,000 worth of jewelry under a contract of remunerative agency. Laperal sued Katigbak for the recovery of the jewelry. The latter confessed judgment and was sentenced to pay Laperal ₱97,000 plus ₱14,000 as the value of certain unpaid promissory notes. Laperal wanted to enforce the judgment against the fruits of the paraphernal property of Katigbak's wife, Evelina Kalaw.

Held: Said fruits are not liable. The contract of agency was entered into by Katigbak without Kalaw's knowledge and when the two were living separately. The proceeds of the agency did not redound to the benefit of the family. "If the conjugal assets involved are fruits of or products of the paraphernal property, in case of doubt concerning its true investment, it is not the wife who has to prove the fraud or the illegality of the act; it is the husband or the creditor who has to justify that the obligations contracted redounded to the benefit of the family. The spirit of the provisions is that the husband cannot utilize for his own interest or for private or personal undertakings the fruits of the paraphernal property; that these shall be destined to the true needs and charges of the conjugal partnership and accordingly, that they be employed, as they should be, for the benefit of the family."

Liability of conjugal partnership for husband's obligation.—

Article 161 of the new Civil Code provides that "the conjugal partnership shall be liable for all debts and obligations contracted by the husband *for the benefit of the conjugal partnership* x x x." The phrase "for the benefit of the conjugal partnership" is new. Article 1408 of old Civil Code, corresponding to article 161, simply provides that "all debts and obligations contracted during the marriage by the husband" are chargeable against the ganancial partnership.

Where before the new Civil Code took effect the husband borrowed ₱14,000 and incurred a liability of ₱97,500 in connection with jewelry delivered to him under an agency contract, it ws held that the conjugal partnership is liable for the husband's obligations although they did not redound to the benefit of the family. Article 1408, not article 161, applies to the case, following articles 4 and 2253 of the new Civil Code.[67]

The requirement in article 161 that the obligation contracted by the husband should be for the benefit of the partnership may be regarded as a new right declared for the first time but it cannot be given retroactive effect because to do so would impair the vested rights of the husband's creditors.

When husband cannot demand separation of property.—

The case of *Garcia v. Manzano*[68] involves the novel situation of a husband asking for separation of property from the wife on the ground that the wife has committed abuses in the management of the conjugal partnership. It is the converse of the frequently recurring case wherein the wife asks for separation of property on the ground that the husband has abused his powers as man-

[64] Javier v. Osmeña, 34 Phil. 336; Abella v. Erlanger & Galinger, 59 Phil. 326.
[65] Paterno Vda. de Padilla v. Bibby Vda. de Padilla, 74 Phil. 377; La Corporacion de Padres Agustinos v. Ansaldo, 66 Phil. 566; Quintos de Ansaldo v. Sheriff of Manila, 64 Phil. 118.
[66] G.R. No. L-11418, Dec. 27, 1958.
[67] Laperal case, see note 66.
[68] G.R. No. L-8190, May 28, 1958.

ager of the conjugal partnership. Justice J.B. L. Reyes, the eminent authority on civil law, gives an illuminating discussion on the nature of the conjugal partnership. He says that in the system of conjugal partnership the wife does not administer the conjugal assets unless with the husband's consent or by decree of the court and under its supervision with such limitations as the courts may deem advisable according to articles 168, 196 and 197 of the new Civil Code. Therefore, legally the wife cannot mismanage the conjugal partnership property or affairs, unless the husband or the courts tolerate the mismanagement. In the event of such maladministration by the wife (disregarding the case of judicial authorization to have the wife manage the partnership, since such a case is not involved), the remedy of the husband does not lie in a judicial separation of property but in revoking the power granted to the wife and resuming the administration of the conjugal partnership. He may enforce his right of possession and control of the conjugal property against his wife [69] and seek such ancillary remedies as may be required by the circumstances, even to the extent of annulling or rescinding any unauthorized alienations or incumbrances, upon proper action filed for that purpose. For this reason, articles 165, 167, 172, and 178 of the new Civil Code contemplate exclusively the remedies available to the wife (who is not the legal administratrix of the partnership) against abuses of her husband because normally only the latter can commit such abuses.

Where the wife has been managing the conjugal partnership and has allegedly been committing abuses in her management thereof, the husband's remedy is not separation of property, since separation of property can only be granted on the grounds mentioned in article 191 of the new Civil Code and the wife's alleged mismanagement is not one of those grounds. Consistent with its policy of discouraging a regime of separation of property as not in harmony with the unity of the family and the mutual affection and help expected of the spouses, the old and new Civil Codes require that separation of property shall not prevail unless expressly stipulated in marriage settlements before the union is solemnized or by formal judicial decree during the existence of the marriage, and, in the latter case, only on the grounds specified in article 191. The enumeration of such grounds in article 191 must be regarded as limitative in view of the Code's restrictive policy.

In the *Garcia* case, it appears that the husband filed a complaint against his wife for accounting and separation of property on the ground that she has mismanaged the conjugal partnership and executed fictitious alienations of conjugal assets. The trial court dismissed the complaint on the ground of lack of cause of action.

Held: The dismissal is correct. It is not tenable to argue that, because the wife can ask for separation of property in case the husband mismanages the conjugal partnership, *mutatis mutandis*, the same right must be given to the husband. The accounting sought cannot be granted because it is promised on the husband's right to ask for separation of property. He does not have that right.

Old law: Right of wife's heir to impugn alienations made by the husband.—

Article 171 of the new Civil Code provides that "the husband may dispose of the conjugal partnership for the purposes specified in articles 161 and 162" of said Code. This is tantamount to saying that the husband may dispose of

[69] Perkins v. Perkins, 57 Phil. 205.

the conjugal assets to satisfy obligations of the conjugal partnership and or donate said assets to the common children of the spouses. As a check against the abuses which the husband may commit in connection with his disposition of the conjugal assets, article 173 of the new Civil Code provides that "the wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs after the dissolution of the marriage, may demand the value of the property fraudulently alienated by the husband."

The foregoing rules are different from those found in the old Civil Code whose article 1413 provides that "in addition to his powers as manager the husband 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 gifts or alienations which, in accordance with article 1413, are to be deemed illegal or fraudulent, shall be collated."

Under article 1413 a sale executed by the husband of conjugal property for a valuable consideration without the consent of the wife is not null and void. Authority is expressly granted to the husband to make such sale, although such authority is limited by the provisions of the second paragraph to the effect that the sale should not contravene the Code and should not be made in fraud of the wife. In these cases it should not prejudice the right of the wife or her heirs. If the wife did not know of the sale, it can be assumed that it was made in fraud of her. But the prejudice to her can be determined only at the time of the liquidation of the conjugal partnership property in accordance with article 1419. This is the holding in *Simbre v. Agustin.*[70]

The *Simbre cites Baello v. Villanueva,*[71] where it was ruled that the nullity of illegal donations made by the husband and 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 the annulment of the donation, should it prove prejudicial to her, there should be recorded in the title of the donees the condition that "if the donation is illegal, it is subject to annument to the extent it prejudices the wife, if it so appears from the liquidation." This second part of the ruling in the *Baello* case was not applied in the *Simbre case.*

In the *Simbre* case, it appears from the complaint that on May 3, 1929 Eulogio Simbre, without the knowledge or consent of his wife, sold two parcels of land to Placido Agustin. At the time of the sale, the wife was living apart from the husband. The sale was registered on January 10, 1955. Plaintiffs, who are the children of the deceased spouses Eulogio Simbre and Eustaquia Sudaria, sued the children of Placido Agustin for the annulment of the sale as to the ½ portion pertaining to their mother.

Held: The complaint must be dismissed because it stated no cause of action. It did not allege that there was a liquidation of the conjugal partnership properties of the deceased spouse Simbre and Sudaria and that the rights of the wife and her heirs were prejudiced.

[70] G.R. No. L-11071, Oct. 30, 1958.
[71] 54 Phil. 218.

The *Simbre* case should be distinguished from *Tabuna v. Marigmen*,[72] where it was the wife herself who brought the action and it was held that she had a cause of action to annul the sale of conjugal land effected by her husband without her consent.[73]

Old law: Improper donations of conjugal realty made by the husband.—

The case of *Liguez v. Court of Appeals* [74] involves a donation of conjugal real property made by the husband in 1943 to a 16-year old girl in consideration of carnal intercourse. The case is governed by article 1413 and 1419 in the old Civil Code. The husband's donation of conjugal realty to his concubine is illegal and may be in fraud of the wife.

It was held in the *Liguez* case, that the husband's donation to his concubine is not illegal in the sense contemplated in article 4 of the old Code, now article 5, which provides that "acts performed contrary to the provisions of law are void." Such a donation is not void, but "merely fraudulent, subject to collation upon liquidation of the conjugal partnership and deduction of its value from the donor's share in the conjugal profits."

Liquidation of conjugal partnership.—

The rule that the conjugal partnership may be liquidated in the interstate proceedings for the settlement of the estate of the deceased spouse was applied in *Junga Vda. de Chantengco v. Chantengco*.[75]

Sale by surviving spouse of share pertaining to heirs of deceased spouse in unliquidated conjugal partnership without proper legal formalities is void.

The case of *Porciuncula v. Adamos* [76] applies the rule in Act 3176 (not cited in said case) that "the sale of conjugal property by the surviving spouse without the formalities established by law for the sale of property of deceased persons, shall be null and void, except as to the portion that may correspond to the vendor in the partition." This legal provision is simply a reiteration of the rule in the old case of *Coronel v. Ona*,[77] that "after the dissolution of a conjugal partnership by the death of one of the partners the survivor cannot dispose of the deceased partner's share of the community property, because by law it passes to the legal heirs of the deceased partner." Act 3176, a law, which is not well known to the bench and bar and has often been ignored in cases where it should have been directly applied, revokes the rule that the husband is the administrator of the conjugal partnership in case of the wife's death and that his alienation of conjugal property as such administrator is valid.[78]

By reason of Act 3176 and the rule in the *Coronel* case, it has been held that a sale by the surviving spouse of conjugal property without the formalities established by law for the sale of property of deceased persons is valid to the extent of the share of the vendor in the conjugal asset sold, which share used to be one-half, but, which, under the existing law of succession, is more

[72] G.R. No. L-9727, April 29, 1957.
[73] See also Liguez v. Ngo Vda. de Lopez, 54 O.G. 4261 (1957).
[74] 54 O.G. 4261 (1957); Res. on Motion for Recon., G.R No. L-11240, Feb 18, 1958.
[75] G.R. No. L-10668, Oct. 31, 1958.
[76] G.R. No. L-11519, April 30, 1958, 55 O.G. 32.
[77] 84 Phil. 456.
[78] Manuel and Laxamana v. Lozano, 41 Phil. 855; Nable Jose v. Nable Jose, 41 Phil. 855 and many other cases.

than ½ because the surviving spouse is an heir to a definite portion of the estate of the deceased spouse.[79]

In the *Porciuncula* case, it appears that the wife died in 1931 survived by her husband, a child and grandchildren. In 1943 the husband sold a parcel of conjugal land without first liquidating the conjugal partnership. He died in 1945. In 1947 the child and grandchildren sued the buyer of the conjugal land for the recovery of their ½ share therein. *Held:* The husband's alienation of the portion corresponding to his deceased wife, which descended to her heirs is null and void.

PATERNITY AND FILIATION

Acknowledging parent cannot disclose name of other parent.—

In connection with separate recognition, article 280 of the new Civil Code provides that "when the father or the mother makes the recognition separately, he or she shall not reveal the name of the person with whom he or she had the child neither shall he or she state any circumstance whereby the other parent may be identified." This provision is tied up with section 5 of the Civil Registry Law, Act 3753, which provides that when the mother of a natural child signs its birth certificate, "it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified."

The foregoing provisions were applied in *Roces v. Local Civil Registrar.*[80] It was held in this case that where in the birth certificate of an illegitimate child signed by the mother only, the name of the father was indicated, the Local Civil Registrar, upon the alleged father's petition, may be ordered to rectify the birth certificate by striking out therefrom all information having reference to the alleged father. Such a procedure is not contrary to article 412 of the new Civil Code regarding the correction of clerical errors in the civil register.

The ruling in the *Roces* case is a reaffirmation of the previous holding in *Crisolo v. Macadaeg,*[81] that the Local Civil Registrar has no authority to make of record the paternity of an illegitimate child upon the information of a third person and that the certificate of birth of an illegitimate child signed by the mother only is incompetent evidence of the paternity of the child.

In the *Roces* case, it appears that in a certain birth certificate, signed by a physician, it was stated that the child Ricardo Joaquin V. Roces was the child of Carmen Valdellon, single ,and that the father of the child was Joaquin Roces, a married man. Miss Valdellon swore to the birth certificate. Roces did not sign it. *Held:* As Roces did not sign the birth certificate, the statement therein relative to the father's identity is an open violation of the law. The local civil registrar was ordered to rectify the birth certificate by eliminating therefrom the statements regarding the father's identity.

Declaration that claimant is an acknowledged natural child is sufficient in compulsory recognition.—

The case of *Cruz Aznar v. Christensen Dancy,*[82] is authority for the rule that, where an action for compulsory recognition is brought against the heir

[79] Corpus v. Geronimo, 52 O.G. 2528; Corpuz v. Corpuz, 51 O.G. 5185; Tolag v. Tangkengco, G.R. No. L-4623, Oct. 24, 1952; Ocampo v. Potenciano, G.R. No. L-2263, May 31, 1951; Ibarle v. Po, 49 O.G. 956; De Guinoo v. Court of Appeals, G.R. No. L-5541, June 25, 1955; Heirs of Bonsato v. Utea, 50 O.G. 3568; Alejandrino v. Matamorosa, CA 52 O.G. 2031; Beltran v. Escudero, G.R. No. L-5302, March 11, 1953

[80] G.R. No. L-10598, Feb. 14, 1958, 54 O.G. 4950.

[81] G.R. No. L-7017, April 29, 1954.

[82] G.R. No. L-11484, Feb. 14, 1958.

of deceased putative father, it is error for the court to order the heir to recognize the claimant as a natural child. The declaration that the claimant is an acknowledged natural child of the deceased parent is sufficient because "such declaration is by itself already a judicial recognition of the paternity of the parent concerned which his heirs against whom the action is directed are bound to respect."

The *Cruz Asnar* case illustrates compulsory recognition based on possession of the status of an acknowledged natural child, where the claim for compulsory recognition was ventilated in the testamentary proceeding for the settlement of the father's estate. The father died during the child's minority.

In the *Cruz Aznar* case, it appears that in 1917 a girl named Bernarda Camporedondo started working as an assistant cook in the plantation at Padada, Davao of Edward Christensen, a bachelor. Bernarda and Christensen had carnal relations for many years. Christensen died in 1953. They allegedly begot two children named Lucy and Helen.

However, in his will Christensen stated that his child was Lucy only. He did not mention Helen as his child. The bulk of his $485,000 estate was given to Lucy. Helen appeared in the testamentary proceedings and claimed that she was an acknowledged natural child of Christensen. Lucy and the executor Adolfo Cruz Aznar opposed the claim of Helen.

Helen was born in 1934 to Bernarda. The question was whether her father was Christensen. The oppositors alleged that Helen's father was Zosimo Silva, a laborer in the Christensen's plantation, with whom Bernarda had allegedly illicit relations. The court found that at the time of Helen's birth, Bernarda and Christensen were publicly known to be living as husband and wife; that Christensen supported Helen, enrolled her as an intern in an exclusive girls' college in Manila and allowed her to use the surname "Christensen". He gave Helen all the attention and care which only a father would do for his offspring.

However, Christensen repudiated his relationship to Helen when he and Bernarda parted ways in 1950 and Helen took sides with her mother. Furthermore, Helen married, over Christensen's opposition, a man for whom he had no high esteem. Christensen's failure to mention Helen in his will cannot be made the criterion in determining whether Helen was his child "for human frailty and parental arrogance sometimes may lead a person to adopt unnatural or harsh measures against an erring child or one who displeases him just so the weight of his authority would be felt." Helen was considered an acknowledged natural child of Christensen.

Old law: Discovery of an indubitable writing after parent's death.—

Under article 137 of the old Civil Code, actions for the acknowledgment of natural children may only be instituted during the lifetime of the presumed parents. One of the two exceptions of this rule is the case where "after the death of the father or mother, some document, previously unknown, should be discovered in which they expressly acknowledge the child," in which case, the action shall be commenced "within six months following the discovery of the document." This provision is reenacted in article 285 of the new Civil Code, with the modification that the period for bringing the action is four years, instead of six months only.

Article 137 was applied in *Pareja v. Pareja*,[88] where it appears that after the death of the putative father a document known as "Information for Mem-

[88] G.R. No. L-10419, April 16, 1958, 54 O.G. 6420; G.R. No. L-5824, May 31, 1954.

bership Insurance" dated March 12, 1939 was discovered. In this document, the deceased named the claimants as his children. It was held that this document, although not the public document contemplated in article 131 of the old Civil Code, regarding voluntary recognition, can be considered as an indubitable writing under article 137. But there was no evidence that it was discovered by the claimants within six months prior to December 2, 1949, when they instituted the action for compulsory recognition. The action for recognition was consequently dismissed.

Support is payable upon demand.—

The case of *Jocson v. Empire Insurance Co.*[84] clarifies the nature of support as a legal obligation. It should be noted that, according to article 298 of the new Civil Code, "the obligation to give support shall be demandable from the time person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date it is extrajudicially demanded." It was pointed out in the *Jocson* case that support must be demanded and the right to it must be established before it becomes payable. The right to support does not arise from the mere fact of relationship, even from the relationship of parents and children, but "from the imperative necessity without which it cannot be demanded, and the law presumes that such necessity does not exist unless support is demanded.'

In the *Jocson* case, it appears that the father as guardian used the funds of his minor children under his guardianship for their support. The father died and the minors on becoming of age contended that their father's disbursements made from the guardianship funds for their education and clothing was illegal. They assumed that their father should have defrayed the cost of their clothing and education from his own funds. They, therefore, asked that the surety company which filed a bond for their father as guardian should answer for the said disbursements.

Held: The minor's contention is without merit.. The minors never demanded support from their father and the need for it was not duly established. The need for support cannot be presumed, especially in the instant case where the minors had means of their own.

Right of husband to support wife in conjugal home.—

The case of *Atilano v. Chua Ching Beng*[85] applies the rule in article 299 of the new Civil Code that in support the obligor may, at his option, fulfill his obligation either by paying the allowance fixed, or by receiving and maintaining the obligee in his house. The latter alternative cannot be availed of in case there is a moral or legal obstacle thereto. The *Atilano* case lays down the rule that "misunderstanding with in-laws, who may be considered third parties to the marriage", is not a moral or legal obstacle that would preclude the husband from supporting his wife in the conjugal dwelling. While physical ill-treatment may be a ground to compel the husband to provide for a separate maintenance,[86] this circumstance was not proven in the *Atilano* case.

In the *Atilano* case, it appears that Pilar Atilano and Chua Ching Beng, after their marriage, established their residence with the husband's parents in Manila. Some months later, they went to Zamboanga for a visit. He was prevailed upon by Pilar's parents to return to Manila alone and leave Pilar

[84] G.R. No. L-10892, April 30, 1958.
[85] G.R. No. L-11086, March 29, 1958.
[86] Arroyo v. Vasquez Arroyo, 42 Phil. 54.

behind with the understanding that she would follow him later. Instead of rejoining him, she filed an action for separate maintenance. She alleged that their marital life was characterized by incessant quarrels and bickerings resulting from incompatibility of temperament and from her husband's inability to provide a home separate from that of his parents. The husband was agreeable to supporting her in a residence apart from that of his parents. The question was whether the wife is entitled to receive support from her husband in case she refused to live with him on account of misunderstanding with his immediate relatives.

Held: Disagreement among in-laws is a problem as old as the world itself, but despite this discouraging facet of married life, there would always be in-laws as long as there are marriages, and the same vicious cycle would be repeated. The husband was ordered to support his wife in the conjugal dwelling apart from the home of his parents. If the wife would not agree to be supported in the conjugal home, the husband would be considered relieved from his obligation to support her.

Wife who committed adultery and was pardoned by the husband could claim support from him.—

The case of *Almacen v. Baltazar* [87] resolves the unprecedented question of whether an unfaithful wife can claim support from an unfaithful husband. It appears in that case that the wife committed adultery in 1937 but that the husband lived maritally with another woman. After the separation of the spouses, there was a reconciliation between them or at least a condonation by the husband of the wife's infidelity as shown by the fact that he sent her money for her support. When he stopped giving her support, she filed action against him for support.

Held: The wife could claim support from the husband. Article 303 of the new Civil Code provides that the obligation to give support ceases when the recipient has committed some act which gives rise to disinheritance. Under article 921(4) of the new Civil Code, a spouse may be disinherited when she has given cause for legal separation. Under article 97 one of the causes of legal separation is adultery on the part of the wife and concubinage on the part of the husband. Article 922 of the same Code provides that a subsequent reconciliation between the offender and the offended party deprives the latter of the right to disinherit and renders ineffectual any disinheritance that may have been made. There was condonation in this case. The act of giving money to the erring wife constitutes condonation, which is the forgiveness by a spouse of an offense which he knows the other has committed against him. Condonation does not require sexual intercourse. It may be express or implied.

No proof of paternity.—

In *Constantino v. Court of Appeals* [88] the action for support brought by the mother in behalf of her minor child against the supposed father was dismissed because there was no sufficient evidence proving that the defendant was the father of the child.

[87] G.R. No. L-10028, May 23, 1958.
[88] G.R. No. L-10579, March 22, 1958.

ADOPTION

Adopted child does not acquire citizenship of adopting parent.—

The case of *Ching Ling v. Galang*[89] settles once and for all a question which has often agitated the minds of law students. The question: Does the adopted child acquire the citizenship of the adopter? The answer: He does not. In justifying this answer, the Supreme Court thoroughly explored the different angles of the question.

Article 341 of the new Civil Code provides that "adoption shall: (1) give to the adopted child the same rights and duties as if he were a legitimate child of the adopter; (2) dissolve the authority vested in the parents by nature; (3) make the adopted person a legal heir of the adopted; (4) entitle the adopted person to use the adopter's surname." Article 264 of the same Code provides that "legitimate children shall have the right: (1) to bear the surnames of the father and of the mother; (2) to receive support from them, from their ascendants, and in a proper case, from their brothers and sisters, in conformity with article 291; (3) to the legitimate and other successional rights which this Code recognize in their favor."

Citizenship is not a "right" but a mere "privilege."[90] So, it cannot be among the rights of a legitimate child which the adopted child can exercise or enjoy. Article 341 in itself shows that the adopted child does not have the same rights as a legitimate child because if it were true that all the rights of a legitimate child can be enjoyed by an adopted child, then paragraphs 3 and 4 of article 341 would be superfluous. Even in succession, the adopted child does not have the same rights as a legitimate child because article 343 provides that when the adopted child concurs with the ascendants of the adopter, the adopted child "shall not have more successional rights than an acknowledged natural child." Moreover, the rights of a legitimate chid given to an adopted person, as stated in article 341, do not include the acquisition of citizenship. This view is justified by the following considerations:

(a) Such acquisition of citizenship partakes of the character of 'naturalization," which is regulated, not by the Civil Code, but "by special laws," according to article 49 of the new Civil Code, or specifically by the Naturalization Law. Not being one of the means specified in the latter for the acquisition of Philippine citizenship, adoption must be deemed necessarily excluded from the operation of said law (*expressio unius est exclusio alterius*).

(b) The framers of the Civil Code had no intention whatsoever to regulate therein political questions. Hence, apart from reproducing the provisions of the Constitution on citizenship, the Code contains no precept therein except that which refers all matters of 'naturalization," as well as those related to the "loss and reacquisition of citizenship" to "special laws." Consistently with this policy, our Civil Code does not include therein any rule analogous to articles 18 to 28 of the Civil Code of Spain regulating citizenship.

(c) The Civil Code of the Philippines permits adoption by resident 'aliens." If such adoption is construed as vesting in the person adopted by an alien the political status of the latter, article 341 of said Code would be open to the charge of unconstitutionality for the Philippines has no jurisdiction to fix the conditions for the acquisition of any foreign nationality. Upon the other hand,

[89] G.R. No. L-11931, Oct. 27, 1958.
[90] Hao Lian Chu v. Republic, 48 O.G. 1780; Lim Lian Hong v. Republic, G.R. No. L-3575, Dec. 26, 1950; Tan Hi v. Republic, G.R. No. L-3354, Jan. 25, 1951; Chan Su Hok v. Republic, G.R. No. L-3470; Nov. 27, 1951; Sengkee v. Republic, G.R. No. L-3863, Dec. 27, 1951; Ng Sin v. Republic, G.R. No. L-7590, Sept. 20, 1955.

said provision must be deemed to convey the same meaning, regardless of whether the adopter is a citizen of the Philippines, or an alien. If, pursuant thereto, the adopted child does not follow, however, the citizenship of the adopter, when the latter is an alien, the effect of the adoption must be the same when the adopter is a Filipino national.

Section 15 of the Revised Naturalization Law (Commonwealth Act No. 473), which provides that "minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof cannot sustain the view that the adopted child acquires the Philippine citizenship of the adopter because whenever the word "children" or "child" is used in statutes, it is generally understood to refer to legitimate children, unless the context of the law and its spirit indicate clearly the contrary. Thus, for instance, when the Constitution provides that "those whose parents are citizens of the Philippines," and "those whose mothers are citizens of the Philippines," who shall elect Philippine citizenship upon reaching the age of majority, are Filipino citizens, our fundamental laws refers to legitimate children.[91] Similarly, the children alluded to in said section 15 are those begotten in lawful wedlock. In fact, illegitimate children are under the parental authority of the mother and follow her nationality, not that of the illegitimate father. Although, adoption gives to the adopted person the same rights and duties as if he were a legitimate child of the adopter, such rights are merely those enumerated in article 264 and do not include the acquisition of the adopter's nationality.

Moreover, as used in section 15, the term "children" could not possibly refer to those whose relation to the naturalized person is one created by legal fiction, as, for instance, by adoption, for, otherwise, the place and time of birth of the child would be immaterial.

The Naturalization Law requires that the children of the applicant should be educated in certain schools in order that said children, as prospective citizens, may be prepared to become an integral part of the nation and to assume their duties as such. This purpose would be thwarted if children devoid of such educational background became citizens of the Philippines in consequence of adoption by a naturalized citizen of the Philippines. Worse still, such a theory would leave the door wide open to a very simple means to circumvent the naturalization and immigration laws.

In the *Ching Ling* case, it appears that in a judgment dated May 2, 1950 the petition for naturalization of Ching Ling was granted. Thereafter, Ching Ling and his wife So Buan Ty instituted special proceedings for the adoption of Ching's five minor illegitimate children begotten with Sy An, a Chinese citizen. The petition for adoption was granted in an order dated September 12, 1950.

On September 29, 1955 Ching Ling took his oath of allegiance and became a full-fledged Filipino citizen. Believing that said children became Filipinos by virtue of his naturalization, Ching Ling asked the Commissioner of Immigration to cancel their alien certificate of registration. The Commissioner turned down the request pursuant to an opinion of the Secretary of Justice dated October 9, 1954 that adoption does not effect a change in the nationality of the adopted children. Ching Lin filed a petition for mandamus against the Immigration Commissioner. The trial court dismissed the petition.

Held: Ching Ling's adopted children did not acquire his Philippine nationality. If adoption by a natural born citizen does not vest our nationality in the adopted children, a *fortiori* adoption by a naturalized citizen could not vest

[91] Chiong Bian v. De Leon, 82 Phil. 771; Serra v. Republic, G.R. No. L-4228, May 12, 1952.

Philippine nationality in the adopted children. Ching Ling's children could not even be legitimated.

The *Ching Ling* case ignores the opinion of the Code Commission that under article 335 of the new Civil Code a resident alien with whose government the Republic of the Philippines has broken diplomatic relations cannot adopt because "the adopted child, a Filipino by blood, but *who* follows the citizenship of the adopting alien, would become an enemy alien, if war should ultimately break out."

USE OF SURNAMES

Use of name since childhood.—

The Anti-Alias Law, Commonwealth Act No. 142, is not violated if one uses a name with which he was christened or by which he has been known since childhood. Where a person has been using since childhood the name Lim Hok and he has always added the name "Albano" to his baptismal name Anselmo Lim Hok because Albano is the surname of his godfather Dionisio Albano and he used that surname in his business and social dealings merely to emphasize his identity, and there is no showing that confusion or prejudice ever was caused by the addition of that surname, it cannot be said that he had violated the Anti-Alias Law.[92]

CIVIL REGISTRY

Correction of clerical errors in civil register. Citizenship is a controversial matter to be threshed out in a proper proceeding.—

Three 1958 cases construed again article 412 of the new Civil Code which provides that "no entry in a civil register shall be changed or corrected, without a judicial order". Previous cases have ruled that article 412 refers to clerical errors. The case of *Black v. Republic*,[93] clarifies the nature of a clerical error as "one that is visible to the eyes or obvious to the understanding" [94] or "an error made by a clerk or a transcriber; a mistake in copying or writing".[95]

On the other hand, in *Ansaldo v. Republic* [96] it was held that the clerical errors which might be corrected by a petition for correction "would be those harmless and innocuous changes, such as correction of a name that is clearly misspelled, occupation of the parents, etc.; but for changes involving the civil status of the parents, their nationality or citizenship, those are grave and important matters which may have a bearing and effect not only on the citizenship and nationality of said parents, but of the offspring, and to seek said changes, it is necessary to file a proper suit wherein not only the State but also all parties concerned and affected should be made parties defendants or respondents, and evidence should be submitted, either to support the allegations of the petition or complaint, or also to disprove the same so that any order or decision in the case may be made with due process of law and on the basis of the facts proven. Then and only then may the change or changes be made in the entry in a civil register that will affect or even determine conclusively the citizenship or nationality of a person therein involved."

In the *Ansaldo* case, it appears that an illegitimate child was born to Virginia Ansaldo, a Filipina and Henry Wang, a Chinaman, both single. But in

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[92] Lim Hok O Anselmo Albano v. Republic, G.R. No. L-10912, Oct. 31, 1958; People v. Uy Jui Pio, G.R. No. L-11489, Dec. 23, 1957.
[93] G.R. No. L-10869, Nov. 28, 1958.
[94] Maxwell v. Hammond, 55 Phil. 519.
[95] In re Steward, 48 N.Y.S. 957, 7 Words & Phrases 472.
[96] G.R. No. L-10226, Feb. 14, 1958, 54 O.G. 5886.

the birth certificate of the child, named James Wang, his nationality was said to be "Chinese". The mother filed a petition for the correction of the birth certificate in the sense that the word "Chinese" after "Nationality" of the child should be changed to "Filipino." Her petition was based on the rule that the illegitimate child of a Filipino mother is a Filipino citizen. *Held:* The change cannot be allowed in a mere petition for correction, which is a summary proceeding, but though an appropriate action wherein all parties who may be affected by the entry are notified or represented. This ruling is a reiteration of the holding in previous cases.[97]

In the *Black* case, the petitioners filed a petition to correct the birth certificate of their daughter who was born in Manila in 1955, by changing her citizenship therein from "Canadian" to "American". It was not shown that the act of writing the word "Canadian" in the birth certificate was due to the error of the clerk in the office of the Civil Registrar of Manila. The alleged error is not visible to the eyes or obvious to the understanding. It was held that it could not be corrected by a mere petition for correction. The desired correction involves the controversial matter of citizenship which should be threshed out in an appropriate action.

Following the *Ty Kong Tin* ruling, the Supreme Court in another 1958 case, *Schultz v. Republic*,[98] affirmed the judgment of the trial court allowing the correction of the name "Schuttz" appearing in the petitioner's birth certificate by changing it to "Schultz", the correct name, but it refused to allow the correction of the name "Maria" by changing it to "Paz", the baptismal name of the petitioner. It likewise denied the prayer of the petition that the word "Filipino", which is the petitioner's nationality in the birth certificate, be changed to "American", her supposedly true nationality.

On the other hand, the Local Civil Registrar may be ordered to rectify the birth certificate of a natural child executed by the natural mother but not signed by the natural father, insofar as said certificate discloses the name of the alleged natural father. The placing of the natural father's name in the birth certificate is prohibited by article 280 of the new Civil Code and section 5 of Act 3753, the Civil Registry Law. In such a case, a petition for correction filed by the alleged natural father would be sufficient. The case is different from the *Ty Kong Tin case*.[99]

CLASSIFICATION OF PROPERTY

A building is realty and cannot be considered a chattel for purposes of the Chattel Mortgage Law.—

Three 1958 cases, *Associated Insurance & Surety Co., Inc. v. Iya*,[100] *Lopez v. Oroso*[101] and *Evangelista v. Alto Surety & Insurance Co., Inc.*[102] all strengthen the rule that a building is real property as expressly provided in article 415 of the new Civil Code.

It should be noted that some cases have held that a building may be treated personal property for purposes of the Chattel Mortgage Law,[103] although this

[97] Ty Kong Ting v. Republic, 50 O.G. 1078; Brown v. Republic, 52 O.G. 6564; Chomi v. Local Civil Registrar of Manila, 52 O.G. 6541. But see Guevara Lim v. Republic, G.R. No. L-8932, May 31, 1957

[98] G.R. No. L-10055, Sept. 30, 1955.

[99] Roces v. Local Civil Registrar of Manila G.R. No. L-10598, Feb. 14, 1958, 54 O.G. 4950.

[100] G.R. No. L-10837, May 30, 1958; See Tan Gin Sin v. Republic, G.R. No. L-12567, May 30, 1958.

[101] G.R. No. L-10817, Feb. 28, 1958.

[102] G.R. No. L-11189, April 28, 1958.

[103] Standard Oil Co. v. Jaramillo, 44 Phil. 630 (1923); De Jesus v. Guan Bee Co., 72 Phil. 464 (1941); Luna v. Encarnacion, 48 O.G. 2664 (1952); Evangelista v. Abad, CA 36 O.G. 2913; Tomines v. San Juan, CA 45 O.G. 2985.

law does not expressly regard a house as a chattel, unlike growing crops which it allows expressly to be the subject matter of a chattel mortgage. The basis of said decisions is estoppel—the parties in treating a house as a chattel are estopped to claim that it is real property which cannot be the subject matter of a chattel mortgage. Moreover, there is a dubious dictum in the *Jaramillo* case that the classification of property into real and personal, in articles 334 and 335 of the old Civil Code, now artciles 415, 416 and 417, is not mandatory and that the parties to a contract may treat as personal property that which by nature would be real property.

However, it is settled that for purposes of execution under Rule 39 of the Rules of Court a house is to be treated as real property.[104] And the leading case of *Leung Yee v. F. L. Strong Machinery Co.*,[105] categorically holds that a chattel mortgage over a building is void. The ruling in the *Leung Yee* case was weakened by the dictum in the *Jaramillo*, *De Jesus* and *Luna* cases, that, as between the parties, a chattel mortgage over a building is valid on the ground of estoppel. To avoid an inconsistency between the ruling in the *Leung Yee* case and that in the *Jaramillo* case, it is argued that in the *Leung Yee* case the chattel mortgage over a building was declared void because a third person attacked the mortgage.

The *Associated Insurance* case reverts to the rule of the *Leung Yee* case that a chattel mortgage over a building is void. In this case, as in the *Leung* case, a third person assailed the chattel mortgage over the building. It appears in that case that in 1951 the spouses Adriano Valino and Lucia Valino executed a chattel mortgage over their house in favor of the Associated Insurance & Surety Co., Inc. The land on which their house stood belonged to another person. After the Valinos became the owners of the land, they executed a real estate mortgage in October 1952 over the lot and house in favor of Isabel Iya. On December 26, 1952 the same house was sold at an auction sale to the mortgagee, Associated Insurance & Surety Co., Inc., pursuant to the corresponding foreclosure proceedings. In 1953 the surety company learned of the real estate mortgage. It sued the Valinos and Iya for the exclusion of the house from the real estate mortgage. In the meantime, Iya foreclosed the real estate mortgage. The question was whether Iya or the surety company had the better right to the house.

Held: The chattel mortgage over the building was a nullity. Iya had the better right. Only personal properties can be the subject of a chattel mortgage under Act 1508 the Chattel Mortgage Law (not Act 3952 as erroneously cited in the body of the decision because Act 3952 refers to the Bulk Sales Law). The building in question is real property although built on the land of another. A building cannot be divested of its character as realty by the fact that the land on which it is constructed belongs to another. To hold it the other way would result in confusion. To cloak the building with an uncertain status dependent on the ownership of the land would create a situation where a permanent fixture changes its nature or character as the ownership of the land changes.

The court cited the *Leung Yec* case and the *Lopez* case. In the *Lopez* case it was held that the inclusion of buildings in article 415 of the new Civil Code as real property separate and distinct from the land means that they are real property irrespective of whether or not the land on which they are built belongs to the same owner or another person.

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[104] Manarang v. Ofilada, 52 O.G. 3954 (1956); Republic v. Ceniza, G.R. No. L-4169, Dec. 17, 1951; Ladera v. Hodges, CA 48 O.G. 5374, overruling Sibal v. Valdez, 50 Phil. 512.

[105] 37 Phil. 644 (1918).

However, it should be observed that, although it is clearly stated in the *Associated Insurance* case that a chattel mortgage over a house is a nullity, there are still those who maintain the doubtful view that had the question in the *Iya* case arose between the parties to the chattel mortgage, it may be sustained as valid on the ground of estoppel. It is argued that, since a third person, as in the *Leung Yee* case, assailed the chattel mortgage, it was held invalid. Thus in the *Evangelista* case, it is stated, following the traditional view in the *Jaramillo* case and other cases, that the ruling that a chattel mortgage over a building is valid "is good only insofar as the contracting parties are concerned" and that such a view is not applicable to strangers to the contract nor to a case where there is no contract at all. As the law now stands, one more definitive decision is necessary in order to clarify once and for all whether a chattel mortgage over a building *is void in all cases.*

In the *Lopez* case, the question was whether the term "real estate in paragraph 5 of article 1928 of the old Civil Code, now paragraph 6 of article 2243, refer to the building alone or should be construed as always referring to the land and building. It was held that it may refer to the building alone, since the building is real property.

The third case, the *Evangelista* case, follows the rule in the *Manarang* case that for purposes of attachment and execution a building built on the land of another, for example, land leased, is real property. It appears in the *Evangelista* case that on *June 4, 1949* Santos Evangelista sued Ricardo Rivera and on the same date secured a writ of attachment which was enforced against a house built by Rivera on leased land. On *October 8, 1951* the house was sold at public auction to Evangelista. However, it appears also that on *September 29, 1950* the same house was sold at public auction to the Alto Surety & Insurance Co., Inc. in compliance with a writ of execution issued in a case brought by the surety company against Rivera and two other persons. The house was sold definitely to the surety company on *May 10, 1952.* The question was whether Evangelista or the surety company had the better right to the house. It was contended by the surety company that the writ of attachment secured by Evangelista was improperly executed because the house was attached as real property, when it should have been attached as personal property.

Held: The attachment secured by Evangelista prevails over the execution sale in favor of the surety company. The house in question was real property for purposes of attachment.

Town plazas are outside the commerce of man.—

The rule in *Municipality of Cavite v. Rojas and Tiung Siuko* [106] that public plazas are outside the commerce of man was followed in *Espiritu v. Municipal Council of Pozorrubio.*[107] Since town plazas are properties of public dominion, to be devoted to public use and to be available to the public in general, they cannot be disposed of or even leased by the municipality to private parties. They cannot be used in the construction of market stalls, specially of residences, and such structures constitute a nuisance subject to abatement according to law. While in case of war or during an emergency, town plazas may be occupied temporarily by private individuals, when the emergency has ceased, said temporary occupation or use must also cease, and the town officials should see

[106] 30 Phil. 602 (1915), followed in Muyot v. De la Fuente, CA 48 O.G. 1886; Li Seng Giap v. Municipality of Daet, CA 40 O.G. 217; Nicolas v. Jose, 6 Phil. 389 (1906); Capistrano v. Moya and Chief of Police, CA 44 O.G. 2798; Unson v. Lacson, G.R. No. L-7909, Jan. 12, 1957.

[107] G.R. No. L-11014, Jan. 21, 1958, 54 O.G. 5140.

to it that the town plazas should ever be kept open to the public and free from encumbrances or illegal private constructions.

In the *Espiritu* case, it appears that during the war the market of Pozorrubio, Pangasinan was destroyed. After liberation, the market vendors constructed temporary and makeshift stalls, even small residences, on a portion of the town plaza. The municipal treasurer collected fees from the stallholders. In time the market was rehabilitated, but the stallholders in the plaza refused to transfer to the public market. The municipal council passed a resolution ordering the stallholders to vacate the plaza within 60 days. The stallholders filed prohibition proceedings to restrain the enforcement of the resolution. *Held:* The trial court rightly dismissed the petition for prohibition.

OWNERSHIP AND COOWNERSHIP

Recovery of land.—

Recovery of possession of land in an *acción publiciana* or *plenaria de posesión* more than one year after the date of unlawful deprivation, which action should be instituted in the Court of First Instance, is illustrated in *J. M. Tuason & Co., Inc. v. Villanueva.*[108]

Possessor in bad faith forfeits improvements.—

In *Felices v. Iriola,*[109] it appears that the purchaser of a homestead made improvements thereon after the seller had asked him to reconvey the homestead in view of the fact that the sale was void *ab initio.* He was therefore in bad faith. Under article 449 of the new Civil Code, he was not entitled to reimbursement for the improvements made by him. Article 453 of the new Civil Code, which refers to a case where both landowner and planter acted in bad faith, does not apply to the case.

Action to quiet title does not prescribe.—

It is an established rule of American jurisprudence made applicable in this jurisdiction by article 480 of the new Civil Code that the actions to quiet title to real property in the possession of the plaintiff are imprescriptible.[110] So, where a parcel of land was sold in an unregistered deed of sale in 1931, and possession of the land was delivered to the vendee, and the heirs of the vendor in 1954 attacked the validity of the sale and sought to recover the land, the plaintiffs may be ordered to execute a formal deed of sale for the said land. Defendant's counterclaim for reconveyance is in effect an action to quiet title. Said action accrued only in 1954.

Prescription among coheirs.—

The rule in article 494 of the new Civil Code, that "no prescription shall run in favor of a coowner or coheir against his coowners or coheirs so long as he expressly or impliedly recognizes the coownership" was applied in *Cordova v. Cordova,*[111] In this case an action was brought in 1955 by the descendants of the children of the first marriage against the children of the second marriage for partition of the properties held by the second wife who died in 1927. It was noted in this case that general acquisitive prescription cannot be pleaded between coheirs except when one heir openly and adversely occupies the pro-

[108] G.R. No. L-10522, Sept. 30, 1958; Roman Catholic Bishop of Cebu v. Mangaron, 6 Phil. 286.
[109] G.R. No. L-11269, Feb. 28, 1958.
[110] 44 Am. Jur. 47; Cooper v. Rhea, 39 LRA 930; Inland Empire Land Co. v. Grant Country, 245 Pac. 14.
[111] G.R. No. L-9936, Jan. 14, 1958.

perty for a period sufficiently long to entitle him to ownership under the law. As long as the other heirs acknowledge the coownership or do not set up any adverse title to the property, prescription is unavailable. In the *Cordova* case, it was held that since the defendants did not clearly plead adverse possession, the complaint for partition cannot be dismissed on the ground of acquisitive prescription.[112]

The same rule was applied in *Cenido v. Court of Appeals*,[113] where it was held that the plaintiffs who with the defendants became coowners of a parcel of land in 1937 did not lose their shares, which they sought to recover only in 1950 from the defendants.

Presumption of good faith.—

The rule in article 527 of the new Civil Code that "good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof" was applied in *Enage Labajo v. Enriquez*,[114] to the case of person who occupied the registered land adjacent to his own, thinking that said adjacent land was of his land. His claim of good faith was not disproved by the plaintiff owners of the adjacent land. As a possessor in good faith he was held entitled to the fruits received by him until June 1950, when he was advised by the plaintiffs that the adjacent land belonged to them.

In the *Enage* case, it also appears that the plaintiffs filed a criminal action against the defendant possessor. The latter filed a counterclaim for damages against the plaintiffs. It was held that the counterclaim should be dismissed because there was no proof that the plaintiffs acted in bad faith in filing the criminal action. "Moreover, the defendant had received rentals from the lot of the plaintiffs for so many years, which on the claim of good faith as a possessor he does not have to reimburse to them, and so it is a matter of justice and equity that he forego his claim for alleged damages."

Justice Padilla dissented in the *Enage* case. He said that the *Enage* case is different from *Co Tao v. Tan Chico*,[114a] which involved only a few square meters and where the possessor was held to be in good faith.

No transfer of symbolical possession.—

In *Teodosio v. Sabala*,[115] it appears that a parcel of land was sold to Marcelo Sabala in 1919 and that in 1921 the same land was included in the sale of a bigger tract of land to Agapito Teodosio. The sale to Teodosio was in a public instrument. At the time of the sale to Teodosio, Sabala was in actual possession of the land in question. Teodosio contends that the sale to him in a public instrument transferred the ownership to him. *Held:* Since at the time of the sale to Teodosio, Sabala was in possession, this fact prevented the transfer of the property to Teodosio by constructive possession.[116] And since in 1920 Sabala was in possession and at present his heirs are still in possession, it can be presumed that such possession was continuous since "a present possessor who shows his possession at some previous time, is presumed to have hold possession also during the intermediate period, in the absence of proof to the contrary." This is the rule in articles 554, 561 and 1138 of the new Civil Code.

Moreover, according to article 541 of the new Civil Code every person in possession of a thing under claim of ownership has in his favor the legal pre-

[112] Laguna v. Levantino, 71 Phil. 566; Mallari v. Sunga, G.R. No. L-5048, Dec. 17, 1952.
[113] G.R. No. L-10634, May 28, 1958
[114] G.R. No. L-11093, Jan. 27, 1958.
[114a] 88 Phil. 548.
[115] G.R. No. L-11522, Jan. 31, 1958.
[116] Masallo v. Cesar, 89 Phil. 134.

sumption that he possesses under a just title. Defendants Sabala were declared the owners of the land in question.

Possessor in good faith of movable property is regarded as the owner.—

The rules that "every possessor has a right to be respected in his possession" and that "the possession of movable property acquired in good faith is equivalent to a title" found in articles 539 and 559 of the new Civil Code were applied in *Chua Hai v. Kapunan, Jr.*[117] This case lays down the following doctrines regarding the possession of movable property acquired in good faith:

(1) That the acquirer and possessor in good faith of a chattel or movable property is entitled to be respected and protected in his possession, as if he were the true owner thereof, until a competent court rules otherwise; (2) that being considered, in the meantime, as the true owner, the possessor in good faith cannot be compelled to surrender possession nor be required to institute an action for the recovery of the chattel, whether or not an indemnity bond is issued in his favor; (3) that the filing of an information charging that the chattel was illegally obtained through estafa from its true owner by the transferor of the *bona fide* possessor does not warrant disturbing the possessor of the chattel against the will of the possessor; and (4) that the judge taking cognizance of the criminal case against the vendor of the possessor in good faith has no right to interfere with the possession of the latter, who is not a party to the criminal proceedings, and such unwarranted interference is not made justifiable by requiring a bond to answer for damages caused to the possessor.

In the *Chua Hai* case, it appears that Ong Shu sold 700 GI sheets to Roberto Soto who issued a rubber check as payment of the price. Soto sold 165 sheets in Pangasinan of these 100 were sold to Chua Hai. Soto was charged with estafa but has not been arrested. The GI sheets were recovered by the police. Ong Shu asked the trial court for the return of the GI sheets to him. Chua Hai opposed the petition as far as the 100 sheets were concerned. The trial court ordered the return of the GI sheets to Ong Shu, requiring him to post a bond equal to twice the value of the 100 sheets claimed by Chua Hai and without prejudice on Chua Hai's part to file the corresponding action to settle the ownership of the 100 sheets. Chua Hai filed certiorari proceedings against the trial court.

Held: The order is void. Chua is entitled to be respected in his possession of the 100 GI sheets. Ong Shu cannot be regarded as still the owner of the GI sheets. It cannot be taken for granted that estafa was in fact committed for that would be in violation of the presumption of innocence. Restitution under article 105 of the Revised Penal Code cannot be ordered until judgment is rendered in the criminal case.

Another reason is that under article 85 of the Code of Commerce, now article 1505 of the new Civil Code, purchases made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws are not affected by the rule that the purchaser does not acquire any title if he purchases the goods from a person who is not the owner thereof. Moreover, Ong Shu was not illegally deprived of the iron sheets. The sale transferred the ownership to Soto pursuant to article 1496 of the new Civil Code. The fraud perpetrated by Soto on Ong Shu only rendered the contract voidable, according to article 1390 of the new Civil Code, and according to article 1506 a seller of

[117] G.R. No. L-11108, June 30, 1958.

goods with a voidable title may transfer ownership to a purchaser in good faith. Questions of ownership are eminently civil in character and should not be settled exclusively in accordance with the Revised Penal Code. Ong Shu has a remedy in a civil suit with attachment, not in the criminal case to which said Chua Hai is not a party.

EASEMENTS

Right of way as a discontinuous easement cannot be acquired by prescription.—

The case of *Ronquillo v. Roco*,[118] applies the rule in articles 620 and 622 of the new Civil Code that only continuous apparent easements can be acquired by prescription and holds that a right of way (*servidumbre de paso*), being a discontinuous easement, cannot be acquired by prescription. Article 615 of the new Civil Code provides that "discontinuous easements are those which are used at intervals and depend upon the acts of man," while continuous easements "are those the use or which is or may be incessant, without the intervention of any act of man." Manresa observes that discontinuous servitudes are exercised through acts of man, and precisely because of this they are and must be discontinuous, for it is physically impossible that their use be incessant. Hence, the servitude of a right of way is discontinuous because it is not possible that man would be continually passing through the same.[119]

In the early case of *Archbishop of Manila v. Roxas*,[120] it was held that to establish the easement of right of way by prescription in those cases where the use is for convenience merely, the presumption of permissive use or license must be overcome. This ruling implies that the right of way could be acquired by prescription. The nature of the right of way, as a discontinuous easement which cannot be acquired by prescription, was not discussed.

In *Municipality of Dumangas v. Jaro*,[121] there is a statement that the easement of way was acquired by prescription, but closer examination of the *ratio decidendi* of the decision reveals that the right of way in that case was acquired under article 567 of the old Civil Code, now article 652, which provides that the grantor of a piece of land in case of sale, exchange or partition is obliged to grant a right of way without indemnity to the grantee in case the land conveyed is surrounded by other estates of the grantor.

The case of *Cuaycong v. Benedicto*,[122] follows the rule in the *Archbishop* case that permissive use of a road or path no matter how long continued cannot create an easement of way by prescription. The point that the easement of way, as a discontinuous easement, cannot be acquired by prescription was not discussed. It was taken for granted that said easement could be acquired by prescription.

In *North Negros Sugar Co. v. Hidalgo*,[123] it was held that an easement of way may be voluntarily constituted in favor of a community, as allowed in article 531 of the old Civil Code, now article 614. The case was therefore different from the *Archbishop* and *Cuaycong* cases where the easement of way was claimed by prescription. In the *North Negros* case the easement of way was not being claimed by prescription. The finding in that case is that the owner of the servient tenement had voluntarily burdened his estate with the ease-

[118] G.R. No. L-10619, Feb. 28, 1958.
[119] 4 Codigo Civil, 6th ed., p. 641; 8 Sanchez Roman Derecho Civil, p. 488, Concurring Opinion, Laurel J., North Negros Co. v. Hidalgo, 63 Phil. 664, 695.
[120] 22 Phil. 450 (1912).
[121] 84 Phil. 541 (1916).
[122] 87 Phil. 781 (1918).
[123] 63 Phil. 664 (1936).

ment of way in favor of the public, as contemplated in article 594 of the old Code, now article 688.

In the 1958 *Ronquillo* case, it appears that for more than 20 years the plaintiffs had allegedly been using a road of passageway on the land of Vicente Roco, leading to a public street and market in Naga City. Roco's tenants and the administrator of the estate constructed a chapel on said passageway and enclosed it with a barbed wire fence, thus closing it hermetically and preventing the plaintiffs from having any access to the street and market. The trial court dismissed the complaint on the ground that a right of way is a discontinuous or intermittent easement which can be acquired only by title and not by prescription. The Supreme Court sustained the order of dismissal.

Some justices in the *Ronquillo* case opined that the easement of way could be acquired by prescription because section 41 of Act No. 190 makes no distinction as to the real rights which are subject to prescription. They think that there is no valid reason why the continued use of a path or a road or right of way by the party, specially by the public, for ten years or more, not by mere tolerance of the owner of the land, but through adverse use of it, cannot give said party a vested right to such right of way through prescription. This view is supported by the rule in American Jurisprudence that "the uninterrupted and continuous enjoyment of a right of way necessary to constitute adverse possession does not acquire the use thereof every day for the statutory period, but simply the exercise of the right more or less frequently according to the nature of the use.[124]

Justice J. B. L. Reyes in his concurring opinion in the *Ronquillo* case pointed out that the essence of the easement of way lies in the power of the dominant owner to cross or traverse the servient tenement without being prevented or disturbed by its owner. As a servitude, it is a limitation on the servant owner's rights of ownership because it restricts his right to exclude others from his property. But such limitation exists only when the dominant owner actually crosses or passes over the servient estate; because when he does not, the servient owner's right of exclusion is perfect and undisturbed. Since the dominant owner cannot be continually and uninterruptedly crossing the servient estate, but can do so only at intervals, the easement is necessarily of an intermittent or discontinuous nature.

Justice Reyes considered the matter from the viewpoint of the requirement in section 41 of the Code of Civil Procedure, now article 1118 of the new Civil Code, that adverse possession in prescription must be "continuous". Under article 523 of the new Civil Code, formerly article 430, possession of a right means to enjoy or exercise it. In the case of a right of way, its enjoyment or exercise (meaning its possession) is discontinuous. Hence, it cannot be acquired by prescription.

It should be noted that the classification of servitudes into continuous and discontinuous refers to their exercise, but not to their essence or permanency because a servitude, once established, is permanent or continuous.

REGISTRY OF PROPERTY

Sale of registered land is binding between the parties.—

The case of *Sapto v. Fabiana*,[125] reiterates the rule that under section 50

[124] 17 Am. Jur. 972.
[125] G.R. No. L-11285, May 16, 1958.

of Act 496, which provides that "no deed x x x shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration", an unregistered sale is valid as between the parties because actual notice is equivalent to registration.[126] Registration is intended to protect the buyer against claims of third persons arising from subsequent alienations by the vendor, and is certainly not necessary to give effect as between the parties to their deed of sale. The purpose of registration is merely to notify and protect the interests of strangers to a given transaction, who may be ignorant thereof, and the nonregistration of the deed evidencing said transaction does not relieve the parties thereto of their obligation thereunder.[127] In the *Sapto* case, a parcel of registered land was sold by the predecessors of the plaintiffs to the defendant. The sale was not registered but the vendee took possession of the land. No rights of third persons were involved. *Held:* The sale was binding on the plaintiffs as heirs of the vendor. Plaintiffs were ordered to execute a formal conveyance of land which may be registered.

DONATIONS

Illegal donation should not be confused with inexistent one.—

The case of *Liguez v. Court of Appeals* [128] stresses the distinction between an illegal and an inexistent donation of real property. If a donation of real property was not executed with all the formalities required by article 749 of the new Civil Code, as where it was not embodied in a public instrument, the donation is inexistent. Where the consideration for the donation is immoral, as where it was given to a girl in consideration of carnal intercourse, the donation is illegal, its *causa* being illegal. An inexistent donation may be attacked by the parties thereto, but an illegal donation cannot be attacked by either party under the rule of *in pari delicto*.

SUCCESSION

The case of *Magdalera v. Benedicto* [129] reiterates the rule that, because successional rights are vested as of the moment of death, as provided in article 777 of the new Civil Code, the legal heirs of the deceased may file an action arising out of a right belonging to their ancestor, without a separate judicial declaration as such, provided that there is no pending special proceeding for the settlement of the decedent's estate.[130] The sole legal heirs may file an action to revive a judgment decreed in favor of the deceased.

Testimony of witnesses prevails over that of expert.—

The rule in *Roxas v. Roxas* [131] that the positive declarations of the attesting witnesses to to the due execution of the will should prevail over the speculations of the expert hired by the oppositors was applied in *Matias v. Salud*.[132]

[126] Obras Pias v. Devera Ignacio, 17 Phil. 45; Gustilo v. Maravilla, 48 Phil. 412; Quimson v. Suarez, 45 Phil. 901; Winkleman v. Veluz, 43 Phil. 609, Galasinao v. Austria, 51 O.G. 2874; Carillo v. Salak, G.R. No. L-14888, May 13, 1952; Medina v. Imas and Warner, Barnes & Co., 27 Phil. 314

[127] Galanza v. Nuesa, G.R. No. L-6628, Aug. 31, 1954; Casica v. Villanueva, L-9590, April 30, 1957

[128] G.R. No. L-11240, 54 O.G. 4261 (1957); Feb. 12, 1958, res. on motion for reconsideration.

[129] G.R. No. L-9105, Feb. 28, 1958.

[130] Nuñez v. Atun, G.R. No. L-8018, Oct. 26, 1955.

[131] 48 O.G. 3177.

[132] G.R. No. L-10751, June 28, 1958. See also Galvez v. Galvez, 26 Phil. 243; Samson v. Tan Quintin, 44 Phil. 578.

Thumbmark is a sufficient signature.—

The *Matias case*[133] also adheres to the rule that the thumbmark of the testator is a sufficient signature.[134]

In such a case it is not necessary to state in the attestation clause that another person wrote the testator's signature at his request.[135] While in some cases the signing by mark was described in the will or in the attestation clause, it does not appear that the court ever held that the absence of such description is a fatal defect.

Oral evidence is not sufficient to prove contents and due execution of a lost holographic will.—

The case of *Gan v. Yap*,[136] lays down the very important precedent-setting rule that *"the execution and contents of a lost or destroyed holographic will may not be proved by the bare testimony of witnesses who have seen or read such will."* It may be proved by a photostatic copy or by a carbon or mimeographed copy or by other similar means, if any, whereby the authenticity of the handwriting of the deceased may be exhibited and tested before the probate court. This ruling was laid down, notwithstanding the doctrine of American courts that the contents of a lost holographic will may be proven by oral testimony.[137] The Supreme Court followed the Spanish doctrine.

In arriving at this conclusion, Justice Bengzon, speaking for the court, discussed the historical background of holographic and attested wills in this jurisdiction.

As noted in the *Gan* case, the Spanish Civil Code of 1889 permitted the execution of holographic wills along with other forms. The Code of Civil Procedure, Act 190, approved on August 7, 1901 adopted only one form, that is, the attested will, thereby repealing the other forms, including holographic wills. The New Civil Code effective on August 30, 1950 revived holographic wills in its articles 810 to 814. This is a radical departure from the form and solemnities provided for wills under Act 190 which for fifty years (1901 to 1950) required wills to be subscribed by the testator and three credible witnesses in each and every page; such witnesses to attest to the number of sheets used and to the fact that the testator signed in their presence and that they signed in the presence of the testator and of each other.

The object of such requirements is to close the door against bad faith and fraud, to prevent substitution of wills, to guarantee their truth and authenticity and prevent those who have no right to succeed the testator from inheriting his estate and to being benefited by the probate of the same. However, formal imperfections may be brushed aside when the authenticity of the instrument is duly proved.[138] Authenticity and due execution is the dominant requirement to be fulfilled when such will is submitted to the course for allowance. For that purpose the testimony of one of the subscribing witnesses would be sufficient if there is no opposition. If there is an opposition, the three must testify, if available. From the testimony of such witnesses and of other additional witnesses, the court may form its opinion as to the authenticity of the will and the circumstances of its due execution.

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[133] *Supra*, note 132.
[134] De Gala v. Ona, 53 Phil. 105; Dolor v. Diancin, 55 Phil. 479; Neyra v. Neyra, Lopez v. Liboro.
[135] Payad v. Tolentino, 62 Phil. 849.
[136] G.R. No. L-12190, Aug. 30, 1958.
[137] 41 ALR and 413-414.
[138] Abangan v. Abangan, 40 Phil. 476; Mendoza v. Pilapil, 72 Phil. 546; Rodrigues v. Yap, 68 Phil. 126.

On the other hand, in the matter of holographic wills, no such guarantees of truth and veracity are demanded, since they need no witnesses. They are only required to be entirely written, dated and signed by the hand of the testator himself. The law regards the document itself as material proof of authenticity, and as its own safeguard, since it could at anytime be demonstrated (or not to be) in the testator's handwriting. However, in the probate of a holographic will at least one witness who knows the handwriting and signature of the testator should explicitly declare that the will and the signature are in the testator's handwriting If the will is contested, at least three such witnesses are required. In the absence of witnesses familiar with the testator's handwriting and if the court deems it necessary, expert testimony may be resorted to.

The witnesses so presented need not have been witnesses to the execution of the holographic will. They may be mistaken in their opinion of the handwriting or they may deliberately lie in affirming that it is written in the testator's handwriting. However, the oppositor may present other witnesses who also know the testator's handwriting, or some expert witnesses, who after comparing the will with other writings or letters of the decedent, have come to the conclusion that such will has not been written by the hand of the deceased. And the court, in view of such contradictory testimony may use its own visual sense, and decide in the face of the document, whether the will submitted to it has indeed been written by the testator. Obviously when the will was allegedly lost and has not been produced in court, these means of opposition and of assessing the evidence are not available. And then the only guarantee of authenticity has disappeared, for as Scaevola observes, the holographic will is "una forma de testamento en la que todo la garantia consiste in la letra del testator."

In such a case, the oppositor cannot prove that the lost will was not in the decedent's handwriting. His witnesses who know the testator's handwriting have not examined it. His experts cannot testify because there is no way to compare the alleged will with other documents admittedly, or proven to be, in the testator's hand. The oppositor will, therefore, be caught between the upper millstone of his lack of knowledge of the will or the form thereof, and the nether millstone of his inability to prove its falsity. Again the proponent's witnesses may be honest and truthful; but they may have been shown a fake document, and having no interest to check the authenticity thereof have taken no pains to examine and compare. Or they may be perjurers boldly testifying, in the knowledge that none could convict them of perjury, because no one could prove that they have not been shown a document which they believed was in the handwriting of the deceased. Of course, the competency of such perjured witnesses to testify as to the handwriting could be tested by exhibiting to them other writings sufficiently similar to those written by the deceased; but what witness or lawyer would not foresee such a move and prepare for it? His knowledge of the handwriting established, the witness or witnesses could simply stick to his statement; he has seen and read a document which he believed was in the decedent's handwriting. And the court and the oppositor would practically be at the mercy of such witnesses or witness not only as to the execution but also as to the contents of the will.

Rule 77 of the Rules of Court, insofar as it allows secondary evidence to prove the contents of a lost or destroyed will could not have referred to a holographic will because this will could not be executed here at the time the Rules were promulgated.

Spanish commentators agree that one of the greatest objections to the holographic will is that it may be lost or stolen. This is an implied admission that such loss or theft renders the will useless. This must be so because the old Civil Code requires the holographic will to be protocoled and presented to the judge who shall subscribe it and require its identity to be established by the three witnesses who depose that they have no reasonable doubt that the will was written by the testator. And if the judge considers that the identity of the will has been proven, he shall order that it be filed. All these imply presentation of the will itself. The old Code also requires that the surviving spouse and the legitimate ascendants and descendants be summoned so that they make any statement that they may desire to submit with respect to the authenticity of the will. As it is universally admitted that the holographic will is usually executed by the testator and by himself alone to prevent others from knowing either its execution or its contents, such a requirement was imposed to enable the relatives to show that the will was not written by the testator and this they cannot do unless the will itself is presented to them. The law wants to give the relatives the choice of either complying with the will if they admit its authenticity or to oppose it if they think it is spurious. Such purpose is frustrated when the document is not presented for their examination. If it be argued that such choice is not essential because anyway the relatives may oppose, the answer is that their opposition will be at a distinct disadvantage and they have the right and privilege to comply with the will, if genuine, a right which they should not be denied by withholding inspection thereof from them.

Thus, under the old Code, the protocolization of a mutilated holographic will was denied even in the face of allegations and testimonial evidence ascribing the mutilation to the opponents of the will. The presentation of the will whole and unmutilated was required. The same idea is found in the *Fuero Juzgo* which requires that the will itself must be compared with specimens of the testator's handwriting. This means that the courts will not distribute the property of the deceased in accordance with his holographic will unless they are shown his handwriting and signature. These doctrines are applicable under the new Civil Code since it merely revived the holographic will provided in the old Code. Even the French civil law considers the loss of the holographic will as fatal.

Unlike holographic wills, ordinary wills may be proved by testimonial evidence when lost or destroyed. The difference lies in the nature of the wills. In holographic wills, the only guarantee of authenticity is the handwriting itself; in an attested wills, the testimony of the subscribing or instrumental witnesses (and of the notary, now). The loss of the holographic will entails the loss of the only medium of proof; if the ordinary will is lost, the subscribing witnesses are available to testify on its due execution.

In the case of ordinary wills, it is quite hard to convince three witnesses (four with the notary) to lie deliberately. Their lies could be checked and exposed, as also their whereabouts and acts on the particular day. And if they were intimates or trusted friends of the testator they are not likely to lend themselves to any fraudulent scheme to distort his wishes. Last but not least, they cannot receive anything on account of the will.

Whereas in the case of holographic wills, if oral testimony were admissible only one man could engineer the whole fraud this way: after making a clever or passable imitation of the handwriting and signature of the deceased,

he may contrive to let three honest and credible witnesses see and read the forgery; and the latter, having no interest, could easily fall for it, and in court they would in all good faith afvrm its genuineness and authenticity. They will having been lost—the forger may have purposely destroyed it in an "accident"—the oppositors have no way to expose the trick and the error, because the document itself is not at hand. And considering that the holographic will may consist of two or three pages, and only one of them need be signed, the substitution of the unsigned pages, which may be the most important ones, may go undetected.

If testimonial evidence of holographic wills be permitted, one more objectionable feature—feasibility of forgery—would be added to the several objections to this kind of wills listed by Castan, Sanchez Roman and Valverde and other well-known Spanish commentators and teachers of Civil Law. Justice J. B. L. Reyes, professor of Civil Law, says that "holographic wills are peculiarly dangerous in case of persons who have written very little. The validity of these wills depends exclusively on the authenticity of handwriting and if writing standards are *not procurable*, or not contemporaneous, the courts are left to the mercy of the mendacity of witnesses. It is *questionable* whether the *recreation* of the holographic testament will prove wise."

One more fundamental difference: in the case of a lost will, the three subscribing witnesses would be testifying to a fact which they saw, namely the act of the testator of subscribing the will; whereas in the case of a lost holographic will, the witnesses would testify as to their opinion of the handwriting which they allegedly saw, an opinion which can not be tested in court, nor directly contradicted by the oppositors, because the handwriting itself is not at hand.

In the *Gan* case, it appears that after the death of Felicidad Esguerra Alto, her relatives filed a petition for the probate of her alleged lost holographic will. The petition was opposed by her husband Ildefonso Yap. The due execution and contents of the lost will were sought to be proven by the oral testimony of her relatives who had allegedly read the will. Due to improbabilities in the testimonies of the witnesses for the proponent, the trial court and the Supreme Court ruled that it was not conclusively proven that Mrs. Yap had executed a holographic will. It was doubtful that the decedent would have shown her alleged holographic will to her relatives who received nothing under it. If she wanted to conceal her will from her husband, why did she not entrust it to her beneficiaries? The improbabilities and inconsistencies in the evidence for the proponent render said evidence deficient under Rule 77 of the Rules of Court.

In reserva troncal, each nephew or niece of the half blood gets ½ the share of each nephew or niece of the full blood.—

The case of *Padura v. Baldovino*,[139] resolves the novel question of how the reservees in *reserva troncal* who are nephews and nieces of the full and half blood should divide the reservable property, whether *per capita* or whether those of the full blood should get twice as much as those of the half blood. The answer is that the *reservatarios* who are nephews and nieces of the full blood are entitled to a share twice as much as that of the nephews and nieces of the half blood.

[139] G.R. No. L-11960, Dec. 27, 1958.

As stated by Alonso Martinez, the Chairman of the Code Commission, which drafted the old Code, the purpose of *reserva troncal* is to avoid "el peligro de que bienes poseidos secularmente por una familia pasen bruscamente y a titulo gratuito a manos extrañas por el azar de los enlaces y de muertes prematuras." This purpose is no longer necessary when the reservable property is already in the hands of the reservees whose respective share in the reversionary property should be governed by the ordinary rules of legal succession. In this spirit, it was held that upon the death of the ascendant reservista the reservable property should pass, not to all the *reservatarios* as a class, but only to those nearest in degree to the descendant (*prepositus*) excluding those *reservatarios* of more remote degree.[140] And within the third degree of relationship from the descendant (*prepositus*), the right of representation operates in favor of nephews.[141]

Proximity of degree and right of representation are basic principles of ordinary legal succession; so is the rule that whole blood brothers and nephews are entitled to a share double that of brothers and nephews of half blood. If in determining the rights of the *reservatarios inter se*, proximity of degree and the right of representation of nephews are made to apply, the rule of double share for immediate collaterals of the whose blood should likewise be operative.

In other words the *reserva troncal* merely determines the group of relatives (*reservatarios*) to whom the property should be returned; *but within that group*, the individual right to the property should be decided by the applicable rules of ordinary intestate succession, since, article 891 of the new Civil Code on *reserva troncal* does not specify otherwise. This conclusion is strengthened by the circumstance that the *reserva* being an exceptional case, its application should be limited to what is strictly needed to accomplish the purpose of the law. The restrictive interpretation is the more imperative in view of the new Civil Code's hostility to successional reservas and reversions, as exemplified by the suppression of the *reserva viudal* and the *reversion legal* found in articles 812 and 968 of the old Code.

There is another point that deserves consideration. Even during the *reservista's* lifetime, the *reservatarios*, who are the ultimate acquirers of the property, can already assert the right to prevent the *reservista* from doing anything that might frustrate their reversionary right, and for this purpose they can compel the annotation of their right in the Registry of Property even while the *reservista* is alive.[142] This right is incompatible with the mere expectancy that corresponds to the heirs of the *reservista*. It is likewise clear that the reservable property is no part of the estate of the *reservista*, who may not dispose of it by will as long as there are *reservatarios* existing.[143] The latter, therefore, do not inherit from the reservista, but from the descendant *prepositus*, of whom the *reservatarios* are the heirs *mortis causa*, subject to the condition that they must survive the *reservista*.[144] Had the nephews of whole and half blood succeeded the *prepositus* directly, those of full blood would undoubtedly receive a double share compared to those of the half blood, according to articles 1006 and 1008 of the new Civil Code. Why then should the latter receive equal shares simply because the transmission of the property was delayed by the interrugnum of the *reserva*? The decedent (*causante*),

[140] Florentino v. Florentino, 40 Phil. 489.
[141] Florentino case, *supra*; Nieva v. Alcala, 41 Phil. 915.
[142] Edroso v. Sablan, 25 Phil. 295.
[143] Arroyo v. Gerona, 58 Phil. 287.
[144] 6 Sanchez, Roman, 286; 6 Manresa, 6th ed., 274, 310.

the heirs, and their relationship being the same, there is no cogent reason why the hereditary portion should vary.

The contrary opinion of Sanchez Roman and Scaevola is based on the reason that the *reservatarios* are called by law to take the reservable property because they belong to the line of origin and not because of their relationship. But this argument, if logically pursued, would lead to the conclusion that the property should pass to any and all the *reservatarios*, as a class, and in equal shares, regardless of lines and degree. In truth, such is the thesis of Scaevola that later became known as the theory of *reserva integral*. But our Supreme Court and the Spanish Supreme Court rejected Scaevola's view. They believe that the reservable property should pass to the *reservatario* who is nearest in degree, according to the basic rules of intestacy. All told, reason and policy favor keeping to a minimum the alterations introduced by the *reserva* in the basic rules of succession *mortis causa*.

In the *Padura* case, it appears that Agustin Padura had with his first wife one child named Manuel Padura and with his second wife, two children named Fortunato Padura and Candelaria Padura. Agustin died on April 26, 1908. Fortunato died childless on May 28, 1908 and his share in Agustin's estate, consisting of four parcels of land, was inherited by his mother Benita Garing. Candelaria Padura died on August 26, 1934 survived by four legitimate children surnamed Baldovino, being full blood nephews and nieces of Fortunato. Manuel Padura died on October 6, 1940, survived by seven legitimate children, who are half blood nephews and nieces of Fortunato ,the *prepositus*. Benita Garing, the *reservista*, died on October 15, 1952. The Baldovino heirs claimed ½ of the reservable properties in representation of their mother Candelaria. The children of Manuel contended that the reservable properties should be divided equally among the eleven reservees. The trial court sustained the contention of Manuel's seven children. *Held:* The reservable properties should be divided in such a way that each of the four nephews and nieces of the full blood should get twice as much as each of the seven nephews and nieces of the half blood. .

Legacy that should go to legatee's decendants, not to her estate.—

Where it was provided in a will that certain legacies should be paid to the legatees, if living, and if not living then to the legatees' legitimate descendants, it is error to contend that, if the legatee is dead, the legacy should be paid to the estate of the deceased legatee, administered by her surviving husband. The legacy should be paid to the children of the legatee by her first marriage as they are her legitimate descendants.[145]

Decedent's half sister excludes relatives in fifth degree.—

The case of *Morin Vda. de Murbella v. Kilayko*,[146] applies the rule in article 962 of the new Civil Code that in legal succession "the relative nearest in degree excludes the more distant ones," and that, consequently, the decedent's half sister inherits his estate to the exclusion of the children of his deceased first cousins. Said children are in the fifth degree whereas the half sister is in the second degree.

The *Morin* case also held that where the decedent's estate was partitioned among his heirs in the fifth degree in November, 1951 and the partition was

[145] Arguelles v. De Olaguera, G.R. No. L-10164, Feb. 28, 1958.
[146] G.R. No. L-11141, June 27, 1958.

approved by the court on June 7, 1952 and the intestate proceedings were closed on November 14, 1953, the action of the decedent's half-sister, who was omitted in the partition, for the setting aside of the partition, which action was filed in October 1, 1954, could still be maintained. Reliance was placed on the rule that successional rights are vested as of the moment of death and on the holding in *Lajom v. Viola*[147] that an heir could bring a reivindicatory action for the recovery of his share within 10 years after the decree of distribution.[148] It was assumed in the *Morin* case that the partition involved therein was an extrajudicial one approved by the court. So, the 2-year period in section 4, Rule 74, Rules of Court for attacking an extrajudicial partition was also cited. The court did not cite, but it could also have cited the rule in article 1105 of the new Civil Code, which 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." Therefore, the Court in the *Morin* case rejected the plea that the decree of distribution was *res judicata*.

The Court did not cite, but it could have cited, the *Anuran v. Aquino*,[149] holding that a decree of distribution could be annulled on the ground of extrinsic fraud and *De Torres v. De Torres*[150] also involving the annulment of a partition which included persons who were not the decedents heirs.

Renunciation of future inheritance is void.—

Article 905 of the new Civil Code, which provides that "every renunciation or compromise as regards a future legitime between the person owing it and his compulsory heirs is void," was cited in *Porciucula v. Adamos*,[151] to support the view that a document signed by a child in favor of her father, wherein in consideration of a certain amount the child renounced "her share in her father's estate," is void. It is also void as a contract over future inheritance.

Partition with lesion.—

Article 1098 of the new Civil Code, which provides that "a partition, judicial or extrajudicial, may also be rescinded on account of lesion, when anyone of the coheirs received things whose value is less, by at least one-fourth, than the share to which he is entitled, considering the value of the things at the time they are adjudicated," refers to a partition among coheirs but not to a partition among some coheirs and the successors in interest of the other heirs. This is the holding in *Aguirre v. Atienza*.[152]

PRESCRIPTION

Contractual stipulation on period for bringing action must be reasonable.—

The case of *Pao Chuan Wei v. Nomorosa*[153] is authority for the rule that a provision in a surety bond requiring that claims thereunder should be filed with the surety company and, if rejected, should be brought in court within the total period of ninety (90) days from the date of the expiration of the bond is unreasonable. The effect of such a provision is that the claimant or obligee is given a period of 45 days within which to file the claim and another

[147] 78 Phil. 563.
[148] Ramirez v. Gmur, 42 Phil. 855, 869.
[149] 88 Phil. 29.
[150] 28 Phil. 49.
[151] G.R. No. L-11519, April 30, 1958.
[152] G.R. No. L-10665, Aug. 30, 1958.
[153] G.R. No. L-10292, Feb. 28, 1958.

45 days for presenting court action. In the *Pao Chuan* case the 3-month period was construed as the period for the filing of the claim with the surety company. The obligee was allowed the statutory ten-year period to file court action on the bond.

The *Pao Chuan* case implies that the parties may stipulate for a shorter period within which the action should be brought, but the period agreed upon should be reasonable. It was noted in said case that the provision in the Insurance Law, Act No. 2427, that "any stipulation in any policy of insurance limiting the time for commencing an action thereunder to a period of less than one year from the time the cause of action accrues is void," does not apply to surety bonds, which are not insurance policies.[154]

The said provision of the Insurance Law abrogates the holding in *E. Macias & Co. v. China Fire Insurance Co.*,[155] and *Teal Motor Co. v. Orient Insurance Co.*,[156] that a contractual period of three months within which to bring an action on a fire insurance policy is reasonable. But those two cases may also be cited as authority for the rule that the statutory period for bringing a suit may be modified by contractual stipulation as long as the period fixed is reasonable.

Another unreasonable stipulation regarding the period for bringing the action on a surety bond is found in *Ongsiaco v. World Wide Insurance & Surety Co., Inc.*[157] It appears in this case that in a surety bond executed on November 10, 1951, it was stipulated that the surety company's liability on the bond would expire on February 10, 1952. The bond was issued to guarantee the payment of promissory note dated November 10, 1951 which was to mature in ninety days or on *February 10, 1952*. When the note was not paid on that date, the creditor wrote to the surety company a letter notifying it of the debtor's failure to pay the amount of the note. The creditor sued the surety company and the debtor on *March 6, 1953*. The surety company contended that the action had prescribed because its liability on the bond expired on *February 10, 1952. Held:* If the company's liability expired on February 10, 1952, such a stipulation was "unfair and unreasonable for it practically nullified the nature of the undertaking assumed" by the company. The debtor had until February 10, 1952 to pay the amount of the note. If the debtor failed to pay and resort had to made to the surety for payment on the next day, it would be unfair for the latter to allege that its liability had already expired. And yet such is the stand taken by the surety company. As the terms of the bond should be given a reasonable interpretation, it is logical to hold that the liability of the surety attaches as soon as the principal defaults, and notice thereof is given the surety within a reasonable time to enable it to take steps to protect its interest.

Accrual of cause of action.—

In *Lee E. Won v. Wack Wack Golf & Country Club, Inc.*,[158] it appears that *in 1944* Lee E. Won purchased a membership certificate of defendant corporation from M. T. Reyes. In February or *April 1955* Lee asked the defendant to register the transfer in its books, pursuant to a provision of its by-laws that no assignment of any membership certificate shall be effective with respect to the club until such assignment is registered in the books of the club. Defendant

[154] Phil. Surety v. Royal Oil, G.R. No. L-9981, Oct. 31, 1957.
[155] 46 Phil. 845 (1924).
[156] 59 Phil. 808.
[157] G.R. No. L-12077, June 27, 1958.
[158] G.R. No. L-10122, Aug. 30, 1958.

refused to register the assignment to Lee. So Lee on April 26, 1955 brought this action to compel the defendant corporation to register the assignment in its books. The defendant pleaded prescription. The question is whether Lee was bound to register within a definite period the assignment in his favor.

Held: There is no such period. It is true that from the moment the certificate was assigned to Lee his right to have the assignment registered commenced to exist. But it does not follow that said right should be exercised immediately or within a definite period. The existence of a right is one thing, and its enforcement is another. The instant action was filed shortly after defendant's alleged refusal to register the assignment. Plaintiff's right was violated only sometime in 1955 and it could not have asserted any cause of action against the defendant before that time. The action had not therefore prescribed.

It should be noted in this connection that according to article 1150 of the new Civil Code, unless the contrary is specially provided, the time for prescription for all kinds of actions shall be counted from the day they may be brought.

Interruption of prescriptive period.—

Payment, fortuitous event, and moratorium may interrupt the prescriptive period which was running at the outbreak of the war. Section 50 of the Code of Civil Procedure, now article 1155 of the new Civil Code, provides that "when payment has been made upon any demand founded upon contract, or a written acknowledgement thereof or a promise to pay the same has been made and signed by the party sought to be charged, an action may be brought thereon x x x after such payment, acknowledgement, or promise." Thus payment of interest, which constitutes a recognition of the debt, interrupts the prescriptive period and prescription would commence to run only after such payment.[159]

As to fortuitous events, article 1154 of the new Civil Code provides that "the period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him." War is such a fortuitous event. Thus, it has been held that "the statute of limitations is only suspended by war, rebellion, or insurrection when the regular course of justice is interrupted to such an extent that the courts cannot be kept open." [160]

As to the moratorium, it has been repeatedly held that with respect to prewar obligations of debtors who did not suffer any war damage, the moratorium law interrupted the prescriptive period from March 10, 1945 to July 25, 1948 (the eve of the effectivity of Republic Act No. 342, which lifted the moratorium as to those who did not suffer any war damage), or a period of 3 years, 4 months and 16 days.[161]

The case of *Talens v. M. Chuckay & Co.*[162] illustrates these different forms of interruption of the prescriptive period. That case involves a mortgage which under the Code of Civil Procedure as well as under article 1142 of the new Civil Code prescribes after ten years. It appears in the *Talens* case that on April 15, 1933 Teodoro Talens and his brothers and sisters mortgaged a parcel of land to M. Chuakay & Co. to secure a loan of P900 with 12% interest from that date. In 1954 or some 21 years thereafter the living mortgagors and the

[159] Obras Pias v. Ignacio, 17 Phil. 45; Mina v. Court of Appeals, G.R. No L-7534, Sept. 27, 1955.
[160] España v. Lucido, 8 Phil. 419; Palma v. Celda, 81 Phil. 416; Alcantara v. Chico, CA 48 O.G. 150 (1952).
[161] Liboro v. Finance and Mining Investments Corporation, G.R. No. L-8948, Nov. 29, 1957; Magdalena v. Benedicto, G.R. No. L-9105, Feb. 28, 1958.
[162] G.R. No. L-10127, June 30, 1958.

heirs of those who died filed an action against the mortgagee for the cancellation of the the mortgage annotation, alleging that the action on the mortgage had already prescribed. However, it appears that the mortgagors had paid interest on April 15, 1941. The mortgagee filed a counterclaim dated September 6, 1954 for the foreclosure of the mortgage. The question was whether the mortgage action had already prescribed.

Held: The action had not prescribed. It commenced to run from April 16, 1941 when the interest was paid. It was interrupted when the war broke out and the courts were closed for some months. It was also interrupted by the moratorium law. Adding the period of the moratorium to the period during which the Court of First Instance of Nueva Ecija was closed and subtracting the total from the time that elapsed from the date prescription commenced to run to the date of the filing of the counterclaim for the foreclosure of the mortgage, it will be seen that the said counterclaim was set up in court within the prescriptive period of ten years.

The rule that the moratorium law suspended the running of the prescriptive period was reiterated in *Philippine National Bank v. Osena.*[163]

No interruption of the one year period provided in the Carriage of Goods by Sea Act.—

Article 1155 of the new Civil Code, which provides that "the prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgement of the debt by the debtor," does not apply to actions governed by The Carriage of Goods by Sea Act because such application would extend the one year period of prescription fixed by that law. It is desirable that matters affecting transportation of goods by sea be decided as promptly as possible. To apply article 1155 in such cases would unnecessarily extend the period and permit delays in the settlement of questions affecting transportation, contrary to the clear intent and purpose of the law.[164]

Criminal action may interrupt period for recovering in a civil action damages arising from crime.—

Article 1155 of the new Civil Code, formerly article 1973, which provides that "the prescription of actions is interrupted when they are filed before the court," was applied in *Degollacion v. Li Chui.*[165] It was ruled in this case that the criminal action interrupts the running of the four-year prescriptive period for claiming the civil liability arising from a crime, since under rule 107 of the Rules of Court, when the criminal action is instituted, the civil action is likewise deemed included unless there is an express waiver or reservation. It was assumed in this case that the civil liability arising from criminal liability should be claimed within four years. Article 1146 of the new Civil Code was not cited.

In the *Degollacion* case, it appears that in September 1949 Cluadio Degollacion was injured when the truck wherein he was riding was bumped by the truck owned by Li Chui and recklessly driven by Telesforo Sagayno, his employee. Sagayno was charged with less serious physical injuries through reckless imprudence but on February 16, 1954 the case was dismissed provisionally. On May 16, 1955 Degollacion instituted a civil action for damages against Li

[163] G.R. No. L-10880, Jan. 31, 1958, citing Manila Motor Co. v. Flores, 52 O.G. 5804 and other cases.
[164] Yek Tong Lin Fire & Marine Insurance Co., Ltd. v. American President Lines, Inc., G.R. No. L-11081, April 30, 1958.
[165] G.R. No. L-11640, May 28, 1958.

Chui. The trial court dismissed the action on the ground of prescription. *Held:* The action had not yet prescribed. The running of the four-year prescriptive period, which started on September 29, 1949, was interrupted on December 13, 1949, when the driver Sagayno was charged with physical injuries through reckless imprudence and started to run again after February 16, 1954 when the case was dismissed, without prejudice. The filing of the criminal action included the civil action for damages.

Civil action based on a quasi-delict prescribes in four years.—

The case of *Paulan v. Sarabia*[166] applies the rule in article 1146 of the new Civil Code, that actions based on quasi-delict should be brought within four years from the time the cause of action accrues and that the institution of a criminal action, based on the act constituting the quasi-delict, does not interrupt the 4-year period because quasi-delictual actions for damages may be brought independently of the criminal action according to article 31 of the new Civil Code. In collision cases the civil action for damages accrues on the day the collision took place.

In the *Paulan* case, it appears that on July 31, 1951, a truck owned and operated by Zacarias Sarabia and driven by Emilio Celeste fell into a creek after it had collided with another truck of the Mary Lim Line. As a result of the collision, Gaudencio Basco, a passenger in Sarabia's truck, died. On April 19, 1955 Basco's heirs filed a complaint for damages against Sarabia and Celeste. On July 11, 1955 Sarabia and Celeste filed a third-party complaint against Juan Caduñgan, the driver of the Mary Lim truck. This third-party complaint was amended on January 24, 1956 so as to include Maria Lim, owner of the truck driven by Saduñgan. The question was whether the action had prescribed as to Maria Lim since it was filed more than four years after the occurrence of the collision.

Held: The action against Maria Lim is based on quasi-delict. It had already prescribed since it was brought more than four years from the time the action accrued. The action against Lim accrued, not when the complaint against Sarabia was filed, but when the collision occurred. Article 1150 of the new Civil Code provides that "the time for prescription for all kinds of action, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought." Article 1146 does not contain any special provision for the accrual of the action based on quasi-delict. In collision cases, the action accrues on the day the collision occurred.

At any rate, the prescription of the action against Maria Lim would not prejudice Sarabia if he can prove that the accident was due to Maria Lim's driver and not to his (Sarabia's) driver. If both drivers were negligent, then Sarabia may invoke the negligence of Maria Lim's driver as to the share that pertains to Maria Lim, pursuant to articles 1222 and 2194 of the new Civil Code on solidary liability.

Justice J. B. L. Reyes in his concurring opinion explained that three hypotheses may be postulated as to the cause of Basco's death.

1. If the accident was due solely to the fault of Sarabia's driver, then Sarabia has no cause of action against Maria Lim.

2. If the accident was due to the fault of Lim's driver, then the action of Basco's heirs against Sarabia should be dismissed. Sarabia would then have no cause of action against Lim.

[166] G.R. No. L-10542, July 31, 1958.

3. If the accident was due to the common fault of both drivers, then the resulting liability of Sarabia and Lim may be either *mancomunada* or solidary. If the liability of the carriers is solidary, Basco's heir have no more right of acting against Lim because the action against Lim is quasi-delictual and it prescribes in four years counted from the date of the accident. Basco's heirs could hold Sarabia liable only to the extent of his share, since as to Lim's share, Sarabia could plead prescription pursuant to article 1222 of the new Civil Code. If the liability of Sarabia and Lim is *mancomunada* then each debtor will answer only for his share. Basco's heirs will just the same have no more cause of action against Lim.

Civil action for defamation prescribes within one year.—

In *Tejuco v. E. R. Squibb & Son Phil. Corp.*,[167] it appears that the plaintiff brought an action for damages against the defendant for having published a libelous letter on October 18, 1954. The action was brought 1 year and 6 months after the publication of the libel. The question was whether the action had already prescribed. Article 1161 of the new Civil Code provides that civil obligations resulting from criminal offenses shall be governed by the penal laws, subject to article 2177 and the provisions of the new Civil Code on human relations and damages. These provisions do not deal with the prescription of an action for damages in libel cases.

On the other hand, article 112 of the Revised Penal Code provides that civil liability shall be extinguished in the same manner as other obligations in accordance with the Civil Code. Article 1231 of the new Civil Code provides that prescription is one of the modes of extinguishing obligations. Article 1147 of the new Civil Code provides that an action for defamation must be filed within one year. The term defamation includes libel. Plaintiff's action had already prescribed.

Other rulings on prescription.—

(1) Article 1149 of the new Civil Code, which provides that actions for which no special period is fixed should be brought within five years, does not apply to the prescriptive period for an action to question the legality of a tax. "The Civil Code governs relations between private individuals, not between the latter and the State. These are governed by Administrative Law. The collection and refund of taxes is governed by the Internal Revenue Code and not by the Civil Code." [168]

(2) There is no substantial difference between an action for revival of judgment and an action for recovery of property adjudged under and by virtue of a final judgment.[169]

(3 An action to claim a commission, based on a written agency contract, may be brought within ten years from the date the commission became due and payable.[170]

(4) Where it is not clear from the allegations of the complaint just when plaintiff's cause of action accrued, and consequently it cannot be determined with certainty whether the action has already prescribed or not, the defense of

[167] G.R. No. L-11052, April 30, 1958.
[168] Lim Tio v. Court of Appeals, G.R. No. L-10681, March 29, 1958.
[169] Hizon v. Escocio, G.R. No. L-11093, March 20, 1958.
[170] Convets, Inc. v. National Development Company, G.R. No. L-10332, Feb. 28, 1958, 54 O.G. 5822.

prescription cannot be sustained in a mere motion to dismiss based on what appears on the face of the complaint. [171]

(5) Where in the partition agreement executed in 1941 in an intestate proceeding and approved by the court, it was stated that the sum of ₱12,000 would be paid to the plaintiff upon his appearance (said plaintiff being then absent from the Philippines and unheard from), it is erroneous to suppose that the cause of action for the recovery of the said sum accrued in 1941. The cause of action accrued in 1945 when the plaintiff returned to the Philippines and became aware of his right to the sum of ₱12,000. His right to sue started only from the moment he demanded payment and was not paid. His action brought in 1954 had not yet prescribed.[172]

(6) The period of prescription for an action to annul a sale of land bought by third persons should be counted from the date of registration of the deed of sale.[173]

(7) An action based on fraud can be instituted within four years from the discovery of the fraud, pursuant to article 1146 of the new Civil Code, formerly section 43 of the Code of Civil Procedure. Where a person through fraudulent representations in his application secured a free patent over a parcel of land, the aggrieved parties have a period of four years from the discovery of the fraud within which to recover the land.[174]

OBLIGATIONS IN GENERAL

Force majeure,—

A defect in the steering knuckle of a truck, which caused the accident resulting in the death of a passenger and injuries to another, is not fortuitous event that would excuse the carrier from the payment of damages for breach of the contract of carriage. This ruling in *Necesito v. Paras* [174a] is based on *Lasam v. Smith*,[175] where defects in the steering gear of an automobile were held not to be a fortuitous event and on *Son v. Cebu Autobus Co.*,[176] where it was held that the defective engine or "drag link spring" of the truck, which brought about the accident, does not exempt the carrier from liability for damages.

But where a guest passenger fell from a pickup truck as it was passing a bumpy and rough highway full of stones and the passenger was killed, it was held that the accident was due to an unforeseen event.[177]

In another 1958 case, it was held that the loss suffered by a government-owned corporation in consequence of the operation of a law (an act of the sovereign power) is beyond its control and constitutes force majeure. The State should not complain of a loss caused by itself.[178]

Action to fix term must procede action for specific performance.—

Article 1197 of the new Civil Code provides that "if the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof. The

[171] Sison v. McQuaid, 50 O.G. 96.
[172] Varela v. Marajas, G.R. No. L-10215, April 30, 1958.
[173] Avecilla v. Yatco, G.R. No. L-11578, May 14, 1958, 54 O.G. 6415, De Guinoo v. Court of Appeals, G.R. No. L-5341, June 25, 1955.
[174] Roco v. Gimeda, G.R. No. L-11651, Dec. 27, 1958.
[174a] G.R. No. L-10605, June 30, and Sept. 11, 1958.
[175] 45 Phil. 659.
[176] G.R. No. L-6155, April 30, 1954.
[177] Lara v. Valencia, G.R. No. L-9907, June 30, 1955.
[178] Sabelin v. Rehabilitation Finance Corporation, G.R. No. L-11790, Sept. 30, 1958.

courts shall fix the duration of the period when it depends upon the will of the debtor." Article 1180 provides that "when the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provisions of article 1197." Article 1197 was construed in the 1958 case of *Pages v. Basilan Lumber Co.*[179] where no term was fixed within which the defendant company would purchase the logs of the plaintiff.

It was held in the *Pages* case that when there is no time limit fixed for the performance of an obligation, plaintiff cannot well demand performance without first asking for the fixing by the court of the period or term. The period should first be determined because in the absence of such term or period, there can be no breach of contract or failure to perform the obligation. In obligations whose term is not fixed, the only action that can be maintained is that to ask the court to determine the term within which the obligor must comply with his obligation. This is so because the fulfillment of the obligation itself cannot be demanded until after the court has fixed the term for its compliance and such period has arrived.[180]

But in *Tiglao v. Manila Railroad Company,*[181] a case involving the salary differentials of retired employees, the court fixed the term of the obligations to pay said salary differentials, although the action was to enforce the payment of said obligation. No separate action was required to fix the term as that would result only in multiplicity of suits. A separate action would only be a mere formality and would serve no other purpose than to delay the payment of the claim.

Resolution of reciprocal obligations.—

The case of *Albert v. University Publishing Co., Inc.,*[182] illustrates the resolution of reciprocal obligations. It appears in that case that Justice Mariano Albert and defendant company entered into a contract on July 19, 1948 whereby the company agreed to publish Albert's commentaries on the Revised Penal Code and to pay him ₱30,000 in eight quarterly installments of ₱3,750 each, beginning July 15, 1948. The amount of ₱30,000 included the liquidated shares of Albert in the company's sale of the reprinted copies of his book. As of December 24, 1948, the company had paid Albert only ₱7,000. The first quarterly installment of ₱3,750 due on or before October 15, 1948 was not paid on time. As of that date, it paid Albert only ₱2,000. And as of January 15, 1949, the due date of the second installment, the payment of the company was short of ₱500. The contract provided that failure on the part of the company to pay in full any installment would render the rest of the installments due and demandable. Albert filed a suit for the collection of the balance of ₱23,000.

Held: Albert's suit was "not for recission of a contract" but was "for a resolution of reciprocal obligations because one of the obligors failed to comply with that which was incumbent upon him" as provided in article 1124 of the old Civil Code, now article 1191. It was ruled that the amount claimed by Albert may be treated as liquidated damages but as the amount appears to be excessive, it was reduced to ₱15,000.[183]

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[179] G.R. No. L-10679, Nov. 29, 1958.
[180] Ungson v. Lopez, CA 50 O.G. 4297; Concepcion v. People, 74 Phil. 63; Gonzales v. Jose, 66 Phil. 379
[181] 52 O.G. 179 (1956).
[182] G.R. No. L-9800, April 18 and Sept. 17, 1958.
[183] Note that the court distinguishes "rescission" from "resolution". A similar distinction is made in Salas Rodriguez v. Leuterio, 47 Phil. 818. Art. 1124 of the Old Code used the word "resolve", whereas art. 1191 now uses "rescind".

EXTINCTION OF OBLIGATIONS

Incomplete performance does not operate as full payment.—

Article 1235 of the new Civil Code, which provides that "when the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with," was cited in *Joe's Radio & Electrical Supply v. Alto Electronics Corporation*[184] to support the view that the delivery to the vendee of two television sets worth ₱2,928 cannot be considered as a full settlement of the vendor's obligation amounting to ₱49,378 if the vendee accepted the two sets conditionally. The court also relied on the rule that retention of payment shall not be considered in full satisfaction of the claim where the amount accepted does not purport to cover the amount in controversy, when there is nothing to show that the payment was accepted as a definite and final settlement, or when the amount is transmitted under circumstances showing that it was tendered as a payment of indebtedness which was thereafter to be adjuted by the parties.[185] Moreover, the vendor admitted in its answer to the complaint that it had not paid the balance of ₱49,378.

Ineffectual payment by means of checks.—

The rule in article 1170 of the old Civil Code, now found in article 1249, that payment by means of checks "shall produce the effects of payment only when realized or when, by the fault of the creditor, the privileges inherent in their negotiable character have been lost," was applied in *Hidalgo v. Heirs of D. Tuazon, Inc.*[186] In this case, it appears that on December 6, 1944 Eduardo Hidalgo tendered to Jose Tuazon, president of defendant corporation, a Bank of Taiwan check for ₱10,673 as payment of his obligation. Tuazon rejected the tender. It was held that in view of this rejection, the check did not operate as payment. Eduardo Hidalgo should have consigned the amount due after its tender was rejected.

It also appears that on December 29, 1944, Felipe Hidalgo tendered to Jose Tuazon, through his brother Nicasio, a Philippine National Bank check for ₱10,505 as payment of his obligation. The tender was not rejected, but the check was not cashed. It was held that the tender did not operate as a payment because the check was not cashed and there was no proof that the check was impaired due to the fault of Jose Tuazon.

However, it was also held that, in view of the tender of the two checks, the obligations of Eduardo and Felipe should be revalued under the Ballantyne scale. The rate of exchange in December 1944 should be applied.

In another case, it was held that a check intended to pay a debt, if rejected by the obligee or creditor, is not a valid tender of payment.[187] The fact that in previous years payment in check by the debtor was accepted by the creditor does not place the latter in estoppel or preclude him from requiring the debtor to pay his obligation in cash, as required in articles 1249 and 1257 of the new Civil Code.

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[184] G.R. No. L-12876, Aug. 22, 1958.
[185] 15 C.J.S. 720-721.
[186] G.R. No. L-10871, June 27, 1958.
[187] Lapuz Sy v. Eufemio, G.R. No. L-10572, Sept. 30, 1958 citing Belisario v. Natividad, 60 Phil. 156; Villanueva v. Santos, 67 Phil. 648; Cuaycong v. Rius, 47 O.G. 6125; Legarda v. Mialhe, G.R. No. L-3434, April 28, 1951; Court of First Instance of Tarlac v. Vicente, G.R. No. L-4191, April 30, 1952.

In the *Lapuz* case, it appears that on December 20, 1949 in a case for support S. Eufemio and Carmen Lapuz Sy entered into a compromise agreement whereby Eufemio agreed to pay Lapuz ₱10,000 cash and ₱25,000 in installments at the rate of ₱2,500 a year for 10 years on condition that Lapuz would move for the dismissal of a certain civil case and a criminal case for bigamy. Later or on August 10, 1953 Lapuz sued Eufemio for legal separation and dissolution of the conjugal partnership.

On January 10, 1955 Eufemio filed a manifestation averring that Lapuz refused to accept a tender of payment of the sum of ₱3,250 in compliance with their compromise agreement and that in view of such refusal, he was consigning the amount in court. Lapuz replied that the tender was made in check and that its delivery was conditioned on her signing a motion for the dismissal of the legal separation case. *Held:* The consignation was void. Eufemio should pay the amount due in cash.

Payment of obligation incurred during the Japanese time.—

It is settled that if a loan contracted during the Japanese occupation is payable within a period of time embracing the Japanese occupation alone or the Japanese occupation and the liberation, the payment may be revalued under the Ballantyne scale. On the other hand, if the loan was payable after liberation only, then it should be paid without revaluation under the Ballantyne scale.[188]

The 1958 case of *Valero v. Sycip*[189] presents a novel situation because in this case the loan of ₱250,000 contracted on August 1, 1944 was payable on August 1, 1945 in ₱250,000 Philippine currency, but the debtor was given the option of paying it on or before August 1, 1945 in the sum ₱300,000 Philippine currency.

Held: The case falls within the rule that the loan should be revalued because the debtor could have paid it during the Japanese time. The obligation was facultative and not alternative, since the option to pay within the first year was a privilege granted to the debtor, not a duty imposed upon him. His failure to pay the note during the Japanese occupation does not change the fact that he had the option to pay, and could have paid, during that period.

In another 1958 case, it was held that where the obligation could have been paid during the Japanese time and tender of the amount due was made in December, 1944 by means of checks, which were not cashed, the debtor's obligation should be revalued under the Ballantyne scale.[190]

Another novel factual situation is presented in *Lopez v. Ochoa*.[191] In this case the agreement was that the loan of ₱15,000 contracted on August 26, 1943 would be paid only after the expiration of two years from that date. However, on June 12, 1944 the creditor accepted ₱5,000 in Japanese notes as part payment of the principal. *Held:* The receipt of said amount operated as a waiver of the stipulation that no payment could be made before expiration of

[188] De Asis v. Agdamag, G.R. No. L-3709, Oct. 25, 1951; Roño v. Gomez, 46 O.G. (Supp. 11) 339 Gomez v. Tabia, 84 Phil. 269 (1949).
[189] G.R. No. L-11119, May 28, 1958.
[190] Hidalgo v. Heirs of D. Tuason, Inc., G.R. No. L-10871, June 27, 1958; Wilson v. Berkenkotter, 49 O.G. 1401; De la Cruz v. Del Rosario, G.R. No. L-4859, July 24, 1951; Arevalo v. Barretto, G.R. No. L-3519, July 31, 1951; Gregorio Araneta, Inc. v. Tuason de Paterno, G.R. No. L-7377, Jan. 31, 1956.
[191] G.R. No. L-7955, May 30, 1958.

the 2-year period. Hence, the balance should be revalued in accordance with the Ballantyne scale.

The rule that there would be no revaluation of an obligation incurred during the Japanese time if it was payable only after liberation was followed in *Jimenez v. Bucoy.*[192]

The same rule was applied in *Sternberg v. Solomon,*[193] where the obligation was contracted on August 7, 1944 and the stipulation was that it should be paid on August 7, 1945 or after liberation.[194]

Creditor may make application of payments if debtor fails to exercise such right.—

The case of U.P. Recreation Club, Inc. v. Alto Surety & Insurance Co., Inc.[195]illustrates articles 1252 and 1254 of the new Civil Code regarding application of payments. It lays down the rule that while the Civil Code gives to the debtor the right to provide for the application of payments where he has various debts of the same kind in favor of one and the same creditor, which right must be exercised at the very time he effects the payment, according to article 1252, yet, upon the failure of the debtor to exercise such right, the creditor is empowered to make the application as he deems fit. Our law is silent as to who has the right to exercise such privilege when the debtor does not avail of it, but American jurisprudence on the matter sustains the general rule that if a debtor fails to exercise his right of directing the manner in which a payment is to be applied, the creditor may make the application as he may see fit and in such a manner as is beneficial to himself. This rule is not absolute. It has also been held that a creditor holding secured and unsecured claims may apply an undirected payment to an unsecured claim.

In the *U.P. Recreation* case, it appears that Nereo Andolong leased from the U.P. Recreation Club Inc. its recreation establishment inside the U.P. Compound in Diliman, Quezon City on a month-to-month basis and at a rental of ₱800 a month beginning December 1, 1953. The Alto Surety & Insurance Co. filed a bond to secure the payment of rentals amounting to ₱9,600 or for a one year period. On December 20, 1954 the lessor filed a suit against Andolong and his surety for the recovery of ₱3,400 as the unpaid rentals. Despite the complaint, Andolong continued to occupy the establishment and he remained as lessee up to September 30, 1955. During this second year of the lease (not covered by the bond), he paid rentals amounting to ₱4,500, leaving an unpaid balance of ₱3,500. The complaint was amended to include this additional unpaid balance.

The question was whether the payments made by Andolong during the second year amounting to ₱4,500 could be applied to the unpaid rentals for the first year. Andolong did not specify the months for which he made payments. The plaintiff-lessor applied the said sum of ₱4,500 to the rentals for the second year. The surety contended that it should be applied to the unpaid rentals for the first year. *Held:* The lessor had the right to apply the payments during the second year of the lease to the rentals due for that period since the lessee had not indicated the months to which the payments should be applied.

Four concurring justices found that Andolong had in fact exercised the right to apply his payments during the second year to the rentals due for that

[192] G.R. No. L-10221, Feb. 28, 1958, 54 O.G. 7660.
[193] G.R. No. L-10691, Jan. 31, 1958.
[194] Wilson v. Berkenkotter, 49 O.G. 1401; Kare v. Imperial, G.R. No. L-7906, Oct. 22, 1957 and many other cases
[195] G.R. No. L-11181, Sept. 17, 1958.

year and that the lessor did not apply said payments to the unpaid rentals for the first year of the lease because these rentals were covered by a bond. Justice J. B. L. Reyes made the observation that a guaranteed obligation is more onerous than an unsecured claim.

Secured debts are more onerous than unsecured debts.—

In *Traders Insurance & Surety Co., Inc. v. Dy Eng Hiok*,[196] it was held that where a debtor owed a prior unsecured debt and a subsequent secured debt and he made payments without indicating to which debt the payments should be applied, said payments should be imputed to the more onerous debt, which from the standpoint of the debtor is the secured debt, according to articles 1252 and 1254 of the new Civil Code. Debts covered by a guaranty are deemed more onerous than the simple obligations because the debtor in such debts may be subjected to action not only by the creditor but also by the guarantor, and this even before the guaranteed debt is paid by the guarantor, according to article 2071 of the new Civil Code. Hence, the payment of the guaranteed debt liberates the debtor from liability to the creditor as well as to the guarantor, while payment of the unsecured obligation only discharges him from possible action by only one party, the unsecured creditor. The rule that guaranteed debts are to be deemed more onerous to the debtor than those not guaranteed and entitled to priority in the application of the debtor's payments was already recognized in Roman Law and has passed to us through the Spanish Civil Code. Manresa says that "atendiendo al gravamen, la deuda garantida es mas onerosa que la simple."

The *Traders* case is clearly distinguishable from *Hongkong & Shanghai Bank v. Aldanese*[197] and *Commonwealth v. Far Eastern Surety & Insurance Co.*[198] where the debtor is each case owed the creditor a single debt of which only a portion was guaranteed. In those cases, the guarantor had no right to demand that the partial payments made by the principal debtor should be applied precisely to the portion guaranteed. The reason is that the rules for the imputation of payments presuppose that the debtor owes several distinct debts of the same nature and does not distinguish between portions of the same debt. Hence, where the debtor only owes one debt, all partial payments must necessarily be applied to that debt, and the guarantor answers for any unpaid balance, provided it does not exceed the limits of the guaranty. Any other solution would defeat the purpose of the security.

In the *Traders* case, the guaranty bond secured the performance of the debtor's obligation to remit to the distillery company the proceeds of his sales during the period of the guaranty or from August 4, 1951 to August 4, 1952. This obligation was entirely distinct and separate from his obligation to remit the proceeds of his sales during a different period, say, before August 4, 1951. Therefore, the debtor actually owed two distinct debts, one for the value of his sales before August 4, 1951 and the other for the value of his sales between that date and August 4, 1952. There being two debts, his partial payments had necessarily to be applied, in the absence of express imputation, first to the obligation that was more onerous for him, which was the one secured by the guaranty.

It is legally unimportant that the creditor should have applied the payments to the prior debt. Where the debtor has not expressly elected any par-

[196] G.R. No. L-9073, Nov. 17, 1958.
[197] 48 Phil. 990 (1924).
[198] 83 Phil. 305 (1949).

ticular obligation to which the payment should be applied, the application by the creditor, in order to be valid and lawful, depends (1) upon his expressing such application in the corresponding receipt and (2) upon the debtor's assent, shown in his acceptance of the receipt without protest. This is the import of article 1252 which provides that "if the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract."

Ultimately, therefore, the application by a creditor depends upon the debtor's acquiescence thereto. In the *Traders* case there was no evidence that the receipts for payment expressed any application of payment or that the debtor agreed to the same. This is what distinguishes the *Traders* case from the *U. P. Recreation* case.

Nature of Consignation—

Consignation requires tender of payment and judicial deposit of the thing due. The act of the creditor in depositing the amount due in the bank without notifying the debtor of that fact is not a tender of payment. Nor can it be regarded as consignation since no suit was filed.[199]

A mere telegraphic transfer sent to the clerk of court is not the tender of payment and consignation contemplated in articles 1256, 1257 and 1258 of the new Civil Code.[200]

But failure of the lessee to consign the rentals tendered to and improperly rejected by the lessors did not render the lessee in default (*mora solvendi ex re*) nor render him answerable for the subsequent loss of the building due to a fortuitous event. The only effect of the failure to consign the rentals in court is that the obligation to pay them subsisted [201] and the lessee remained liable for the amount of the unpaid contract rent. On the other hand, the failure to consign did not wipe out the *mora creditoris* of the lessor in refusing to accept the proferred rentals.[202]

Failure to give first notice renders consignation ineffectual.—

In order that consignation may be valid, there should be notice before and after the consignation. The reason is to enable the creditor to withdraw the property deposited. It would be unjust to make him suffer the risk for the deterioration or loss of the thing deposited if he could not have taken possession of said goods or money by reason of lack of knowledge of the consignation.[203]

The requisites of consignation are as follows: (1) there must be a debt due; (2) the consignation of the obligation had been made because the creditor to whom tender of payment was made refused to accept it or because he was absent or incapacitated, or because several persons claimed to be entitled to receive the amount due; (3) previous notice of the consignation had been given to the person interested in the fulfillment of the obligation; (4) the amount due was placed at the disposal of the court; and (5) after the consignation had been made the person interested was notified thereof. Failure to give the first notice is a fatal defect.[204]

[199] El Hogar Filipino v. Angeles, G.R. No. L-11613, Sept. 30, 1958.
[200] Alemars v. Cagayan Valley College, Inc., G.R. No. L-11270, April 28, 1958.
[201] Philippine National Bank v. Relativo, G.R. No. L-5298, Oct. 29, 1952.
[202] Vda. de Villaruel v. Manila Motor Co., Inc., G.R. No. L-10394, Dec. 13, 1958.
[203] Cabanos v. Calo, G.R. No. L-10927, Oct. 30, 1958.
[204] Ponce de Leon v. Syjuco, G.R. No. L-3316, Oct. 31, 1951.

However, the first notice may be made simultaneously with the tender of payment.[205]

It should be noted that the *Cabanos* case deals with the *pacto de retro* sale. There are conflicting rulings on whether consignation is necessary in a *pacto de retro* sale.[206]

In compensation, each obligor must be reciprocally bound.—

In *Zuluaga v. De Erquiaga*,[207] it appears that Santiago de Erquiaga was indebted to the estate of Joaquin Zuluaga, represented by Manuel Zuluaga as administrator, in the sum of ₱20,000, which was part of the price paid by Erquiaga for Joaquin Zuluaga's interest in a certain partnership. Erquiaga claimed that he was not liable to pay the said sum because he had made loans to Joaquin and Manuel Zuluaga amounting to more than ₱20,000. The question was whether it was a case of compensation. *Held:* The alleged loans were made by the partnership to Joaquin, not by Erquiaga. Said advances might have been liquidated already when the debt of ₱20,000 was acknowledged by Erquiaga. There was no showing therefore that the estate of Joaquin was indebted to Erquiaga. Compensation was not allowed.

In another 1958 case compensation was allowed with respect to the dividends due from a corporation to its stockholder and the debt of the stockholder to the corporation.[207a]

Nature of novation.—

While novation is one of the modes of extinguishing obligations, it does not necessarily result in the extinction of the obligation. Novation produces only a relative extinguishment of obligations in the sense that by this mode, obligations are not extinguished but are substituted by others. Novation under the rules of the civil law, whence the term has been introduced into the modern nomenclature of the common law jurisprudence, was a mode of extinguishing one obligation by another: the substitution, not of a new paper or note, but of a new obligation in lieu of an old one, the effect of which was to pay, dissolve, or otherwise discharge it. Article 1291 of the new Civil Code provides that there is novation where another is substituted in place of a debtor, or somebody is subrogated to the rights of the creditor, or where there is a change in the object of the obligation or an alteration or modification of its principal terms and conditions. Under article 1292 of the new Civil Code, "in order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligations be on every point incompatible with each other." In other words, novation may be effected not only by expressly declaring that the parties intended such a change but also where the new obligation is in all respects incompatible and cannot stand side by side with the former one.

The foregoing rules were applied in *Philippine National Bank v. Mallari*,[208] where it appears that during the pendency of a suit brought by the bank against its debtor, Hermogenes Mallari, and his surety, the First National Surety &

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[205] Valenzuela v. Bakani, G.R. No. L-4689, Res. of Sept. 29, 1953.

[206] Rosales v. Reyes, 25 Phil. 495; Canuto v. Mariano, 37 Phil. 840; Paez v. Magno, 83 Phil. 403; Estrada v. Noble, CA 49 O.G. 139; Rumbaoa v. Arzaga, 84 Phil. 812; Ocampo v. Potenciano, CA 48 O.G. 2230; hold that consignation is not necessary in *pacto de retro* sales, while Rivero v. Rivero, 80 Phil. 802; Angao v. Clavano, 17 Phil. 52 hold that such consignation is necessary.

[207] G.R. No. L-10891 Dec. 27, 1958.

[207a] G.R. No. L-6817, July 31, 1958. Same holding in Brimo v. Goldenberg & Co., Inc., 89 Phil. 502 that a stockholder's credit can be compensated with his debt to the company.

[208] G.R. No. L-11862, Aug. 29, 1958.

Assurance Co., Inc., for the recovery of ₱2,000 plus interest (there having been a writ of preliminary attachment levied on Mallari's palay), Conrado Guanzon, Mallari's employer, wrote a letter to the bank wherein he offered to pay the obligation of Mallari in installments provided that the attached palay was released to Guanzon. The bank accepted the offer. Guanzon made an initial payment to the bank of ₱1,000. The order of attachment was lifted but the case was not dismissed. Guanzon did not make any further payments. The bank continued its suit against Mallari and its surety. The quetion was whether there was a novation of the obligation.

Held: There was a novation. Guanzon's agreement with the bank wiped out the original obligation of Mallari. There was a substitution of debtor as well as an alteration of the terms and conditions of the original contract. The surety's liability was extinguished.

Animus novandi is necessary,—

The case of *Joe's Radio & Electrical Supply v. Alto Electronics Corporation*,[209] like the *Mallari* case, *supra*, reaffirms the rule that, under article 1292 of the new Civil Code (cited above) novation cannot take place without the *animus novandi*, or the intention of the parties to do so. The intent to novate the old obligation must either be express or else clearly apparent from the incompatibility on all points of the old and new obligations. Aside, therefore, from the changes or differences effected by the new agreement upon the terms of the old agreement, absolute incompatibility between the two obligations should be evident as showing the *animus novandi*, in the absence of an express declaration to that effect by the parties.[210]

In the *Radio & Electrical Supply case*, it appears that Joe's Radio & Electrical Supply and the Alto Electronics Corporation entered into a dealership agreement whereby the former agreed to buy from the latter 500 television sets. The vendor delivered 250 sets which were fully paid for. The vendee made an advance payment of ₱66,150 for the second batch of 250 television sets. No delivery was made and the vendee sued the vendor and its surety for the recovery of said sum of ₱66,150 plus damages. During the pendency of the suit, the vendor and the vendee executed an agreement dated July 2, 1954 wherein the vendor admitted having received ₱66,150 from the vendee, which together with interest then amounted to ₱70,008. The vendor agreed to liquidate this debt by delivering to the vendee 66 television sets within 90 days from July 2, 1954. However, under this second agreement the vendor delivered to the vendee only 13 sets valued at ₱20,629. The question was whether the original contract was novated by the agreement of July 2, 1954.

Held: The second agreement *pendente lite* did not constitute a novation of the original contract. The second agreement recognized the existence of the first agreement because it was stipulated that if the 66 sets were not all delivered, any partial deliveries would be applied "on account of the claims, subject matter of the complaint," meaning the claims under the original agreement. Hence, the second agreement merely gave the vendor more time and another opportunity to liquidate its original obligation and thus escape the sanction of the first agreement. The first agreement would be extinguished

[209] G.R. No. L-12376, Aug. 22, 1958.

[210] La Tondeña, Inc. v. Alto Surety & Insurance Co., Inc., G.R. No. L-10132, July 18, 1957; Lerma v. Enriquez, G.R. No. L-12081, May 30, 1958; Pascual v. Lacsamana, G.R. No. L-10060, Nov. 27, 1957; Santos v. Acuña, G.R. No. L-8881, Oct. 31, 1956; Mendoza v. De Guia, G.R. No. L-1628, Nov. 3, 1959; Inchausti v. Yulo, 34 Phil. 978; Levy Hermanos, Inc. v. Capule, 53 Phil. 624; Zapanta v. De Rotaeche, 21 Phil. 154.

upon full performance of the terms of the second agreement. The stipulation in the original contract for liquidated damages subsisted.

More extension of time for the payment of a debt is not novation.[211]

Substitution of debtors requires creditor's consent.—

The rule in article 1293 of the new Civil Code that substitution of a new debtor in place of the original one requires the creditor's consent was applied in *Vda. de Pirovano v. De la Rama Steamship Co., Inc.*[212] In this case it appears that Estefania R. Vda. de Pirovano was entitled to receive from the De la Rama Steamship Co., Inc. the sum of ₱221,975 as dividends but the corporation refused to pay the amount because Mrs. Pirovano was allegedly indebted to it in the sum of ₱44,202 as cash advances. However, she contended that those advances were assumed by her father, Esteban de la Rama. The question was whether such assumption of debt was binding on the De la Rama Steamship Co., Inc.

Held: Such assumption of debt, treated as a novation, was not binding upon the defendant corporation because it did not consent to the substitution of debtors. The dividends due to Mrs. Pirovano may be set off against the advances due from her.

Subrogation as a form of novation.—

In *Geonanga v. Hodges*,[213] it appears that Benjamin Geonanga and Emilio Gotera paid to the Rehabilitation Finance Corporation, with its consent, the debt of the spouses Raymundo Robles and Margarita Mondejar. *Held:* Such payment entitled Geonanga and Gotera to be legally subrogated to all the rights of the creditor bank, not only against Robles and Mondejar, but also against third persons, pursuant to articles 1237, 1302 and 1303 of the new Civil Code.

In another 1958 case,[214] it was held that there is no novation if the surety made payments to the creditor on the principal obligation and such payments were in accordance with the bond and the indemnity agreement executed by the defendant and the principal debtor in favor of the surety company. The payments did not alter the principal obligation.

CONTRACTS

Perfected oral contract of lease.—

The case of *Gil Vda. de Murciano v. Auditor General*[215] applies certain elementary principles of contracts. Where an offer to pay rental is made in behalf of the occupant of a parcel of land and the offer is unconditionally accepted, a contract is thereby perfected in accordance with article 1319 of the new Civil Code. Once perfected a contract is binding on both parties and its validity or compliance cannot be left to the will of one of them according to article 1308. The absence of a writing does not preclude a perfected contract from having a binding effect as long as it does not belong to the class called "formal" or "solemn" wherein a writing is essential to its binding effect. Nor may contracts deliberately entered into be overturned by reason of mistake of one of the parties to which the other in no way has contributed.[216]

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[211] Lerma v. Reyes, G.R. No. L-12081, May 30, 1958.
[212] G.R. No. L-6817, July 31, 1958.
[213] G.R. No. L-11828, April 21, 1958.
[214] Manila Surety & Fidelity Co., Inc. v. Cruz, G.R. No. L- 10414, April 18, 1958.
[215] G.R. No. L-11744, May 28, 1958.
[216] Gonzales v. Mondragon, 48 O.G. 560; Tanda v. Aldaya, G.R. No. L-3278, July 28, 1951.

In the *Gil* case, it appears that on July 27, 1950 the Philippine Army through the Chief of Engineers offered to Pilar Gil Vda. de Murciano the sum of ₱15,067.31 as rentals for the use of her land from May 1, 1948 to October 8, 1949. Mrs. Murciano accepted the offer and signed the quitclaim agreement prepared by the army authorities for that purpose. However, the Chief of Staff refused to sign the agreement and offered to pay Mrs. Murciano only ₱3,386. Protracted negotiations followed, resulting in the payment of ₱7,000 "without prejudice to further claims on the balance." Mrs. Murciano asked the Auditor General for payment of the balance. Upon recommendation of the Chief of Staff, the Auditor General denied the claim for the balance.

Held: The Auditor General erred in denying the claim. The contract for the payment of ₱15,067 was perfected. The army authorities could not by any unilateral action modify or alter the perfected contract by reducing the stipulated rental. However, interest on the balance of ₱8,067 should be paid only from the date when the petitioner filed her claim with the Auditor General. There was no evidence that she demanded the balance prior to that time. Default only commences from the date of extrajudicial demand and it is only from the date of default that interest may be recovered according to articles 1169 and 2209 of the new Civil Code.

Breach of executory contract gives rise to damages.—

The case of *Valencia v. Rehabilitation Finance Corporation*[217] illustrates the perfection of a contract initiated by means of an advertisement for bids and the recovery of damages in consequence of the bidder's failure to perform his obligations under the perfected contract. Article 1305 of the new Civil Code provides that "a contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. The offer must be certain and the acceptance absolute." Article 1326 of the same code 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 appear." Article 2201 provides that in contracts, "in case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the nonperformance of the obligation."

In the *Valencia* case, it appears that the RFC accepted the bid of Brigido Valencia to install for ₱12,800 the plumbing in its building in Davao City. After being notified of the acceptance of his bid, Valencia refused to sign the contract and told the RFC branch manager that it would be better if the plumbing contract were awarded to the building contractor. The RFC later awarded the plumbing contract to the building contractor for ₱19,000. It then sued Valencia for damages in the sum of ₱6,200 representing the difference between ₱19,000 and ₱12,800.

Held: There was an unqualified acceptance of Valencia's bid. There was a duly perfected contract. Valencia was adjudged liable to pay the damages of ₱6,200 plus ₱1,000 as attorney's fees.

Binding effect of contracts.—

Where a parcel of land was adjudicated to one heir, and this heir sold the property to a third person, the administrator of the decedent's estate has no personality to sue the purchaser of the property for specific performance

[217] G.R. No. L-10749, April 25, 1958.

or rescission of the sale, considering that under article 1311 of the new Civil Code, "contracts take effect only between the parties, their assigns and heirs, except where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." The heir who made the sale should be the one to sue on said contract.[218]

Contract of minor is valid under the theory of estoppel.—

Generally, the contracts of unemancipated minors are voidable, according to article 1327 of the new Civil Code. The exception is that a minor's contract may be valid on the ground of estoppel. In *Hermosa v. Zobel*,[219] it appears that at the time an heir ceded to his coheir his rights to a parcel of land, he was 20 years, 11 months and 3 days old. It was held that he could not annul the cession on the ground of his alleged minority because "the sale of real estate, effected by minors who have already passed the ages of puberty and adolescence and are near the adult age when they pretend to have already reached their majority, while in fact they have not, is valid, and they cannot be permitted afterwards to excuse themselves from compliance with the obligation assumed by them or to seek their annulment." [220] Moreover in the *Hermosa* case, the alleged minor asked the court to approve the cession made by him. He is therefore estopped to assail the validity of the cession.[221] Not only that. Prior to the cession, the alleged minor had executed an affidavit stating that he was already of age.

Voidable contract.—

A contract vitiated by duress is not void *ab initio* but is merely voidable according to article 1330 of the new Civil Code. It is valid until annulled and it may be ratified according to article 1390 of the new Civil Code.[222]

A contract vitiated by fraud is also voidable.[223]

Construction against party who caused obscurity.—

Any ambiguity in the provisions of a surety bond, regarding the time within which action on the bond should be brought, should be construed against the surety company which prepared the printed form for the bond in accordance with article 1377 of the new Civil Code.[224]

Rescission and annulment of contracts.—

Under article 1389 of the new Civil Code, an action for rescission prescribes in four years from the removal of one's incapacity. Where a minor attained the age of majority on January 7, 1948 and he brought the action to rescind a sale which was entered into during his minority, only on May 28, 1954, his action has already prescribed.[225]

The case of *Avecilla v. Yatco* [226] applies the rule that an action to annul a deed of sale of land on the ground of fraud should be brought within four

[218] Hermosa v. Zobel, G.R. No. L-11835, Oct. 30, 1958.
[219] G.R. No. L-11035, Oct. 30, 1958.
[220] Mercado v. Espiritu, 37 Phil. 215.
[221] Suan v. Alcantara, 47 O.G. 4561.
[222] Rio Grande Rubber Estate Co., Inc. v. Board of Liquidators, G.R. No. L-11821, Nov. 28, 1958.
[223] Chua Hai v. Kapunan, Jr., G.R. No. L-11108, June 30, 1958.
[224] Pao Chuan Wei v. Nomorosa, G.R. No. L-10292, Feb. 28, 1958, citing art. 1288, old Civil Code, now art. 1377: Heacock v. Macondray & Co., 42 Phil. 205.
[225] Hermosa v. Zobel, G.R. No. L-11035, Oct. 30, 1958.
[226] G.R. No. L-11578, May 14, 1958, 54 O.G. 6415.

years counted from the registration of the sale as provided in article 1391 of the new Civil Code, formerly article 1301.[227]

STATUTE OF FRAUDS

Statute of Frauds applies only to executory agreements.—

The case of *Carbonnel v. Poncio* [228] reiterates the settled rule that the Statute of Frauds is applicable only to executory contracts, not to contracts that are totally or partially performed.[229] The reason for the Statute of Frauds is simple. In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud. However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable the defendant to keep the benefits already derived by him from the transaction in litigation, and, at the same time, evade the obligation, responsibilities or liabilities assumed or contracted by him thereby.

Parol evidence may be introduced to prove partial performance. To exclude parol evidence on partial performance would nullify the rule that the Statute of Frauds is not applicable to contracts which have been partly executed and lead to the very evils that the statute seeks to prevent. "The true basis of the doctrine of part performance x x x is that it would be a fraud upon the plaintiff if the defendant were permitted to escape performance of his part of the oral agreement after he has permitted the plaintiff to perform in reliance upon the agreement. The oral contract is enforced in harmony with the principle that courts of equity will not allow the statute of frauds to be used as an instrument of fraud. In other words, the doctrine of part performance was established for the same purpose for which the statute of frauds itself was enacted, namely, for the prevention of fraud, and arose from the necessity of preventing the statute from becoming an agent of fraud for it could not have been the intention of the statute to enable any party to commit a fraud with impunity.[230] The rule of part performance involves the principle that oral evidence is admissible in such a case to prove both the contract and the part performance of the contract.[231]

In the *Carbonnel* case, plaintiff claimed that she purchased a lot belonging to Jose Poncio and that after she had paid part of the price, Poncio sold the land to Ramon and Emma Infante. Plaintiff introduced in evidence a document wherein it is recited that Poncio may stay for one year on the lot which the plaintiff bought from Poncio "without payment" (sic) and that if after one year Poncio had not found any place wherein to transfer his house, he could stay on the lot "and he will pay according to agreement." *Held:* Under the circumstances, the plaintiff should be allowed to introduce parol evidence on the partial performance of the sale of land.

Another 1958 case, *Ortega v. Leonardo*,[232] sheds further light on the rule that partial performance takes the sale of real estate outside the Statute of Frauds. It was held in the *Ortega* case that part payment of the price is not the only circumstance that indicates part performance. Thus, the vendor's

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[227] Raymundo v. Afable, 51 O.G. 1829 (1955); Claridad v. Benares, G.R. No. L-6438, June 30, 1955.

[228] G.R. No. L-11231, May 12, 1958.

[229] Facturan v. Sabanal, 81 Phil. 512; Almirol v. Monserrat, 48 Phil. 67; Robles v. Lizarraga Hermanos, 50 Phil. 387; Diana v. Macalibo, 74 Phil. 70; 49 Am. Jur. 722-723; Babao v. Perez, 56 O.G. 2888 (1957).

[230] 49 Am. Jur. 725-726.

[231] 49 Am. Jur. 927.

[232] G.R. No. L-11311, May 28, 1958.

relinquishment of rights, continued possession by the vendee, building of improvements by the vendee, tender of payment plus the surveying of lot at the vendee's expense are circumstances indicating partial performance.

VOID CONTRACTS

A contract to stifle the prosecution of a crime is inexistent because its consideration is unlawful.—

Article 1409 of the new Civil Code regards as inexistent or void *ab initio* contracts "whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy." Article 1352 of the same Code provides that contracts with an unlawful cause produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy. Article 1306 provides that "the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." Article 2034 of the same Code provides that "there may be a compromise upon the civil liability arising from an offense, but such compromise shall not extinguish the public action for the imposition of the legal penalty." Article 2034 should be read in connection with article 23 of the Revised Penal Code, which provides that a pardon by the offended party does not extinguish criminal action, except as provided in article 344, regarding crimes against chastity, but the civil liability with regard to the interest of the injured party is extinguished by his express waiver.

The foregoing legal provisions are relevant to the case of *Monterrey v. Gomez*,[233] which reiterates the rule that a contract for the payment of money, whose consideration is the dismissal of a criminal case or the stifling of a criminal prosecution, is void.

In the *Monterrey* case, it appears that Virginia Hofileña, the offended party in a case of physical injuries through reckless imprudence filed against Narciso Ramirez, agreed to its provisional dismissal on condition that the damages suffered by her amounting to ₱470 be paid. The lawyer of Ramirez wrote to Hofileña a letter wherein he guaranteed the payment of the damages. The guaranty was confirmed by Ramirez. He paid ₱80 to Hofileña but refused to make further payment. Hofileña assigned her claim to Rafael Monterrey who in turn sued Ramirez and his lawyer.

Held: The Supreme Court affirmed the holding of Judge Magno S. Gatmaitan that the complaint should be dismissed because the consideration for the claim is illegal. It is obvious that the object of the undertaking was to stifle the prosecution of Ramirez and that the consideration for the obligation thus assumed by the defendants is unlawful, for which reason said contract is void *ab initio* and no cause of action may be predicated thereon as provided in article 1411 of the new Civil Code. The taint in the purpose and cause of said contract is not cured by the term "provisional" qualifying the "dismissal" of the criminal case. The understanding of the parties was that Hofileña would not press the prosecution of Ramirez. The provisional character of the dismissal was only a weapon to compel the defendants to pay the damages.

In *Arroyo v. Berwin*[234] the contract involved was declared void because the defendant assumed the obligations therein on condition that the plaintiff would ask the prosecuting attorney to dismiss the proceedings filed against certain persons for the crime of theft. It was held that the promise of the

[233] G.R. No. L-11082, Oct. 31, 1958.
[234] 36 Phil. 886 (1917).

owner of the stolen goods to stifle the prosecution of the person charged with theft, which promise was given for a pecuniary or other valuable consideration, is manifestly contrary to public policy and the due administration of justice and cannot be enforced in a court of law.

In *Velez v. Ramas* [235] a contract whereby the defendant undertook to pay a sum of money illegally abstracted by one Restituto Quirante from the plaintiffs provided that the latter suspend the criminal action was held void because its purpose was to prevent the prosecution of a crime and was therefore clearly illicit. An undertaking given in consideration of a promise on the part of the obligee to refrain from instituting a criminal prosecution is void on account of the illicit character of the consideration. *Ex turpi causa non oritur actio.* "By the universal consensus of judicial opinion in all ages it has been considered contrary to public policy to allow parties to make agreements designed to prevent or stifle prosecutions for crime. It is self-evident that the law cannot sanction an engagement which is subversive of the law itself or which tends to weaken the foundations of human society. The machinery for the administration of justice cannot be used to promote an unlawful purpose."

In *Reyes v. Gonzales* [236] a mortgage deed to guarantee the refund of a sum of money stolen by relatives of the mortgagor was held void, it appearing that the consideration for the said deed was the release of the guilty parties and the dismissal of the criminal complaint filed against them.

The *Monterrey* case is similar to the foregoing cases but is different from *Hibberd v. Roode and McMillian* [237] where the note involved represented the value of merchandise admittedly received by one McMillian from Brand & Hibberd. The latter claimed that McMillian was a mere depositary of said goods and that he had misappropriated the same. Therefore, even prior to the alleged misappropriation, McMillian was civilly liable for the full amount of said note, there being no allegation that the goods had been lost or destroyed through force majeure. There was no agreement to interfere with the due administration of the criminal justice, whereas in the *Monterrey* case the dismissal of the criminal action sought to defeat the administration of justice

In the *Hibberd* case, it was held that contracts relating exclusively to the civil liability of one charged with a public offense are legal and enforcible. The mere expectation of the accused person that settlement of his civil liability would stop the criminal prosecution, or the promise of the injured person not to actively assist in such criminal case is not sufficient to taint the contract with illegality. Whether a contract of this character tends to obstruct the administration of the criminal laws is a question which must be determined from all the facts and circumstances of the particular case.

However, it was also held in the *Hibberd* case that any contract whereby it is sought to actively obstruct or hinder the prosecution of a public offense, as by the promise of the injured person not to prosecute, or by the suppression of evidence, or by improper solicitation of officials of the State whose authority extends to the due investigation and prosecution of the culprit, is against public policy and would not be enforced by the courts, notwithstanding that there has been, in fact, no crime committed, or that the greater part of the consideration of the contract may consist of reparation to the injured party.

[235] 40 Phil. 787 (1920).
[236] CA 45 O.G. 881.
[237] 32 Phil. 476.

Case where contract to compromise criminal liability was enforced against surety.—

The case of *Garrido v. Perez Cardenas*,[238] regarding the enforcement of a promissory note, which was executed as a compromise of the promissor's criminal liability for estafa, should be distinguished from the *Monterrey* case.

The ruling in the *Monterrey*, *Arroyo*, and *Velez* cases is not applicable to the case of a surety who guaranteed the payment of a promissory note which was allegedly executed in order to stifle a prosecution for estafa against the principal debtor. In the *Garrido* case, it appears that on March 26, 1941, Attorney Pedro Camus executed a promissory note in favor of Jose Garrido binding himself to pay Garrido ₱2,000. Attorney Jose Perez Cardenas, the employer of Camus, guaranteed the note as a solidary comaker. In view of Camus' failure to pay the note, Garrido sued Perez Cardenas. The trial court ordered Cardenas to pay the amount of the note. The Court of Appeals reversed the decision of the trial court on the ground that the note was illegal. Garrido appealed to the Supreme Court.

Held: The note itself does not show that it was executed for the purpose of securing the dismissal of the estafa charge lodged in the fiscal's office by Garrido against Camus. Cardenas testified that when he signed the note Camus informed him that he had certain obligations to Garrido and that he wanted to have an extension of time to settle the same. It was after signing the note that Cardenas learned that it was the result of an estafa case filed by Garrido against Camus. Cardenas said that he signed the note because he wanted to help Camus, a young lawyer, develop into a better man. Cardenas was sentenced to pay the amount of the note to Garrido. The consideration as to Cardenas was the obligation of Camus to refund the sum of ₱2,000 to Garrido.

No prescription for action to declare a contract void—

The rule in article 1410 of the new Civil Code, that "the action or defense for the declaration of the inexistence of a contract does not prescribe" was applied in *Angeles v. Court of Appeals* [239] to the prohibited sale of a homestead effected within five years from the issuance of the patent. Such a sale is outlawed by section 116 of Act 2874, now section 118 of the Public Land Law, Commonwealth Act No. 141. It was noted that the rule in article 1410 was first laid down in *Tipton v. Velasco*,[240] where it was held that "mere lapse of time cannot give efficacy to contracts that are null and void." In the *Angeles* case the homestead was sold in 1937. The action for its recovery was brought in 1950 or after the lapse of thirteen years. *Held:* The action to recover the homestead does not prescribe,[241]

However, if the homesteader or his heirs brought the action for recovery after the lapse of thirty-seven (37) years, the action may be barred by laches.[242]

Rule of in pari delicto as applied to sales of lands to aliens.—

The rule of *in pari delicto*, followed in previous cases regarding sales by Filipino citizens of private lands to aliens,[243] was reiterated in *Soriano v. Ong Hoo*.[244] It was held in the *Soriano* case that ignorance of the meaning of

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[238] G.R. No. L-10631, April 25, 1958
[239] G.R. No. L-11024, Jan. 31, 1958, 54 O.G. 1945.
[240] 6 Phil. 69 (1906).
[241] Same holding in Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955; Corpus v. Beltran, 51 O.G. 5631 (1955).
[242] Mejia v. Gamponia 53 O.G. 677 (1956).
[243] Cabatuan v. Uy Hoo, G.R. No. L-2207, Jan. 23, 1951; Ricamara v. Ngo Ki, G.R. No. L-5836; Rellosa v. Gaw Chee, G.R. No. L-1411, Sept. 29, 1953; Dingalasan v. Lee Bun Ting, G.R. No. L-5996, June 27, 1956
[244] G.R. No. L-10931, May 28, 1958, 54 O.G. 8066.

the constitutional provision against transfer to aliens of private agricultural lands is not an excuse that would prevent the application of the rule in *pari delicto*.

The case was distinguished from the sale of homesteads. The law in prohibiting the sale of homesteads intends to conserve the ownership of homesteads in the homesteader or his heirs. Where the land sold is not a homestead, it would seem injudicious that the law should order the return of the land to him. In the United States, where a prohibition similar to our constitutional prohibition exists, it has been held that the vendor has no recourse against the vendee despite the alien's disability to hold the property, and that it is only the State that is entitled by proceedings in the nature of office found to have a forfeiture or escheat declared against the incapacitated vendee.[245] As the Constitution is silent as to the effects or consequences of a sale by a citizen of his land to an alien, and as both the citizen and the alien have violated the law, neither of them should have a recourse against the other, and only the State should be allowed to intervene and determine what is to be done with the property illegally sold. What the State should do or could do in such cases is a matter of public policy that is beyong the scope of judicial authority. As long as the Congress has not definitely decided what policy should be followed in cases of violations of the constitutional prohibition, courts cannot go beyond declaring the disposition to be null and void.

Immoral donation.—

The rule of *in pari delicto potior est conditio defendentis* (where the parties are equally at fault, the defendant holds the stronger position), found in articles 1411 and 1412 of the new Civil Code, formerly articles 1305 and 1306, does not apply where the parties to a contract are not equally guilty.[246] In the 1957 case of *Liguez v. Court of Appeals*,[247] it appears that Salvador Lopez, the husband of Maria Ngo, donated a parcel of conjugal land on May 18, 1943 to Conchita Liguez, a 16-year old girl, in order that he could cohabit with her. The donation was made in compliance with the condition precedent imposed by Conchita's parents. Lopez died on July 1, 1943. Conchita attained majority in 1948. In 1951 she sued the wife and heirs of Lopez for the recovery of the land. The heirs invoked the rule of *in pari delicto*. *Held:* The donation was unlawful because the consideration was immoral, but the rule of *in pari delicto* could not be interposed as a defense to the action because the parties were not equally guilty. The donee was only 16 years old whereas the donor was a mature person. Moreover, the donation was agreed upon between the donee's parents and the donor. The recovery of the land donated was allowed.

The heirs of the donor filed a motion for reconsideration, which the Supreme Court resolved in 1958.[248] In its resolution, it was held that, even under the rule of *in pari delicto*, the donee should be allowed to recover the land donated because when Lopez in 1943 made the donation in a public instrument, the ownership of the land was transferred to Conchita. Donation is one of the modes of acquiring ownership; and the retention of the donated land by the donor or his privies cannot deprive the donation of its transferring effect, either because a donation does not need to be completed by tradition since article 609 of the old Code, now article 712, prescribes that ownership and other real rights may be acquired by donation and in consequence of certain

[245] Vasquez v. Li Seng Giap, 51 O.G. 717 (1955).
[246] Bough v. Cantiveros and Hanopol, 40 Phil. 209 (1919).
[247] 54 O.G. 4281
[248] G.R. No. L-11240, Feb. 13, 1958.

contracts by tradition, thus implying that donation does not require tradition), or because the execution of the notarial deed of donation is equivalent to the physical tradition of the property, as expressly provided in article 1462 of the old Code, now article 1498. And while it is true that there can be no symbolical transfer of possession by means of a public instrument (*traditio per chartam*) if the land conveyed is in the possession of a third person, nevertheless, in this case possession of the land by the heirs of the donor cannot be regarded as possession by strangers to the conveyance.

In the instant case the act of donor in conveying the land pursuant to the illicit contract operated to divest him of the ownership of the land and to bar him from recovering it from his transferee, just as if the transfer was made through a bargain that was legal in its inception. "Repugnant as immoral bargains are, the law deems it more repugnant that a party should invoke his own guilt as a reason for relief from a situation he deliberately entered: *Nemo auditur propriam turpitudinem allegans* (No one should be permitted to testify on his own wickedness or baseness). This explains why the immoral donation in question, to the extent that it has been carried out, becomes conclusive as between the guilty parties, even if without effect against strangers without notice; and why a guilty party may not ask the courts for a restoration of the status *quo ante*. The rigor of the rule has been somewhat tempered by articles 1413 to 1419 of the new Civil Code."

The instant action of the donee Conchita Liguez is not for specific performance. The donation was already consummated. She is suing as owner of the land on the basis of a completed (not merely executory) donation. Her ownership carried with it the right to possession which the defendants withhold. To retain possession, the defendants must defeat the donation; to defeat it, they invoke its illegality, but they cannot do so because of the rule in *in pari delicto*.

The defendants are barred from attacking the donation, not on the ground of estoppel, but on the fundamental reason that, as successors in interest of the donor, they can not have more rights than the donor. *Nemo dat quod non habet*, or *Nemo plus juris ad alium transferee potest quam habet:* one cannot transfer to another more rights than he has himself. What bars those who contracted will likewise bar their successors (*Quod ipsis, qui contraxurunt, obstat, successoribus corum obstabit*). These maxims are grounded not only on common sense but they result from the very nature of succession as a mere derivative mode of acquiring rights.

Rule of in pari delicto does not apply to homesteads.—

The rule of *in pari delicto non oritur actio* (there is no action if both parties are equally at fault) or *in pari delicto melior est conditio defendentis* (where the parties are equally at fault, the situation of the defendant is better) found in articles 1411 and 1412 of the new Civil Code, has an exception in article 1416, which provides that "when the agreement is not illegal *per se* but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered."

An illustration of the exception is found in the sale of a homestead within five years from the date of the issuance of the patent. Such a sale is void but the seller or his heirs are allowed to sue for the recovery of the homestead. Reason for the rule is that the policy of the law is to give land to a family for his home and cultivation and the law allows the homesteader to reacquire

the land even if it has been sold; hence, the right may not be waived. To apply the rule of *in pari delicto* to such a case "would run counter to an avowed fundamental policy of the State that the forfeiture of the homestead is a matter between the State and the grantee or his heirs, and that until the State has taken steps to annul the grant and asserts its title to the homestead the purchaser is, as against the vendor or his heirs, no more entitled to keep the land than any intruder." In other words, the rule of *in pari delicto* does not apply "whenever public policy is considered advanced by allowing either party to sue for relief against the transaction." And, as a corollary, the action to recover the homestead does not prescribe.[249]

The above holding is reiterated and strengthened in *Angeles v. Court of Appeals and Sta. Ines.*[250] The *Angeles* case is noteworthy because it announces a new rule in connection with the fruits gathered from the homestead and the improvements found thereon. It was held in the *Angeles* case that, while the rule of *in pari delicto* does not apply to the recovery of the homestead, the rule however, applies to the fruits and improvements. This means that the buyer cannot recover the value of the improvements made by him on the homestead but neither could the homesteader or his heirs require the buyer to pay the value of the products gathered from the land.

In the *Angeles case*, it appears that a homestead patent and title were issued to Juan Angeles in 1937 and in that same year he sold the land to Gregorio Santa Ines. Angeles died in 1938. In 1950 his heirs sued Santa Ines for the recovery of the homestead. *Held:* The homestead can be recovered upon plaintiffs' payment to Santa Ines of ₱2,500, the price which he paid for it to Angeles. The action to recover the same does not prescribe.

The rule in the *De los Santos* case was also applied in *Santander v. Villanueva,*[251] where part of a homestead was sold for ₱480 in 1942, or within five years from the issuance of the patent. The action for recovery was brought in 1948. The recovery of the homestead was allowed in spite of the fact that the Secretary of Agriculture and Natural Resources had approved the sale. The approval was mistakenly given by the Secretary.

Although in the *Santander* case the land had a market value of ₱60,000, it was the original purchase price of ₱480 that was ordered to be returned to the homesteader. However, since there was evidence that the action for recovery was motivated by the desire of the homesteader to speculate on its value, the Supreme Court referred the case to the Director of Lands "for investigation and forfeiture" of the homestead.

ESTOPPEL

Rulings on estoppel.—

(1) A judgment may constitute an estoppel against a person who, although not nominally or formally a party to the action in which it was rendered, submitted his interest in the subject matter of the litigation to the consideration of the court and invited its adjudication thereon.[252]

(2) Where an employee, upon being separated from the service, received an amount as gratuity and commutation of his vacation and sick leaves, he is estopped to ask for reinstatement.[253]

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[249] De los Santos v. Roman Catholic Church of Midsayap, 50 O.G. 1588 (1954); Acierto v. De los Santos, G.R. No. L-5823, Sept. 29, 1954; Eugenio v. Perdido, G.R. No. L-7083, May 19, 1955

[250] G.R. No. L-11024, Jan. 31, 1958, 54 O.G. 4945.

[251] G.R No. L-6184, Feb. 28, 1958.

[252] 50 C.J.S. 820 cited in Valdez v. Valdez, G.R No. L-11327, Oct. 31, 1958.

[253] Lopez v. Board of Directors, L-8907, April 30, 1957, 54 O.G. 2900; Zandueta v. De la Costa, 66 Phil. 615.

(3) Where pursuant to the written and verbal orders of the defendant, the plaintiff sent merchandise to the latter under the conditions mentioned in the delivery invoices, and the defendant made partial payments and did not protest against the prices and conditions indicated in the invoices, it is bound by said conditions.[254]

TRUSTS

Recovery of property held in constructive trusts may be barred by prescription.—

The confusion in recent rulings regarding the prescriptibility of actions to recover property held in constructive trust was clarified in *Diaz v. Corricho*.[255] Article 1456 of the new Civil Code 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." The rule in article 1456 is the same as that laid down in the 1926 case of *Gayondato v. Treasurer of the P.I.*,[256] that "if a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party." Express trusts are those created by the direct and positive acts of the parties, by some writing, or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust. Implied trusts are created by operation of law, either to carry out a presumed intention of the parties or to satisfy the demands of justice or protect against fraud. Implied trusts are divided into resulting and constructive trusts. Resulting trusts are those raised by implication of law and are presumed always to have been contemplated by the parties, the intention as to which is to be found in the nature of their transaction, but not expressed in the deed or instrument of conveyance. Constructive trusts are created by the construction of equity in order to satisfy the demands of justice, one not arising by agreement or intention but by operation of law.[257] Constructive trusts are not trusts in the technical sense.

There is a rule that an action to compel a trustee to convey property registered in his name in trust for the benefit of the *cestui que trust* does not prescribe.[258] This rule has been applied to constructive trusts. Sowever, there is a view that said rule does not apply to constructive trusts. Constructive trusts, as distinguished from express ones, are barred by laches or prescription without need of repudiation.[259]

The *Diaz* case, following the rule in the *Claridad* case, definitively lays down the rule that laches constitutes a bar to actions to enforce constructive trusts and that repudiation is not required, unless there is concealment of the facts giving rise to the trust.[260] The express trusts disable the trustee from acquiring for his own benefit the property committed to his management or custody, at the least while he does not openly repudiate the trust, and makes such

[254] Alemar's v. Cagayan Valley College, Inc., G.R. No. L-11270, April 28, 1958.
[255] G.R. No. L-11229, March 20, 1958, 54 O.G. 8429.
[256] 49 Phil. 244.
[257] 65 C.J. 220-224.
[258] Manalang v. Canlas, 50 O.G. 1980 (1954); Cristobal v. Gomez, 50 Phil. 810 (1927); Castro v. Castro, 57 Phil. 675 (1932); Salinsa v. Tuason, 55 Phil. 729 (1931); Bancarren v. Diones, G.R. No. L-8018, Dec. 20, 1955; Sevilla v. De los Angeles, 51 O.G. 5590 (1955); Mirabiles v. Quito, 52 O.G. 6507 (1956)
[259] Claridad v. Benares, G.R. No. L-6488, June 30, 1955; Concurring opinion in Mirabiles v. Quito, *supra*.
[260] 54 Am. Jur. secs. 580, 581; 65 C.J. secs. 956-958.

repudiation known to the beneficiary. For this reason the old Code of Civil Procedure declared that the rules on adverse possession do not apply to "continuing and subsisting" (unrepudiated) trusts.[261]

In express trusts the delay of the beneficiary is directly attributable to the trustee who undertakes to hold the property for the former, or who is linked to the beneficiary by confidential or fiduciary relations. The trustee's possession is therefore not adverse to the beneficiary, until and unless the latter is made aware that the trust has been repudiated. But in constructive trusts created by law, there is neither a promise nor fiduciary relationship, the so-called trustee does not recognize any trust and has no intent to hold for the beneficiary; therefor, the latter is not justified in delaying action to recover his property. It is his fault if he delays; hence, he may be estopped by his own laches.

Of course, the equitable doctrine of estoppel by laches requires that the one invoking it must show, not only the unjustified inaction, but that some unfair injury would result to him unless the action is held barred.[262]

In the *Diaz* case, it appears that in 1919 Francisco Diaz died, survived by his wife Maria Sevilla and three children and leaving two conjugal lots. In 1935 Carmen Gorricho sued Maria Sevilla and in connection therewith a writ of attachment was issued upon her share in the two lots. The lots were sold at public auction. Sevilla failed to redeem them within the one year period. A final deed of sale was issued to Gorricho. However, in the final deed the sheriff conveyed to Gorricho the entire parcels instead of only Sevilla's ½ interest. New titles for the two lots were issued to Gorricho in 1937. In 1951 Sevilla died. In 1952 the three children of Diaz and Sevilla sued Gorricho for the recovery of their ½ interest in said lots. The youngest child, Constancia Diaz, became of age in 1939. Plaintiff's theory was that Gorricho held their ½ interest in trust.

Held: The action must be dismissed on the ground of laches. The action accrued in 1937. Plaintiffs allowed 15 years to elapse before they brought their action for recovery. The longest period of extinctive prescription under the Code of Civil Procedure was 10 years.

It should be noted that in *Cordova v. Cordova*,[263] a 1958 case decided earlier than the *Diaz* case, the rule in the *Gayondato* case was applied. In the *Cordova* case, it appears that the plaintiffs were the grandchildren of Rosendo Cordova and his first wife Juana Zabala, while the defendants were the children of Rosendo Cordova and his second wife Potenciana Mirasol. Juana Zabala died ahead of Cordova who in turn died in 1918. Potenciana died in 1927.

Plaintiffs alleged that Cordova and Potenciano acquired conjugal real estate: that after Cordova's death said properties were possessed by his widow Potenciana: that after her death, defendants Jose and Consuelo Cordova possessed said properties and refused to give the plaintiffs their share thereof as heirs of Rosendo Cordova. In 1950 and 1953 the title to two lots was transferred to Consuelo and Jose Cordova. The trial court dismissed the complaint of the plaintiffs on the ground of prescription.

Held: The dismissal was erroneous because the pleadings do not show that the defendants possessed said properties adversely.

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[261] Laguna v. Levantino, 71 Phil. 569 (1941).
[262] Go Chi Gun v. Go Cha, G.R. No. L-5208, Feb. 28, 1955; Mejia v. Gamponia, 53 O.G. 677 (1956); Domingo v. Mayon Realty Corporation, G.R. No. L-2701, Sept. 30, 1957.
[263] G.R. No. L-9986, Jan. 14, 1958.

Among coheirs prescription cannot generally be pleaded except when one heir openly and adversely occupies the property for a period sufficiently long to entitle him to ownership under the law. As long as the other heirs acknowledge their coownership or do not set up any adverse title to the property, prescription is unavailable. Article 1965 of the old Civil Code provides that "as between coheirs, coowners, or proprietors of adjacent estates, the action to demand partition of the inheritance or of the thing held in common, or the survey of the adjacent properties does not prescribe." Article 494 of the new Civil Code provides that "no prescription shall run in favor of a coowner or coheir against his coowners or coheirs so long as he expressly or impliedly recognizes the coownership."[264]

Another aspect of the case is that defendants, taking advantage of their influence and position in the family and with the evident intention to defraud the other heirs and deprive them of their legitimate shares and participation possessed, used and enjoyed the properties in question. Since defendants held the properties merely as heirs and the deprivation of plaintiffs' share was due to fraud, they cannot now set up the defense of prescription, for there is created between them a relation of trust which extends protection to the *cestui qui trust* and gives him the right to recover the property regardless of time. Apparently, the court in making this statement meant a constructive trust, not an express trust. It cited the *Gayondato* and *Bancairen* cases.

Action against trustee who breached the trust.—

The case of *Avecilla v. Yatco*[265] lays down the rule that where a person, through fraudulent representation, becomes the owner of registered land, a constructive trust in favor of the registered owner is created and the latter may recover the land. But where, the land has already been transferred to an innocent purchaser for value, the action for damages should be brought against the trustee. The action must be brought within four years from the registration of the fraudulent deed of sale.

It should be noted that *Avecilla* case did not squarely resolve the contention that the action to recover property held under constructive trust does not prescribe. It was assumed in the *Avecilla* case that where the land, held in constructive trust, was transferred to an innocent purchaser for value, the action for recovery of the land would not lie anymore and the remedy of the defrauded owner is an action for damages against the trustee who perpetrated the fraud to be brought within four years from the registration of the deed of sale.

No trust.—

In *Rosario v. Rosario*,[266] it was held that the fact that the grantees are the children of the alleged trustee who, after several conveyances of the land to other parties, became the owners of, or acquired, the land, does not render them liable for the acts of their father; nor did they assume upon acquiring the land the alleged obligations of their father as trustee. The action for reconveyance is an equitable remedy available only when the land wrongfully registered under the Torrens system in the name of one who is not the owner has not passed into the hands of an innocent purchaser for value. In the *Rosario* case, it was alleged that Hipolito Rosario in 1915 made Partenio Rosario the

[264] Casañas v. Rosello, 50 Phil. 97; Abella v. Abella, 40 O.G. 4th Supplement 222.
[265] G.R. No. L-11678, May 14, 1958, 54 O.G. 6415.
[266] G.R. No. L-9701, July 31, 1957, 54 O.G. 2875.

trustee and administrator of a parcel of land and that in 1917 Partenio registered the land in his name under the Torrens system. In 1919 Partenio mortgaged the land to the Philippine National Bank. In 1923 he sold the land under *pacto de retro* to Librada Villarin who consolidated her title thereto in 1925. In 1926 Librada sold the land to Geminiano Villarin. In 1949 Geminiano sold the land to the defendants, the children of Partenio. In 1952 the plaintiffs, children of Hipolito, sued the children of Partenio for the recovery of the land. *Held*: The action had already prescribed.

SALES

No rescission if there was no breach of the contract of sale.—

A sale may be rescinded if one of the parties did not fulfill his obligations under the contract but where there was no breach by one party the other cannot ask for rescission. In *Co Cho Chit v. Hanson, Orth & Stevenson*,[267] it appears that Co Cho Chit offered to sell to Hanson, Orth & Stevenson, Inc. a hemp press for the price of ₱8,000. The latter accepted the offer and paid the price. Around seven months after the delivery and installation of the hemp press in its fiber plant, the company sued Co Cho Chit for rescission of the sale on the ground that the machine could not compress and turn out the regulation size of hemp bales which are to be exported. The trial court and the Court of Appeals allowed rescission.

Held: Rescission cannot be allowed. Defendant vendor complied with all his obligations under the contract of sale. The hemp press met all the specifications indicated in the contract. The contract did not provide that the hemp press would press hemp in bales of any specified size or according to the regulation size needed for exportation. Since the hemp press was strictly in accordance with the description in the contract, the fact that it could not be used by the company to suit its own private and specific purpose cannot render the contract rescindible.[268]

Price may be in money or its equivalent.—

The rule in article 1458 of the new Civil Code, that the price in a contract of sale may be "in money or its equivalent" was applied in *Republic v. Philippine Resources Development Corporation*,[269] where one Macario Apostol bought *almaciga* and logs from the Bureau of Prisons. As part payment of the price, he transferred to the Bureau GI sheets, black sheets, MS plates, round bars, anr GI pipes. *Held:* Apostol's transfer of said goods operated as a valid payment of the price. Said transfer may also be justified as dation in payment under article 1245 of the new Civil Code.

Nemo dat quod non habet.—

The rule that no man can transfer to another a better title than he has himself is illustrated in *Sampillo v. Court of Appeals*,[270] where it appears that in January 1945 Teodoro Tolete died intestate. He was survived by his wife and several nephews and nieces. He had no children. His estate, consisting of four lots, was extrajudicially adjudicated by the surviving wife to herself as sole heir. She sold the lots to Benny Sampillo on July 25, 1946. Sampillo in turn sold the lots to Honorato Salacup on June 17, 1950. Both sales were registered. On June 20, 1950 Felisa Sinopera, as administrix of the estate of

[267] G.R. No. L-8439, May 30, 1958.
[268] Pacific Commercial Co. v. Ermita Market & Cold Stores, Inc., 56 Phil. 617; Palanca v. Fred Wilson & Co., 37 Phil. 506.
[269] G.R. No. L-10141, Jan. 31, 1958.
[270] G.R. No. L-10474, Feb. 28, 1958.

Tolete, sued Sampillo and Salacup for the recovery of the lots. *Held:* The wife had only a ½ interest in the four lots. The sale was void insofar as it exceeded the wife's ½ portion.[271]

Bilateral promise to buy and sell.—

Article 1479 of the new Civil Code provides that "a promise to buy and sell a determinate thing for a price certain is reciprocally demandable. An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price." The first part of article 1479 refers to a bilateral promise to buy and sell, which has the same effect as a perfected sale.[272] The second part refers to an accepted unilateral promise to sell wherein the promisee elects to buy and to an accepted unilateral promise to buy wherein the promisee elects to sell. There must be a distinct consideration in these two cases.

The first part of article 1479 was applied in *Atkins, Kroll & Co., Inc. v. Chua Hian Tek*,[273] where it appears that Atkins, Kroll & Co., Inc. offered to sell to Chua Hian Tek a specified quantity of Luneta sardines at ₱8.25 a carton. Chua Hian Tek accepted the offer. But Atkins, Kroll & Co. failed to deliver the sardines due to a shortage of catch of sardines by the California packers, its suppliers. Chua Hian Tek sued Atkins, Kroll & Co., for damages representing his unrealized profit.

The company contended that the contract between the parties was only an option to buy, which was void because there was no distinct consideration. This contention was not sustained. It was ruled that the contract was a bilateral promise to buy and sell. The company could have withdrawn its offer before acceptance pursuant to article 1324 of the new Civil Code. The contract between the parties could not have been a mere option because in an option the promisee would be free either to buy or not to buy. But in this case, once the offer was accepted, the offerer was bound to sell and the offeree was bound to buy. The company was held liable for damages.

However, in the *Atkins Kroll* case, the *ponente*, Justice Bengzon, made the *obiter* dictum that even supposing that the contract between the parties was an option to buy, which is not binding for lack of consideration, still after it was accepted, "it constitutes a binding contract of sale regardless of the absence of consideration."[274]

The above dictum is not correct because if the contract was an option to buy and it was without consideration, acceptance would not validate it. This is the holding in *Southwestern Sugar and Molasses Co. v. Atlantic, Gulf & Pacific Co.*,[275] a case not cited by Justice Bengzon. The erroneousness of the said dictum must have been the reason why in the *Atkins, Kroll* case, Justice Bautista Angelo, the *ponente* in the *Southwestern Sugar* case, merely concurred in the result.

Tradition in sale.—

The rule in article 1462 of the old Civil Code, now article 1497, that "the thing sold shall be understood as delivered, when it is placed in the control and

[271] See U.S. v. Sotelo, 28 Phil. 147; 158 (1914); De los Santos v. McGrath, G.R. No. L-4618, Feb. 28, 1955; Ozoa v. Montano, G.R. No. L-8621, Aug. 27, 1956; Cruz v. Pahati, 52 O.G. 8053; Masiclat v. Centeno, G.R. No. L-8420, May 31, 1956; Wolfson v. Reyes, 8 Phil. 864.

[272] Banco Nacional Filipino v. Ah Sing, 69 Phil. 611.

[273] G.R. No. L-9871, Jan. 31, 1958, 54 O.G. 7892.

[274] 77 C.J.S. 652; 27 R.C.L. 339; Zayco v. Serra, 44 Phil. 331.

[275] 51 O.G. 3447.

possession of the vendee," was applied in *Albert v. University Publishing Co., Inc.*,[276] a case involving a contract for the publication of Justice Albert's Commentaries on the Revised Penal Code. One of the disputed points in that case was whether Justice Albert complied with his obligation "to deliver" to the company the manuscript of the book in its final form not later than December 31, 1948. It appears that on December 16, 1948 Justice Albert wrote a letter advising the company that "the manuscript of my Commentaries on the Revised Penal Code, subject matter of our Contract executed on the 19th of July this year, is now at your disposal. It is ready to go to the printer should you desire to publish the same next month. I am keeping the manuscript in the office because I am afraid that it may be copied by others, spoiled or lost in your possession.

The question was whether the letter was tantamount to a delivery of the manuscript. *Held:* Delivery of the manuscript does not necessarily mean physical or material delivery thereof. The letter constituted delivery of the manuscript.[277]

Purchase of things involved in an estafa case.—

The case of *Chua Hai v. Kapunan, Jr.*[278] concerns the sale of GI sheets by Ong Shu to Roberto Soto, who paid for it by means of a rubber check. Some of the GI sheets were resold by Soto to Chua Hai. Soto was charged with estafa. On Ong Shu's motion in the pending criminal case, the GI sheets bought by Chua Hai were ordered returned to Ong Shu upon his filing a redelivery bond. Chua Hai attacked the legality of the order. In holding that the order restitution was void, the Supreme Court, through Justice J. B. L. Reyes noted that article 1505 of the new Civil Code, which exempts purchases made "in a merchant's store, or in fairs, or markets," from the rule that a purchaser acquires no better title than the vendor if the latter is not the owner of the thing sold, is a reenactment of article 85 of the Code of Commerce.

It was also noted in the *Chua Hai* case that the sale by Ong Shu transferred the ownership of the GI sheets to Soto pursuant to article 1496 of the new Civil Code. Soto's nonpayment of the price did not revest the ownership in the seller. And assuming that Ong Shu's consent was vitiated by fraud, this circumstance rendered the sale only voidable under article 1390 of the new Civil Code. Chua Hai, as a purchaser in good faith, without notice of the fraudulent acts of Soto, acquired title to the GI sheets under article 1506 of the new Civil Code which provides that "where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale (as in this case), the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title."

Surety's liability on its bond for warranty against eviction.—

The case of *Republic v. Alto Surety & Insurance Co., Inc.*[279] applies the rules in article 1548 and 1549 of the new Civil Code that eviction takes place whenever by a final judgment based on a right prior to the sale the vendee is deprived of the whole or part of the thing purchased and that the vendee need not appeal from the judgment in order that the vendor may be liable for eviction. The peculiar feature of the *Republic* case is that the vendor in that case posted a bond to answer for its liability on its warranty.

[276] G.R. No. L-9300, April 18 and Sept. 17, 1958.
[277] See 10 Manresa, Codigo Civil, 5th Ed., p. 152
[278] G.R. No. L-11108, June 30, 1958.
[279] G.R. No. L-12375, May 21, 1958.

It appears in that case that the Bureau of Hospitals bought from Cesario Fabricante a tract of land with an area of 423 hectares located in Cabusao, Camarines Sur. Fabricante posted a bond of P80,000 to back up his warranty against eviction. The Alto Surety & Insurance Co., Inc. was the surety on the bond. It was stipulated in the bond that the surety's liabilty would "expire one (1) year after the land shall have been registered in the name of the Bureau of Hospitals" and that the Bureau would commence registration proceedings within one year from January 4, 1949.

On May 14, 1949 the Government filed an opposition in the land registration proceedings instituted by Silverino Salva covering the same land. This opposition was tantamount to the commencement of the registration proceedings for said land. On July 22, 1952 the Government instituted an action against Sulpicio Roco to quiet title to a portion of said land with an area of 55 hectares. The trial court decided the case in Roco's favor on October 6, 1954. The Government did not appeal. It made a demand upon the surety for the indemnity corresponding to the portion adjudicated to Roco. *Held:* The surety was liable to pay the Government the indemnity allocable to the portion claimed by Roco. The indemnity could be claimed even if the Government did not appeal from the decision.

Double sale of movables.—

Article 1473 of the old Civil Code, now article 1544, which provides that "if the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be personal property," was applied in *Tomassi v. Villa-Abrille.*[280] In this case it appears that on May 28, 1948 Fernando Villa-Abrille bought from the Surplus Property Commission at a public auction sale certain goods located at Guiuan Naval Base. Villa-Abrille immediately took possession of the properties sold. On October 6, 1949 some of the said goods were sold again to Santiago Gancayco, who in turn sold the same to Raymond Tomassi on February 22, 1950. *Held:* As it was Villa-Abrille who in good faith took possession of the articles in controversy, he has a better right than Tomassi to their ownership and possession.[281]

Pacto de retro sale.—

The case of *Adorable v. Inacala* [282] construes the third paragraph of article 1606 of the new Civil Code, which provides that in *pacto de retro* sales, "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." In a 1957 case it held that this new provision cannot be given a 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.[283]

In the 1958 case of *Adorable* it was held that the third paragraph of article 1606 refers to cases involving a transaction where one of the parties contests or denies that the true agreement is one of sale with right to repurchase, but not to a case where the parties admit that the transaction was a *pacto de retro* sale.

[280] G.R. No. L-7047, August 21, 1958.
[281] See Olsen v. Yearsely, 11 Phil. 178.
[282] G.R. No. L-10183, April 28, 1958.
[283] De la Cruz v. Acosta, G.R. No. L-9402, Oct. 31, 1957. But article 1606 was given a retroactive effect in Ayson v. Arambulo, G.R. No. L-6501, May 31, 1955 pursuant to art. 2253.

In the *Adorable* case, it appears that in 1941 Irinea Inacala sold her land to Arcadio Mendoza for P420. On the same date when the sale was executed, Mendoza executed a private document wherein he gave Inacala a period of one year within which to repurchase the property. Mendoza sold the land to Eugenio Ramos, who in turn sold it to Raquel Adorable. A new title was issued to Adorable. Inacala had always been in possession of the land. It was only in 1951 when Adorable tried to take possession of the land that he learned of Inacala's claim over it. *Held:* Since there is no doubt that the transaction between Inacala and Mendoza was a *pacto de retro* sale and as the one year period for redemption had expired, title to the land was consolidated in Mendoza.[284] The third paragraph of article 1606 was erroneously applied to the case by the Court of Appeals.

LEASE

Occupation of the leased premises by the Japanese force is perturbacion de derecho.—

The case of *Vda. de Villaruel v. Manila Motor Co.*[285] clarifies the nature of a mere act of trespass (*perturbacion de mero hecho*) and legal trespass or trespass under color of title (*perturbacion de derecho*). Article 1654 of the new Civil Code provides that one of the lessor's obligations is to "to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract." Article 1664 of the new Civil Code, formerly article 1560, provides: "The lessor is not obliged to answer for a mere act of trespass which a third person may cause on the use of the thing leased; but the lessee shall have a direct action against the intruder. There is a mere act of trespass when the third person claims no right whatever." The second sentence of article 1560 of the old Code, corresponding to the second sentence of article 1664 reads: "If the third person, be it the Government or a private individual, has acted in reliance upon a right, such action shall not be deemed a mere act of disturbance." It is this provision which is involved in the *Villaruel* case.

If the act of trespass is not accompanied nor preceded by anything which reveals a really juridic intention on the part of the trespasser, in such wise that the lessee can only distinguish the material fact, stripped of all legal form or motive, what is involved is trespass in fact.[286]

Perturbacion de derecho refers to the acts of a person claiming a right to the thing leased, which acts prevent the lessee from enjoying it peacefully. The lessor should answer to the lessee for such acts. Thus, if a person who disturbs the lessee in the possession of the thing leased does so because he disputes the lessor's right to lease the thing. The trespass is a juridical one. On the other hand, *perturbacion de mere hecho* refers to the acts of a person, an intruder for example, who does not claim any right to the thing leased, but whose acts disturb the lessee in his use or peaceful enjoyment of the thing. In such a case the lessor does not answer to the lessee for the acts of disturbance. The lessee's remedy is a direct action against the person causing the disturbance.

This distinction was recognized in the *Goldstein* case, where a landlord granted permission to a new tenant to take the roof of the leased building for the purpose of adding another story. The new tenant let the work to a con-

[284] Angao v. Clavano, 17 Phil. 152; Rafols v. Rafols, 22 Phil. 336; Gonzales v. Javellana, 49 Phil. 1; Racca v. Viloria, 26 Phil. 120.
[285] G.R. No. L-10394, Dec. 18, 1958.
[286] Goldstein v. Roces, 34 Phil. 562 (1916).

tractor. During the time the roof was partially removed, rain fell and caused damage to another tenant leasing the lower floor of the building. It was held that the acts of the new tenant, which caused damage to the old tenant, did not constitute legal trespass but only trespass in fact and, therefore, the lessor was not obliged to pay the damages caused to the old tenant.

In another case, it was held that the acts of the itinerant vendors or peddlers in plying their trade on the sidewalk or alley surrounding a leased market stall did not constitute a juridical disturbance which the city leasing the stall to the stallholder was bound to prevent.[287]

In *Lo Ching y So Yun Chong Co. v. Tribunal de Apelacion y El Arzobispo Catolico Romano de Manila*[288] it was ruled that "la privacion de possession de los arrendatarios por los soldados japoneses fue una simple perturbacion de mero hecho y de la cual no responde el arrendador." The same rule was followed in *Reyes v. Caltex (Phil.) Inc.*[289] and *Afesa v. Ayala y Cia.*[290]

This rule was abrogated in the *Villaruel* case, where it was held that the ouster of the lessee from the leased premises by the Japanese occupying forces is *perturbacion de derecho* because under the generally accepted principles of international law, which are part of our national law, a belligerant occupant like the Japanese in 1942 to 1945 may legitimately billet or quarter its troops in privately owned land and buildings for the duration of its military operations, or as military necessity should demand. While the military occupant cannot confiscate private property, it can sequestrate or take temporary control of private enemy property.

In the *Villaruel* case, it appears that on May 31, 1940 plaintiffs Villaruel and defendant Manila Motor Co. entered into a contract whereby the former agreed to lease to the latter the floor space of a building to be used as automobile showroom, another building to be used as an automobile repair shop and a house as residence of defendant's branch manager. The term of the lease was five years beginning October 31, 1940, renewable for another five years. The rental was ₱300 a month, payable before the fifth day of each month. The branch manager was to pay a rental of ₱50 a month.

All the prewar rentals were paid. The lease premises were occupied by the Japanese from June 1, 1942 to March 29, 1954. During that period the lessee was ousted from the premises and no rentals were paid. The American forces occupied the premises thereafter. They paid rentals to the owners of the premises.

After the American forces left the premises, the Manila Motor Co. chose to exercise its option to renew the lease for another five years. The parties agreed that the period of seven months, when the American forces stayed in the premises, should be excluded from the 5-year period. However, the lessors wanted the lessee to pay the rentals for the period when the Japanese occupied the premises amounting to ₱11,900. As the lessee refused to pay, they gave notice seeking the rescission of the lease. The lessors accepted the payment of one month's rental "without prejudice to their demand for rents in arrears and for the rescission of the contract of lease." On April 26, 1947 the Villaruels brought an action against the Manila Motor Co. and Arturo Colmenares, its branch manager, for the recovery of back rentals. During the pendency of the action, a fire originating from the projection room of the City Theater, into which Colmenares (the sublessee) had converted the former repair shop,

[287] City of Naga v. Sales, 50 O.G. 5765 (1954).
[288] 81 Phil. 601 (1948)
[289] 84 Phil. 654 (1949).
[290] G.R. No. L-2376, June 26, 1951.

completely razed the building. The plaintiffs filed a supplemental complaint for the recovery of the value of the burned buildings.

Held: The Manila Motor Co. was liable to pay only the rentals for the leased premises from July to November 1946 and it was not liable to pay the rentals during the Japanese occupation and the value of the burned buildings.

The dispossession of the lessee from the premises by the Japanese forces was not a mere trespass in fact but was a *perturbacion de derecho.* The lessee could not have a direct action against the Japanese invaders. The case was distinguished from the *Lo Ching* and *Reyes* cases. The dispossession by the Japanese exempted the lessee from its obligation to pay rentals during the period that it was not in possession of the premises.

Exceptio non adempleti contractus and sic rebus non stantibus in lease.—

The *Villaruel case*[291] also lays down the rule that although the lessor could not fulfill his obligation to "maintain the lessee in the peaceful enjoyment of the lease during the entire term of the contract" due to force majeure, such as the forcible occupation of the leased premises by the invading Japanese forces, and later the American forces of liberation, the lessee just the same is relieved from the payment of rentals during the period that he was not occupying the premises.

The reason is that lease being a contract that calls for prestations that are both repetitive and reciprocal (*tractum successivum*), the obligations of either party are not discharged at any given moment, but must be fulfilled all throughout the term of the contract. As a result, any substantial failure of one party to fulfill its commitments at anytime during the contract period gives rise to a failure to consideration (*causa*) for the obligations of the other party and excuses the latter from the correlative performance, because the *causa* in lease must exist not only at the perfection but throughout the term of the contract. No lessee would agree to pay rent for premises he could not enjoy. As stated by Marcel Planiol: "Como la obligacion del arrendador es sucesiva y se renueva todos los dias, la subsistencia del arrendamiento se hace imposible cuando, por cualquier razon, el arrendador no puede ya procurar al arrendatario el disfrute de la cosa."

This effect of the failure of reciprocity appears whether the failure is due to fault or to fortuitous event; the only difference being that in case of fault, the other party is entitled to rescind the contract *in toto*, and collect damages, while in casual nonperformance it becomes entitled only to a suspension *pro tanto* of its own commitments. This rule is recognized in article 1662 of the new Civil Code, formerly article 1558, which authorizes the lessee to demand reduction of the rent in case of repairs depriving him of the possession of part of the property and in article 1680 of the new Civil Code, formerly article 1575, which entitles the lessee of rural lands to demand reduction of the rent if more than one-half of the fruits are lost by extraordinary fortuitous events. Of course, where it becomes immediately apparent that the loss of possession or enjoyment will be permanent, as in the case of accidental destruction of a leased building, the lease contract is terminated.

The rule in the common law is otherwise due to its regarding a lease as a conveyance to the lessee of a temporary estate or title to the leased property so that loss of possession due to war or other fortuitous event leaves the tenant

[291] See note 285.

liable for the rent in the absence of stipulation. As ruled in *Viterbo v. Friedlander*,[292] the common law regards a lease for years at a certain rent as the grant of an estate for years, which the lessee takes title in, and is bound to pay the stipulated rent for, notwithstanding any injury by flood, fire or external violence, at least unless the injury is such a destruction of the land as to amount to an eviction; and by that law the lessor is under no implied covenant to repair or make sure that the premises shall be fit for the purpose for which they are leased.

On the other hand, the civil law regards a lease for years as a mere transfer of the use and enjoyment of the property and holds the landlord, bound, without any express covenant, to keep it in repair and otherwise fit for use and enjoyment for the purpose for which it is leased, even when the need of repair or the unfitness is caused by an inevitable accident, and if he does not do so, the tenant may have the lease annulled, or the rent abated.

It is accordingly laid down in the Pandectas, on the authority of Julian, that "if anyone has let an estate, that, even if anything happens by *vis major*, he must make it good, he must stand by his contract"; and on the authority of Ulpian, that "a lease does not change the ownership—*non solet licatio dominium jutare*", and that the lessee has a right of action if he cannot enjoy the thing which he has hired (*si re quam conduxit frui no liceat*), whether because his possession, either of the whole or of part of the field, is not made good, or a house, or stable or sheepfold, is not repaired and the landlord ought to warrant the tenant (*dominum colono praestare debere*) against every irresistible force (*omnium vim cue resisti non potest*), such as floods, flocks of birds, or any like cause, or invasion of enemies, and if the whole crop should be destroyed by a heavy rainfall, or the olives should be spoiled by blight, or by extraordinary heat of the sum (*solis fervere non assueto*), it would be the loss of the landlord (*damnum domini futurum*); and so if the field falls in by an earthquake, for there must be made good to the tenant a field that he can enjoy (*oportere enim agrum praestari conductori, ut frui possit*); but if any loss arises from defects in the thing itself (*si qua tamen vitia ex ipsa oriantur*), as if wine turns sour, or standing corn is spoiled by worms or weeds, or if nothing extraordinary happens (*si vero nihil extra consuetudinem acciderit*), it is the loss of the tenant (*damnum coloni esse*).

In short, the law applies to leases the rule enunciated by the Canonists and the Bartholist School of Post-Glossators that "*contractus que tractum successivum habent et dependentiam de future, sub conditione rebus sic stantibus intelliguntur*": they are understood entered into subject to the condition that things will remain as they are, without material change.

Loss of the thing leased.—

Article 1667 of the new Civil Code, formerly article 1563, provides that "the lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place without his fault. This burden of proof on the lessee does not apply when the destruction is due to earthquake, flood, storm, or other natural calamity." In the *Villaruel* case[293] the said rule was not invoked in the lower court and the case was tried on the theory that the loss of the building leased was due to a fortuitous event. It appears in that case that the lessor refused to accept without justification the rentals due. Later, the building was burned due to force majeure. It was held that the

[292] 50 L. Ed. 776.
[293] See note 285.

lessor's refusal to accept the rentals without qualification placed him in default (*mora creditoris or accipiendi*) with the result that thereafter he had to bear supervening risks of accidental injury or destruction of the leased premises. Articles 1185, 1452 and 1589 of the old Civil Code, now articles 1268, 1480 and 1717 were cited. However, it should be noted that the relevancy of these articles to the point at issue is doubtful since they refer to the loss of the *thing due*, whereas the *Villaruel* case involved the *loss of the thing leased* and the thing due in that case was the rental.

Recovery of possession by means of ejectment.—

In *Philippine Consolidated Freight Lines, Inc. v. Ajon*,[294] it appears that the plaintiff occupied a parcel of land forming part of the San Lazaro Estate which is administered by the Director of Lands. Plaintiff corporation constructed a building thereon, which it leased to Zacarias de Guzman, who in turn leased it to the defendants. The Director of Lands served upon the plaintiff a notice terminating its occupation of the land in view of its failure to pay increased occupation fees. The Director also notified the defendants to pay rentals to the Bureau of Lands, which payment would be applied to the occupation fees due from the plaintiff. In view of defendants' nonpayment of rentals to the plaintiff, the latter brought the instant ejectment suit against them.

Held: The ejectment action was proper. As sublessees of De Guzman, the defendants had no better right than him. Defendants were occupying the building which admittedly belongs to the plaintiff. The Director of Lands could not extrajudicially terminate plaintiff's occupation of the land.

Ejectment from a mineral land.—

An ejectment suit may be filed against a person unlawfully detaining a parcel of mineral land. Rule 72, Rules of Court, in speaking of "land" includes all kinds of land, whether agricultural, residential or mineral. Where the law does not distinguish, we should not distinguish (*ubi lex non distinguit, nec distinguere devemos*).[295]

Other rulings on lease.—

(1) No rentals for the lease of a vessel can be recovered by the lessor if the vessel sank due to the fact that it was unseaworthy.[296]

(2) Considering that the trial court has the authority to fix the just and reasonable rental of leased property, it has equally the power to determine the date when the rental should take effect.[297]

(3) In relation to the lessor, the sublessees can have no right to the leased premises better than the original lessee or sublessor.[298]

LABOR LAW

Bus conductor under the boundary system is an employee of the bus owner.—

The rule in *National Labor Union v. Dinglasan*,[299] that drivers driving jeepneys under the so-called "boundary" system are employees of the jeepney

[294] G.R. No. L-10206, April 16, 1958, 55 O.G. 22.
[295] Robles v. Zambales Chromite Mining Co., G.R. No. L-12560, Sept. 30, 1958.
[296] Medrigal, Tiangco Co. v. Mabanta, G.R. No. L-6107, April 18, 1958.
[297] Mayon Trading Co., Inc. v. Co Bun Kim, G.R. No. L-11251, July 31, 1958; Archbishop of Manila v. Ver, 73 Phil. 373.
[298] Philippine Consolidated Freight Lines, Inc. v. Ajon and Mandanas, G.R. No. L-10206, April 16, 1958, 55 O.G. 22; Sipin v. Court, 74 Phil. 649; Madrigal v. Ang Sam To, 46 O.G. 2173.
[299] 52 O.G. 1938 (1956).

owners was applied in *Doce v. Workmen's Compensation Commission* to the conductor of a bus operated also under the "boundary" system in connection with the injured conductor's claim for workmen's compensation. In the *Doce* case, it appears that Dado Jadao was a conductor of a bus owned by Isabelo Doce. Jadao was paid under the boundary system. His average daily earnings was ₱4. While acting as such conductor, he was injured and suffered temporary total disability and a partial loss of the use of his right leg. Under the boundary system, the driver and conductor gave to the owner ₱15 daily out of the daily earning derived from the operation of the bus. The cost of the gasoline was deducted from the earnings of the bus. The remainder of the earnings was divided between the conductor and the driver. *Held:* The conductor was an employee of Doce. He was held liable to pay workmen's compensation to Jadao.

COMMON CARRIERS

Carrier is negligent if accident was due to the truck's defective steering knuckle.—

Article 1755 of the new Civil Code provides that "a common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all circumstances." Article 1756 of the same Code 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, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755." These provisions were applied in *Necesito v. Paras.*[300]

The *Necesito* case stresses that the carrier is not an insurer of the passenger's safety but at the same time it also underscores that "a common carrier's contract is not to be regarded as a game of chance wherein the passenger stakes his limb and life against the carrier's property and profits." The carrier's liability rests upon negligence, his failure to exercise the "utmost" degree of diligence that the law requires. The same rule prevails in American jurisprudence, which adheres to the doctrine that a passenger is entitled to recover damages from a carrier for an injury resulting from a defect in an equipment purchased from a manufacturer, whenever it appears that the defect could have been discovered by the carrier if it had exercised the degree of care which under the circumstances was incumbent upon it, with regard to inspection and application of the necessary tests. The manufacturer is considered the agent or servant of the carrier with regards to the making of the equipment. The good repute of the manufacturer will not relieve the carrier from liability.[301] The rationale of the carrier's liability lies in the fact that the passenger has neither the choice nor control over the carrier in latter's selection and use of the equipment and appliances. Having no privity whatever with the manufacturer or vendor of the defective equipment, the passenger has no remedy against him, while the carrier usually has. It is but logical that the carrier, while not an insurer of the safety of his passengers, should nevertheless be held to answer for the flaws of his equipment if such flaws were at all discoverable.[302]

Thus a carrier is responsible for the damages caused by the fracture of a car axle due to a "sand hold" which arose in the course of moulding the

[300] G.R. No. L-10605, June 30, 1958 and Sept. 11, 1958. See Alfaro v. Ayson, CA 54 O.G. 7920.
[301] 10 Am. Jur. 205.
[302] 29 A.L.R. 789.

axle. The relation between the carrier and the manufacturer is governed by the principle of *respondeat superior* (the principal answers for the acts of his agent).[303]

In the *Paras* case, it appears that in the morning of January 28, 1954 Severina Garces and her one year old son, Prescillano Necesito, with a cargo of vegetables, boarded a bus at Agno, Pangasinan bound for Manila. After passing Mangatarem, the bus entered a wooden bridge, but the front wheels swerved to the right; the driver lost control; and after wrecking the bridge's wooden rails, the truck fell on its right side into a creek where the water was breast-deep. The mother Severina was drowned. The child Precillano was injured, suffering abrasions and fracture of the left femur. The heirs of Severina and Precillano sued the bus company for damages. The defense was that the accident was due to "engine or mechanical trouble independent or beyond the control of the company or its driver." The trial court absolved the company from liability for damages because the accident was caused "by the fractures of the right steering knuckle, which was defective in that its center or core was not compact but 'bubbled and cellulous', a condition that could not be known or ascertained by the carrier despite the fact that regular thirty-day inspections were made of the steering knuckle, since the steel exterior was smooth and shiny to the depth of 3/16 of an inch all around." The plaintiffs appealed.

Held: The company is liable for damages. The manufacturer, or the carrier failed to test the steering knuckle to ascertain whether its strength was up to standard, or that it had no hidden flaws that would impair that strength. The periodical visual inspection of the steering knuckle as practised by the carrier's agents did not measure up to the required legal standard of 'utmost diligence of very cautious persons', 'as far as human care and foresight can provide.'" The knuckle's failure cannot be considered a fortuitous event that exempts the carrier from responsibility. It may be impracticable to require of carriers to test the strength of each and every part of its vehicles before each trip, but a due regard for the carrier's obligations toward the traveling public demands adequate periodical tests to determine the condition and strength of those parts of the vehicle whose failure may endanger the safety of the passengers.

Heirs of deceased guest passenger who was negligent cannot recover damages; carrier is required to exercise ordinary care in transporting guest passenger.—

The rule in article 1761 of the new Civil Code, that "the passenger must observe the diligence of a good father of a family to avoid injury to himself," was applied in *Lara v. Valencia.*[304] The *Lara* case also applies the rule "that the owner or operator of an automobile owes the duty to an invited guest to exercise reasonable care in its operation, and not unreasonably to expose him to danger and injury by increasing the hazard of travel." The car owner should "exercise *ordinary or reasonable care to avoid* injuring him. Since one riding in an automobile is no less a guest because he asked for the privilege of doing so, the same obligation of care is imposed upon the driver as in the case of one expressly invited to ride."[305] The carrier is required to observe ordinary care in transporting a guest passenger and is not in duty bound to

[303] Morgan v. Chesapeake & O. R. Co., 15 L.R.A.N.S. 790.
[304] G.R. No. L-19907, June 30, 1958.
[305] 5 Am. Jur. 626-627.

exercise extraordinary diligence as required of a common carrier in articles 1755 and 1756 of the new Civil Code.

In the *Lara* case, it appears that Demetrio Lara was a forestry inspector who classified the logs in the lumber concession of Brigido Valencia at Parang, Cotabato. While in the concession, Lara contracted malaria. He asked Valencia to take him in the latter's pickup truck which was going to Davao. Lara sat in the back together with five other guest passengers. When the truck reached barrio Catidtuan, Lara accidentally fell from the truck. He suffered serious injuries. Valencia stopped the truck to see what had happened to Lara. Lara died before medical assistance could be rendered to him. When the truck arrived in Davao, Valencia reported the matter to the local authorities.

Held: The accident was due to an unforseen event. Lara must have fallen from the truck when he was half asleep and when the truck passed a part of the road that was bumpy, rough and full of stones. His negligence was the proximate cause of his death. The accident was due to circumstances beyond Valencia's control. He was absolved from the complaint for damages brought against him by the heirs of Lara.

It should be noted that the owner of the truck in the *Lara* case was not a common carrier as this term is defined in article 1732 of the new Civil Code.

PARTNERSHIP

Joint venture is a partnership for income tax purposes.—

The rule in *Evangelista v. Collector of Internal Revenue*[306] that the partnerships, which are treated as corporations for income tax purposes under section 24 of the National Internal Revenue Code, "are not necessarily partnerships in the technical sense of the term", was reiterated in *Collector of Internal Revenue v. Batangas Transportation Company*.[307] Sections 24 and 84 of the National Internal Revenue Code defines corporations as including partnerships "no matter how created or organized," thereby indicating 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 one could be deemed constituted for purposes of the tax on corporations." Section 84 also includes in the term "corporation" joint accounts (*sociedad de cuentas on participacion*) and "associations" which have no juridical personality separate and distinct from the members thereof.

In the *Batangas Transportation case*, it was noted that two transportation companies contributed money to a common fund to pay the sole general manager, the accountants and office personnel attached to the office of said manager, as well as for the operation of a common maintenance and repair shop. Said common fund was also used to buy spare parts and equipment for both companies and to pay all the salaries of all their personnel, and at the end of the year, the gross income of both companies was combined and the net income was determined and divided equally between them, wholly and utterly disregarding the expenses incurred in the maintenance and operation of each company and of their individual income. *Held:* The two companies had formed a joint venture which was taxable as an unregistered partnership or corporation.

[306] 54 O.G. 996 (1957).
[307] G.R. No. L-9692, Jan. 6, 1958.

AGENCY

Agency coupled with an interest.—

The case of *Del Rosario v. Abad*,[308] lays down the rule that a mere statement in the power of attorney that it is coupled with an interest does not create an agency coupled with an interest. The interest must be stated in the power of attorney. In the *Del Rosario* case it appears that Tiburcio del Rosario on February 24, 1937 mortgaged to Primitivo Abad the improvements of his homestead as security for a loan of P2,000. On the same day he executed in favor of Abad an "irrevocable special power of attorney coupled with interest" authorizing Abad to sell his homestead. Del Rosario died in 1945. On June 9, 1947 Abad sold the homestead to his son Teodorico for the token sum of P1. In 1952 Del Rosario's heirs sued Teodorico Abad for the recovery of the homestead.

Held: Abad's sale of the homestead to his son is void. Teodorico Abad was ordered to reconvey the homestead to the Del Rosario heirs. The agency executed by Del Rosario in Abad's favor did not create an agency coupled with an interest nor clothe it with irrevocable character. The fact that Del Rosario was a mortgage debtor of Abad is not such an interest as would render irrevocable the power of attorney executed by him in favor of Abad. The debt was not mentioned in the power of attorney.

As the agency was not coupled with an interest, it was terminated upon Del Rosario's death. To consider the power of attorney as irrevocable would constitute an encumbrance on the homestead which is prohibited by law, since the homestead patent was issued in 1936. However, Abad could still foreclose the mortgage on the improvements.

In this connection, the rule is that "to constitute a power coupled with an interest, a property in the thing which is the subject of the agency or power must be vested in the person to whom the agency or power is given, so that he may deal with it in his own name; such that in the event of the principal's death the authority could be exercised in the name of the agent, and hence if the interest of the agent is not such as to enable him to execute the power in his own name, it is not such an interest as precludes termination of the relation by revocation." Coupled with an interest does not mean an interest in the exercise of the power, but an interest in the property on which the power is to operate.[309] Article 1927 of the new Civil Code enumerates three cases of agency coupled with an interest. It provides that "an agency cannot be revoked if a bilateral contract depends upon it, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable."[310]

Person dealing with agent should ascertain latter's authority.—

The rule that persons dealing with a supposed attorney-in-fact are required to observe extraordinary diligence in determining not only the fact of agency but also the nature and extent of his authority[311] or "every person dealing with an agent is put upon inquiry, and must discover upon his peril the authority of the agent, and this is specially true where the act of the agent is of an unusual nature,[312] was applied in *Augsburg Adams v. De Jesus*,[313]

[308] G.R. No. L-10881, Sept. 30, 1958.
[309] Hunt v. Rousmanier, 5 L. Ed. 589; 2 C.J. 531-532.
[310] See De la Rama Steamship Co. Inc., v. Tan, G.R. No. L-8784, May 21, 1956.
[311] Deen v. Pacific Commercial Co., 42 Phil. 737; Harry E. Keeler Electric Co. v. Rodriguez, 44 Phil. 19.
[312] Veloso v. La Urbana, 58 Phil. 681.
[313] G.R. No. L-8658, Dec. 29, 1958.

to the sale of land made on the basis of a forged power of attorney by an imposter. The sale was declared void.[314]

Compensation of agent.—

Where the plaintiff firm was the broker that negotiated the sale of the defendant's vessels to the Indonesian Government and the sale was consummated because of plaintiff's intervention, defendant should pay the plaintiff the stipulated compensation of P70,000.[315]

DEPOSIT

Presumption of negligence in case goods deposited were lost after depositary's default.—

The case of *Gonzales v. Go Tiong*[316] adopts the rule that where there is default in delivery or accounting of the goods deposited on the part of the depositary and the goods were lost thereafter, it is just to presume that the depositary was negligent.[317] This rule is similar to that found in article 1979 of the new Civil Code that the depositary is liable for the loss of the thing through a fortuitous event "if he delays its return" and that found in article 1165 of the same Code, that "if the obligor delays x x x he shall be responsible for any fortuitous event until he has effected the delivery." These two articles were not cited in the *Gonzales case.*

In that case it appears that Go Tiong accepted gratuitous deposits of palay from Ramon Gonzales. He failed to deliver the palay to Gonzales notwithstanding repeated demands. The deposits of palay in his warehouse exceeded the limit fixed by law. The warehouse with its contents were burned later. *Held:* Go Tiong is liable to Gonzales for the value of the palay. He could not be excused because of the alleged loss of the palay due to a fortuitous event. The case was distinguished from that of *Sociedad Dalisay v. De los Reyes.*[318] Go Tiong had delayed the delivery of Gonzales' palay and he had violated the terms of his license by accepting for deposit palay in excess of the limit fixed therein.

COMPROMISES

Articles 2029 and 2030 of the new Civil Code regarding the compromise of civil cases were cited in *Republic v. Villarosa*[319] to justify a lawyer's failure to appear at the hearing of a case. He failed to appear because the other party asked for postponement in order that the case can be settled amicably.

GUARANTY AND SURETYSHIP

Nature of suretyship.—

The case of *Judge Advocate General v. Alto Surety & Insurance Co., Inc.*[320] clarifies the nature of the surety's obligations. The contract of suretyship is not that the obligee or creditor will see to it that the principal debtor pays the debt or fulfills the contract, but that the surety will see to it that the princi-

[314] De Lara v. Ayroso, 50 O.G. 4888 (1954); Parqui v. Philippine National Bank, 50 O.G. 6768, (1954); Garcia v. Reedy, CA-G.R. No. 13324-R, Jan. 9, 1956.
[315] Juan Ysmael & Co., Ltd. v. William Lines, Inc., G.R. No. L-9614, May 12, 1958.
[316] G.R. No. L-11776, Aug. 30, 1958.
[317] 9 A.L.R. 566.
[318] 55 Phil. 452.
[319] G.R. No. L-11782, April 30, 1958, 54 O.G. 6249.
[320] G.R. No. L-10671, Oct. 28, 1958.

pal debtor pays or performs. The creditor, in order to preserve his rights against the surety, is not bound to act with diligence, and if he only remains passive, his rights are not impaired.[321] To require such diligence of the creditor would encourage supineness and negligence on the part of the surety, who intead of performing his duty of paying the debt, or causing it to be paid by his principal, would be tempted to lie in wait for some slip or indiscretion on the part of the creditor, and even to stimulate his principal to solicit from the creditor an imprudent indulgence. Such a principle would destroy the discretion and impair the rights of the creditor.

In the *Alto* case, it appears that the surety company executed a bond to guarantee the payment to the Judge Advocate General of the Philippine Armed Forces of the sum of ₱4,588.62 which had been delivered to Victorina Vienes in order that she could construct a house for a minor child, the son of a deceased member of the U.S. Army. Vienes did not construct the house. It was argued that the Judge Advocate General could have collected ₱1,588 from Vienes had his office been more diligent. *Held:* This contention is untenable. It is the surety's obligation to see to it that Vienes fulfilled her obligation. That was not the obligation of the creditor.

Consideration for the counterbond.—

There is some conflict of opinion as to the consideration for a guaranty or surety bond with respect to the guarantor or surety. The case of *Philippine Guaranty Co., Inc. v. Dinio* [322] adopts the rule in *Pyle v. Johnson* [323] that "the consideration which supports the obligation as to the principal debtor is a sufficient consideration to support the obligation of the surety or guarantor. It is unnecessary to prove consideration between the surety and the creditor." Thus, a counterbond executed by the principal debtor jointly with the co-maker is intended to secure the bond filed by the surety company in behalf of the principal debtor. The fact that the surety bond is not for the benefit of the co-maker does not mean that as to the maker the counterbond has no consideration. The consideration is that which supports the principal debtor's obligation. It is not necessary that the surety bond hould redound directly to the benefit of the co-maker of the counterbond; it is enough that it is favorable to the principal debtor.

On the other hand, in another case it was held that the execution of a bond is supported by no other consideration than the liberality of the guarantor or surety.[324]

It seems that in a *gratuitous* guaranty or suretyship the consideration between the principal debtor and the guarantor is mere liberality, but as between the guarantor and the creditor the consideration is the same as that as for the principal obligation.

Strict construction of guaranty.—

Article 2055 of the new Civil Code which provides that "a guaranty is not presumed; it must be express and cannot extend to more than what is stipulated therein" was applied in *Traders Insurance & Surety Co. v. Dy Eng Giok*,[325] where it was ruled that in the absence of express stipulation, a guaranty or

[321] 50 Am. Jur. 904, 932.
[322] G.R. No. L-10547; 54 O.G. 5331.
[323] 9 Phil. 249, 251; also China Banking Corporation v. Lichauco, 46 Phil. 460; Severino and Vergara v. Severino, 56 Phil. 185.
[324] Standard Oil Co. v. Codina Arenas, 19 Phil. 363.
[325] G.R. No. L-9073, Nov. 17, 1958.

suretyship operates prospectively and not retroactively; that is to say, it secures only the debts contracted after the guaranty takes effect.[326] In the *Traders* case, it appears that on August 4, 1951, when Dy Eng Giok was already indebted to the Distileria Lim Tuaco & Co., Inc. in the sum of ₱12,898, he executed a bond in favor of said distillery to guarantee his turning over of the proceeds of his sales of the company's products in his capacity as its provincial sales agents. His surety was the Traders Insurance & Surety Co., Inc. It was stipulated that the surety's liability would not exceed ₱10,000. Pedro Lopez and Pedro Dy-Liacco acted as counterguarantors of Dy Eng Giok in the indemnity agreement executed by Dy Eng Giok in favor of the surety company.

From August 4, 1951 to August 3, 1952 Dy Eng Giok contracted obligations in favor of the distillery in the sum of ₱41,449 and during the same period he made remittances to the distillery amounting to ₱41,864. But the distillery applied said remittances to the unsecured account of Dy Eng Giok amounting to ₱12,898 as of August 4, 1951. Hence, there was an unpaid balance of ₱12,484 due from Dy Eng Giok, which the distillery demanded from the surety. The surety paid ₱10,000 and then sued Dy Eng Giok and his two counterguarantors for reimbursement.

Held: Dy Eng Giok is liable to pay ₱10,000 to the surety, but the two counterguarantors are not liable to the surety because they did not guarantee Dy Eng Giok's obligation existing before the surety bond was executed. They guaranteed that Dy Eng Giok would turn over the proceeds of his sales and this he had done since his remittances exceeded the value of his sales. The surety was not liable at all under its bond. Its voluntary payment of ₱10,000 was improper. The court cited the rule that "where a bond given to secure compliance on the part of the lessee clearly shows that the privilege is let for a stated sum for the term of two years, the total liability of the surety is limited to this amount; and the contract will not be interpreted as making the surety liable for the stated amount per annum for each of the two years of the lease."[327]

Case where bond was ineffectual because of variance between its provisions and those of principal contract.—

Since guaranty or suretyship is an accessory obligation, the obligation secured by it must be identical to the principal obligation. In *Pacific Tobacco Corporation v. Manila Surety & Fidelity Co., Inc.*,[328] it appears that on *January 4, 1952* the Manila Surety & Fidelity Co., Inc. executed a bond in favor of the Pacific Tobacco Corporation to guarantee the obligation of Domingo Ramos, *as agent*, to account for the goods consigned to him by the corporation. However, on *January 7, 1952* the said corporation and Ramos entered into a contract which provided that the former would sell to Ramos tobacco products and that Ramos should file a bond to answer for the merchandise delivered to him. *Held:* The surety company is not liable on its bond to the Pacific Tobacco Corporation because of the variance between the bond and the principal obligation. There was no contractual or juridical relation between them. Under the bond, the surety would be liable for the acts of Ramos as *agent* but under the principal contract, Ramos was treated as a *buyer* of the tobacco products.

Surety is subrogated to all the rights of the creditor.—

The surety company which pays the amount claimed under its bond is subrogated to all the rights which the creditor may have against the debtor and

[326] El Vencedor v. Canlas, 44 Phil. 699.
[327] Municipality of Lemery v. Mendoza and Blas, 48 Phil. 415.
[328] G.R. No. L-10894, March 24, 1958.

is entitled to claim indemnity or reimbursement from the debtor, pursuant to articles 1177, 1302, 2066 and 2067 of the new Civil Code.[320]

When surety is not discharged.—

The case of *Gonzales v. Go Tiong* [330] adopts the rule that while a compromise settlement between the creditor and the principal debtor, by which the latter is discharged from liability, discharges the surety, on the other hand "an unconsummated agreement to compromise, falling short of effective settlement, will not discharge the surety."

The *Gonzales* case also follows the rule that the surety cannot avoid liability by reason of the mere failure of the warehouseman to issue the prescribed receipt. The surety's obligation covers the duty of the warehouseman to issue the prescribed receipt as well as the other duties imposed upon him by the statute.[331]

Extension to debtor granted with surety consent.—

Article 2079 of the new Civil Code, which provides that 'an extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty" was cited in *Joe's Radio & Electrical Supply v. Alto Electronics Corporation* [332] in connection with the vendee's receipt from the defaulting vendor of two television sets worth ₱2,928 on condition that the surety of the vendor would consent to such acceptance. It appears in that case that the two sets were delivered to the vendee after the stipulated period. In order to prevent the acceptance of the sets from being construed as an extension to the debtor without the surety's consent, the vendee (creditor) required that the surety should consent to such delivery. Therefore, the vendee's acceptance did not release the surety.

In another 1958 case, it was ruled that mere delay in the presentation of the complaint for collection does not constitute an extension as to release the guarantor.[333]

Surety company may sue sureties of principal debtor on counterbond even before payment.—

The case of *Manila Surety & Fidelity Co., Inc. v. Cruz*,[334] reiterates the rule in *Alto Surety & Insurance Co. v. Aguilar*,[335] that the surety company may sue the counter-sureties of the principal debtor on the counterbond or indemnity agreement even before the surety company has paid the principal obligation, where it is provided in the indemnity agreement that "said indemnity shall be paid to the (surety) company as soon as it has become liable for the payment of any amount, under the above mentioned bond, whether or not it shall have paid sum or sums of money, or any part thereof."

Construction of stipulation as to time when action on bond should be brought.—

In *Pao Chuan Wei v. Momorosa*,[336] it was stipulated in a surety bond that the surety company "will not be liable for any claim not discovered and pre-

[320] Material Distributors (Phil.) Inc. v. Miles Timber & Transport Corporation, G.R. No. L-9433, March 24, 1958.
[330] G.R. No. L-11776, Aug. 30, 1958.
[331] Anderson v. Krueger, 212 N.W. 198; 199.
[332] G.R. No. L-12376, Aug. 22, 1958.
[333] Philippine National Bank v. Osena, G.R. L-10880, Jan. 31, 1958; Bank of the P.I. v. Albaladejo, 53 Phil. 141 and other cases.
[334] G.R. No. L-10404, April 18, 1958.
[335] G.R. No. L-5625, March 16, 1954.
[336] G.R. No. L-10292, Feb. 28, 1958.

sented to the company within three (3) months from the expiration of this bond and that the obligee (creditor) hereby waives his right to file any court action against the surety after the termination of the period of three months above-mentioned."

The surety contended that the 3-month period expired on May 22, 1950 and that the action on the bond brought in February 1952 could not be maintained anymore. On the other hand, the creditor or obligee contended that, since he filed a claim with the surety company within the 3-month period, his action was still maintainable.

Held: The said stipulation means that the creditor "waives his right to file any court action against the surety after the termination of the three months above mentioned" *should he present no claim to the surety within said three-month period.* It should be noted that no punctuation separates the first part regarding waiver. This is an indication that the second part is a continuation of the first; and the two clauses must be taken together as referring to one topic: presentation of claim within three months and effect of nonpresentation. The second could not obviously have meant to amend the first part by making it only a condition precedent but also a limitation of action. Indeed, as the parties expressly fixed the three-month period for presentation of the claim as a condition precedent, they must have intended to give the surety, if the claim is presented within that period, some time to decide whether to pay or not to pay. If it agrees to pay, no complaint need be filed in court. Now then, if the claim is presented on 90th or last day, to uphold the contention of the surety company would deprive the surety of the chance to decide whether to pay or not to pay and would compel action on that same day, regardless of the surety's attitude on the matter. That would be nonsensical. So that if the claim is not filed in court on that last day, it would be deemed to have prescribed. The parties could not have contemplated that absurd result. The period fixed for prescription would be unreasonable in that case.

In another 1958 case, it was held that, while the surety company and the creditor may agree on the period within which court action should be brought against the surety, the period agreed upon, to be valid, must be reasonable. The agreement that action against the surety should be brought within the very period when the debt secured should be paid by the principal debtor is unreasonable and cannot be enforced. It nullifies the suspensive term given to the debtor within which to make payment. This is the holding in *Ongsiaco v. World Wide Insurance & Surety Co., Inc.*[337]

Void incontestability clause in indemnity agreement.—

The case of *Traders Insurance & Surety Co. v. Dy Eng Giok* [338] is authority for the rule that an incontestability clause in an indemnity agreement or counterbond executed in favor of a surety company by the counterguarantors or countersureties of the principal debtor is void and unenforceable as being against public policy because it enlarges the field for fraud, the promisor bargains away his right to a day in court, and the effect of the clause is to strike down the right of appeal accorded by the statutes. The clause involved in the *Traders* case reads as follows:

> "INCONTESTABILITY OF PAYMENTS MADE BY THE COMPANY.—Any payment or disbursement made by the company on account of the above-mentioned bond, its renewals, extensions or substitutions, either in the belief that the company was obli-

[337] G.R. No. L-12077, June 27, 1958.
[338] G.R. No. L-9078, Nov. 17, 1958.

gated to make such payment or in the belief that said payment was necessary in order to avoid greater losses or obligations for which the company might be liable by virtue of the terms of the above-mentioned bond, its renewals, extensions or substitutions shall *be final and will not be disputed by the undersigned* who jointly and severally bind themselves to indemify the company for any and all such payments as stated in the preceding clause."

Such a clause is like a warrant of attorney to confess judgment which is also void.[339] In the *Traders* case it was ruled that the payment made by a surety company to the creditor was improper and for that reason it was not entitled to demand reimbursement from the countersureties of the debtor. Although the indemnity agreement contained the incontestability clause quoted above, the said clause did not preclude the countersureties from attacking the propriety of the surety's payment. However, the principal debtor was required to reimburse the surety company.

CHATTEL MORTGAGE

Deficiency may be recovered in chattel mortgage foreclosure.—

Article 2141 of the new Civil Code, which provides that its provisions on pledge, insofar as they are not in conflict with the Chattel Mortgage Law, shall be applicable to chattel mortgages," has generated the opinion that there can be no recovery of deficiency in chattel mortgage foreclosures because no such deficiency is recognized in pledge under 2115 of the same Code. Of course, in the case of a chattel mortgage executed to secure the payment of the price in installment sales, no deficiency may be recovered in case of foreclosure, according to article 1484 of the new Civil Code.

The 1958 case of *Ablaza v. Ignacio* [340] has blasted the opinion that there can be no deficiency judgment in chattel mortgage foreclosure and reiterates the old rule that under section 14 of the Chattel Mortgage Law an independent action may be brought to recover the deficiency in a chattel mortgage foreclosure.[341] In the *Ablaza* case, it appears that the defendant borrowed ₱2,250 from the plaintiff and executed a chattel mortgage to secure the loan. Plaintiff foreclosed the chattel mortgage extrajudicially and there remained a deficiency of ₱2,675 including interest and liquidated damages. Plaintiff filed an action against the defendant for the recovery of the said deficiency. *Held:* The action was proper. Defendant was sentenced to pay the said sum of ₱2,675.

QUASI-CONTRACTS

Where gestor was not allowed to file a claim for damages.—

In *Lim Siok Huey v. Lapiz*,[342] it appears that Chua Pua Lun was killed as a result of a collision between a bus and a jeepney. His heirs, namely, his widow and four children were residing in Communist China but his brother was residing here. This brother, Chua Pua Tam, took steps for the filing of an action for damages in the name of the heirs of Chua Pua Lun against the drivers of the two vehicles and their owners. The action was dismissed because there was no evidence that it was authorized by the nonresident heirs of the deceased. The contention that Chua Pua Tam acted as a *negotiorum gestor* was not entertained because it is necessary that he should have express authority to represent the minor heirs of the deceased. Justice J. B. L. Reyes

[339] National Bank v. Manila Oil Refining & By-Products Co., 43 Phil. 444 (1922).
[340] G.R. No. L-11466, May 23, 1958.
[341] Bank of the P.I. v. Olutanga Lumber Co., 47 Phil. 20 (1924); Manila Trading and Supply Co. v. Tamaraw Plantation Co., 47 Phil. 513 (1925).
[342] G.R. No. L-12289, May 28, 1958.

added that in *negotiorum gestio* it is assumed that the gestor's authority is not disputed by the persons with whom he is dealing. In the instant case, the defendants disputed the authority of Chua Pua Tam.

QUASI-DELICTS

Owner of natatorium who is not negligent is not liable for death of patron.—

The case of *Ong v. Metropolitan Water District (MWD)*[343] is a case of first impression. It concerns the liability of the owner of a swimming pool for the death of a patron. The *Ong* case adopts the rule that "the owners of resorts to which people generally are expressly or by implication invited are legally bound to exercise ordinary care and prudence in the management and maintenance of such resorts to the end of making them reasonably safe fore visitors"[344] and that "although the proprietor of a natatorium is liable for injuries to a patron, resulting from lack of ordinary care in providing for his safety, without the fault of the patron, he is not, however, in any sense deemed to be the insurer of the safety of patrons. And the death of a patron within his premises does not cast upon him the burden of excusing himself from any presumption of negligence."[345]

In the *Ong* case, it appears that in the afternoon of July 5, 1952 at about one o'clock, Dominador Ong, a 14-year old high school student and a boy scout, with his brothers Ruben and Eusebio went to the recreational swimming pool of the Metropolitan Water District at the Balara Filters, Diliman, Quezon City. This was not the first time that the three brothers had gone to said natatorium for they had already been there four or five times before. After paying the requisite admission fee, they immediately went to one of the small pools where the water was shallow. At about 4:35 p.m., Dominador told his brothers that he was going to the locker room in an adjoining building to drink a bottle of coke. Upon hearing this, Ruben and Eusebio went to the bigger pool, leaving Dominador in the small pool and so they did not see the latter when he left the pool to get a bottle of coke On that afternoon, there were two lifeguards on duty in the pool compound. Between 4 and 5 o'clock that afternoon there were around twenty bathers inside the pool area. One lifeguard was on duty and he was going around the pools to observe the bathers in compliance with the instructions of his superior. Between 4:40 to 4:45 p.m., some boys who were in the pool area informed a bather that somebody was swimming under water for quite a long time. Another boy informed the lifeguard of the same happening and the latter immediately jumped into the big swimming pool and retrieved the apparently lifeless body of Dominador from the bottom. The body was placed at the edge of the pool and the lifeguard applied manual artificial respiration. Immediately thereafter a male nurse came to render assistance, followed by a sanitary inspector who brought a resuscitator and a medicine kit. He injected camphorated oil into the boy's body. The lifeguard continued the artificial manual respiration and when this failed to revive the body, the resuscitator was applied until the two oxygen tanks were exhausted. A doctor, with another resuscitator arrived, but the boy was found to be already dead.

The question was whether the MWD was liable for the death of Dominador Ong. The action brought by the parents of Dominador to recover damages amounting to ₱66,000 was based on article 2176 and 2180 of the new Civil Code. Plaintiffs have the burden of proving that the defendant or its employees were negligent.[346]

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[343] G.R. No. L-7664, Aug. 29, 1958.
[344] Larkin v. Saltair Beach Co., 83 Pac. 686.
[345] Berthalot v. Kinnare, 22 A.L.R. 865; Flora v. Bimini Water Co., 119 Pac. 661.
[346] Walter A. Smith & Co. v. Cadwallader Gibson Lumber Co., 55 Phil. 517.

Held: The MWD is not liable for damages. It had taken all the necessary precautions to avoid danger to the lives of its patrons or prevent accident which may cause their death. The swimming pools were provided with a ring bouy, toy roof, towing line, oxygen resuscitator and a first aid medicine kit. The bottom of the pools is painted black so as to insure clear visibility. There is on display in a conspicuous place within the area certain rules and regulations governing the use of the pools. The MWD employs six lifeguards who are all trained as they had taken a course for that purpose and were issued certificates of proficiency. These lifeguards work on the basis of a schedule prepared by their chief and arranged in such a way as to have two guards at a time on duty to look after the safety of the bathers. The MWD employs a male nurse and a sanitary inspector with a clinic provided with oxygen resuscitator. And there are security guards who are available always in case of emergency. After the body of Dominador was retrieved from the pool, everything humanly possible under the circumstances was done to restore life to him.

It is possible that Dominador might have dived where the water was only five and a half feet deep and in so doing he might have hit or bumped his forehead against the bottom of the pool, and as a consequence of which he was stunned, thus eventually leading to his drowning. As a boy scout he must have received instructions in swimming. He knew, or must have known, that it was dangerous for him to dive in that part of the pool.

In this connection, it may be noted that under the attractive nuisance doctrine one who maintains on his premises dangerous instrumentalities or appliances of a character likely to attract children in play, and who fails to exercise ordinary care to prevent children from playing therewith or resorting thereto, is liable to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises. However, the attractive nuisance doctrine generally is not applicable to bodies of water, artificial as well as natural, in the absence of some unusual condition or artificial feature other than the mere water and its location. Ponds, reservoirs, pools of water, streams, canals, dams, ditches, culverts, drains, cespools or sewer pools are not covered by the attractive nuisance doctrine.[347]

In the *Berthalot* case, supra, it was held that there could be no recovery for the death by drowning of a fifteen-year old boy in defendant's natatorium, where it appeared merely that he was lastly seen alive in water at the shallow end of the pool, and some ten or fifteen minutes later was discovered unconscious, and perhaps lifeless, at the bottom of the pool, all efforts to resuscitate him being without avail.

Case were "last clear chance" rule was inapplicable.—

One of the subsidiary rules involved in the determination of the proximate cause of the accident in negligence cases is the doctrine of last clear chance (the humanitarian doctrine or doctrine of supervening negligence or "discovered peril") which means "that the negligence of a claimant does not preclude a recovery for the negligence of defendant where it appears that the latter, by exercising reasonable care and prudence, might have avoided injurious consequences to claimant notwithstanding his negligence." Or as the doctrine is usually stated, "a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent or the neg-

[347] Hidalgo Enterprises v. Balandan, 48 O.G. 2641; Taylor v. Manila Electric Co., 16 Phil. 8, 65 C.J. 45.

ligence of a third person which is imputed to his opponent, is considered in law solely responsible for the consequences of the action."[348]

In other words, where both parties were negligent, but their negligent acts were not contemporaneous, the law is that the party who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party.[349]

The last clear chance doctrine can never apply where the party charged is required to act instanteneously, and if the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered; at least in cases in which any previous negligence of the party charged cannot be said to have contributed to the injury.[350]

In the *Ong* case, *supra*, where a minor was drowned in one of the swimming pools of the Metropolitan Water District, the parents of the deceased contended that the MWD had the last clear chance to avoid the accident. *Held:* The last clear chance rule does not apply to the case. It is not known how the victim came into the big swimming pool, where he was drowned. It was apparent that he went there without any companion in violation of one of the regulations of the MWD as regards the use of pools. The MWD lifeguard responded immediately to the call for help as soon as his attention was called to the fact that the victim was in the bottom of the big pool, and immediately after retrieving the body all resources at the disposal of the MWD were used in order to bring the victim back to life.

Father's liability for his minor child's tortious act.—

Article 2180 of the new Civil Code, formerly article 1903, provides that "the father and, in case of his death or incapacity, the mother, are responsible for the damages caused by minor children who live in their company." This provision is illustrated in *Araneta v. Arreglado.*[351] In this case, it appears that while Benjamin Araneta was talking with other Ateneo students seated atop a wall bordering the Ateneo grounds on Dakota Street, Manila, Dario Arreglado, a 14-year old former Ateneo student, chanced to pass by. Those on the wall called Dario and twitted him on his transfer to De la Salle College. Apparently incensed by the banter, Dario suddenly pulled from his pocket a Japanese Luger pistol licensed in his father's name and fired at Benjamin, hitting him in the lower jaw and causing him to fall backward, bleeding profusely. He was hospitalized and he finally recovered but the gunshot wound left him with a degenerative injury in his jawbone (mandible) and a scar in the lower portion of his face where the bullet had penetrated. His behavior was affected. He became inhibited and morose after leaving the hospital.

Dario pleaded guilty to frustrated homicide but sentence was suspended on him because he was only 14 years old. Benjamin and his father sued Dario and his parents for damages amounting to ₱112,000.

Held: Dario and his father Juan Arreglado were sentenced to pay solidarily to Benjamin Araneta ₱18,000 as damages. Article 2194 of the new Civil Code regarding the solidary liability of joint tortfeasors was cited. The award of substantial damages was justified because to arrest the degenerative process taking place in the mandible and restore Benjamin to a nearly normal condition, surgical intervention was needed for which doctor's charges would

[348] 38 Am. Jur. 900-902 cited in Ong v. Metropolitan Water District, G.R. No. L-7664, Aug. 29, 1958.
[349] Picart v. Smith, 37 Phil. 809.
[350] 8 A.L.R. Digest 955-956.
[351] G.R. No. L-11394, Sept. 9, 1958.

amount to P3,000, exclusive of hospitalization fees, expenses and medicines. The operation would have to be repeated to effectuate a complete cure. Removal of the scar on the face would require plastic surgery. Dario's Father was negligent because he did not take the necessary precautions to prevent Dario from having access to his pistol.[352]

Another 1958 case involving the fathers' liability for the acts of his minor child is *Calo v. Peggy*,[353] which reiterates certain settled rules regarding quasi-delicts. It appears in that case that on June 17, 1953 Arnold Peggy, a minor son of Luis Peggy, while driving a jeep owned by his father announcing the program of his father's movie theater, bumped Romeo Calo, the minor son of the spouses Hermenegildo Calo and Anacoreta Balinton, causing him physical injuries. Arnold was charged with physical injuries through reckless imprudence but was acquitted. The judgment of acquittal was vague because it intimated that the accident was due to the victim's fault but at the same time it acquitted the accused on the ground of reasonable doubt. The Calo spouses and their son Romeo sued the father Luis Peggy for damages. The trial court dismissed the action.

Held: The dismissal was erroneous. The action was justified under article 33 of the new Civil Code which allows an independent civil action for damages in case of physical injuries. Article 29 of the same Code may apply also insofar as the acquittal was based on reasonable doubt. The defendant, as the father of Arnold Peggy and owner of the jeep, is liable for the negligent acts of his child under article 2180 of the new Civil Code. It was alleged that he failed to exercise due diligence over the acts of his son and employee. His liability under article 2180 is primary and not subsidiary. Moreover article 2177 of the new Civil Code allows a choice of remedy, either under the new Civil Code or under the Penal Code.[354]

In another 1958 case, *Maniego v. Manalo*,[355] it appears that Lourdes Maniego, a minor daughter of Melchor Maniego, delivered a defamatory speech against 14 teachers of the North Provincial High School in San Jose, Nueva Ecija on the occasion of its graduation exercises. Laboring under the belief that the father instigated the daughter to slander them, the 14 teachers filed separate criminal complaints for serious slander against the two. The San Jose Justice of the Peace gave due course to the complaints but the Court of First Instance dismissed the same, holding that only one complaint should be filed against the daughter. Later, Melchor Maniego filed a civil action for damages against the 14 teachers, who in turn filed a counterclaim for damages. The trial court dismissed Maniego's complaint and sentenced him to pay P200 as moral and pecuniary damages to each teacher. For failure to perfect an appeal, this judgment became final against Melchor Maniego. He in effect was held liable for his daughter's act.

Independent civil action based on culpa aquiliana.—

The rule now embodied in articles 2176 and 2177 of the new Civil Code, that *culpa aquiliana* or quasi-delict is an independent juridical institution separate from civil liability arising from crime, was applied in *Chan v. Yatco*.[356] In the *Chan* case it appears that on November 24, 1954 a passenger bus of the Philippine Rabbit Co. bumped the freight truck of Alfredo Chan, damaging

[352] For similar case, see Gutierrez v. Gutierrez, 56 Phil. 177; Exconde v. Romano f. Fariñas, 53 O.G. 7245 (1957).
[353] G.R. No. L-10756, March 29, 1958.
[354] Exconde v. Capuno, G.R. No. L-10134, June 29, 1957; Romano v. Pariñas, 53 O.G. 7245 (1957).
[355] G.R. No. L-10275, Dec. 29, 1958.
[356] G.R. No. L-11163, April 30, 1958; Barredo v. Garcia, 73 Phil. 607; Sudario v. Acro Taxicab, G.R. No. L-48977, Feb. 23, 1944.

the truck and its cargo and injuring its driver. Antonio Morales, the driver of the bus, was charged with homicide, physical injuries and damage to property through reckless imprudence. While this criminal action was pending, Chan sued the Philippine Rabbit Co. for the damages to his freight truck and cargo and other consequential losses. The trial court suspended the civil action because of the pendency of criminal action. *Held:* The suspension was improper. The action was predicated on article 2180 of the new Civil Code regarding *culpa aquiliana.* The independent civil action was proper under articles 31 and 2177 of the new Civil Code.[357]

Tortfeasor is liable for damage to property.—

The case of *Sumcad v. Antonio* [358] is an illustration of the tortfeasor's liability for damages due to his tortious act in damaging another's property. In this case, an interisland vessel owned by William Lines, Inc. damaged the fish corral in Panguil Bay owned by Esteban Antonio while the vessel was going to Ozamis City. The accident occurred at early dawn when it was dark and visibility was poor. It could have been avoided had the vessel used a searchlight. The vessel's searchlight was out of order, but Sumcad never took any steps to have it repaired. He knew there was a fish corral in the bay because his vessel had passed near it on previous occasions. He was held liable to pay damages amounting to ₱750 plus ₱500 as attorney's fees. His employer, the William Lines, Inc., was not held liable because it proved that it had exercised due diligence in the selection of Sumcad.

The trial court found that the total damage was ₱1,500, and that Antonio was guilty of contributory negligence because he did not provide any light for his corral. Hence, the trial court ordered Sumcad to pay only ½ of the total damage, the other half to be borne by Antonio himself. This ruling was affirmed by the Court of Appeals and the Supreme Court.

It was also held in the *Sumcad* case that the fact that Antonio had not paid sales and income taxes and had not made monthly reports on the kind of fish caught by him had nothing to do with his right to claim damages.

Province is not liable for negligent acts of driver employed in engineer's office.—

The rule in article 2180 of the new Civil Code, that the State is liable for damages if it acts through a special agent was applied in *Palafox v. Province of Ilocos Norte* [359] to the provincial government because the word "State" means "Government" and the Government includes the national as well as the local governments according to section 2 of the Revised Administrative Code. The *Palafox* case holds that the province of Ilocos Norte is not liable for negligent acts of its driver detailed at the office of the district engineer. It appears in said case that the government freight truck driven by said driver run over a person, causing the latter's death. The heirs of the deceased sued for damages the Province of Ilocos Norte. *Held:* The province was not liable. The driver was not a special agent. This ruling is in consonance with the holding in *Merritt v. Government of the Philippines,*[360] that the Government is not liable for the negligence of the driver of a Philippine General Hospital ambulance, which

[357] Tan v. Standard Vacuum Oil Co., 48 O.G. 2744; Dyogi v. Yatco, G.R. No. L-9623, Jan. 22, 1957; Diana v. Batangas Transportation Co., 49 O.G. 2238; Dionisio v. Alvendia, G.R. No. L-10567, Nov. 26, 1957; Calo v. Peggy, G.R. No. L-10756, March 29, 1958. Note that the Alvendia case modified Parker v. Panlilio, G.R. No. L-4961, March 16, 1952.
[358] G.R. No. L-10986, Sept. 26, 1958.
[359] G.R. No. L-10659, Jan. 31, 1958.
[360] 34 Phil. 311.

collided with a motorcycle and injured the cyclist because said driver is not a special agent of the Government.

It was also noted that the rule of *respondent superior* (let the master answer) in agency would not apply to the case because the driver was engaged in the performance of governmental duties, as distinguished from corporate or proprietary functions of the province.[361] So that, although the death of the plaintiffs' father Palafox, was deplorable, no compensation can be claimed against the province. The reason is that the Government "does not undertake to guarantee to any person the fidelity of the officers or agents whom it employs, since that would involve it in all its operations in endless embarrassments, difficulties and losses which would be subversive of the public interest."

DAMAGES

Employee, injured by third person, who elected to claim workmen's compensation, cannot claim damages from the person.—

The case of *Esguerra v. Muñoz Palma*[362] interprets section 6 of the Workmen's Compensation Law, Act 3428, as amended by Act 3812 and Republic Act No. 772:

> SEC. 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 the proceedings. The sum paid by the employer for compensation or the amount of compensation to which the employee or his dependents are entitled under the provisions of this Act, shall not be admissible as evidence in any damage suit or action.

According to the court in the *Esguerra* case, since the injured employee can choose either to look to his employer for compensation or file an ordinary action for damages, then, following the ordinary rules of election of remedies, he cannot pursue both courses of action simultaneously. If compensation is claimed and awarded, and the employer pays it, the employer becomes subrogated to and acquires, by operation of law, the worker's rights against the tortfeasor; thereafter the worker can no longer proceed against the latter. This rule applies even if the amounts that may be awarded under the Workmen's Compensation Act are less extensive than the damages that may be recoverable under the Civil Code. The injured laborer is initially free to choose either to recover from the employer the fixed amounts set by the Compensation Law or else to prosecute an ordinary civil action against the tortfeasor for higher damages. While perhaps not as profitable, the smaller indemnity obtainable by the first course is balanced by the claimant's being relieved of the burden of proving the casual connection between the defendant's negligence and the resulting injury, and of having to establish the extent of the damage suffered: issues that are apt to be troublesome to establish satisfactorily. Having staked his fortunes on a particular remedy, the laborer is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission. Anyway, under the provisions of section 6, if the

[361] Mendoza v. De Leon, 33 Phil. 508.
[362] G.R. No. L-11988, Sept. 24, 1958.

employer recovers, by derivative action against the alleged tortfeasors, a sum greater than the compensation he may have paid the laborer, the excess accrues to the latter.

The *Esguerra* case also held that the term "compensation" falls within the category of "damages". Compensation claims are under the exclusive jurisdiction of the Workmen's Compensation Commission.[303]

In the *Esguerra* case, it appears that Alfonso Esguerra, while working as a sheller in the factory of the Franklin Baker Company on April 13, 1956 felt an unusual pain in the waist. Tormented by the pain and unable to withstand it, he repaired to the company's medical clinic for consultation. There, he was examined by the company physician, Doctor Gesmundo, who prescribed an injection of the drug, irgapyrine. Pursuant to the doctor's instructions, Flora Guilatco, clinic nurse, administered the injection in the patient's right arm. Shortly thereafter, the arm became swollen and Esguerra was compelled to enter the hospital, where he was confined for eight months. During his confinement, he filed a claim for workmen's compensation for permanent partial loss of the use of right arm. While the claim was being processed, he filed a civil action for damages against Doctor Gesmundo and Flora Guilatco. The trial court dismissed the action for lack of jurisdiction. *Held:* The dismissal was proper because Esguerra had elected to claim workmen's compensation.

In connection with the *Esguerra* case, it should be noted that the court did not cite article 2196 of the new Civil Code which provides that the rules 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 cited by the court is section 5 of the Workmen's Compensation Law 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 to the employee, his personal representative, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury."

It should further be noted that in *Alba v. Bulaong*[304] it was held that the injured employee and the heirs of deceased employees, who were paid damages by the tortfeasor, may still sue the employer for workmen's compensation if there was an understanding that the tortfeasor's payment was without prejudice to the claim for workmen's compensation from the employer. There is also a rule that the indemnity granted to the heirs of a deceased employee in a criminal case does not affect the liability of the employer to pay workmen's compensation to said heirs.[305]

Factors considered in awarding damages.—

In *Araneta v. Arreglado*,[306] it appears that Dario Arreglado, 14 years old, shot with his father's Luger pistol Benjamin Araneta, hitting him in the lower jaw. The gunshot wound left Benjamin with a degenerative injury in the jawbone (mandible) which would require surgical intervention at a cost of not less than P3,000 and a scar on his face which would require plastic surgery.

In ordering Dario and his father to pay solidarily to Benjamin P18,000 as damages, the court took into consideration the necessity and cost of corrective

[303] Castro v. Sagales, 50 O.G. 94; Manalo v. Foster Wheler, 52 O.G. 2514.
[304] 54 O.G. 2871 (1957).
[305] Marinduque Iron Mines Agents, Inc. v. Workmen's Compensation, G.R. No. L-8110, June 30, 1956; Nava v. Inchausti, 57 Phil. 715; Martha Lumber Mill, Inc. v. Lagrandante, G.R. No. L-7599, June 27, 1955.
[306] G.R. No. L-11394, Sept. 9, 1958.

measures to repair the damage; the pain suffered by the injured party; his feelings of inferiority due to consciousness of his present deformity as well as the voluntary character of the injury inflicted and the fact that a repair, howsoever skillfully conducted, is never equivalent to the original state.

However, the court did not allow as damages the cost of a plastic operation and surgical operation in the U.S. since the operation could be completely performed by local practitioners. The damages for Benjamin's lost schooling and his alleged loss of future earning capacity were disallowed as manifestly speculative.

No moral damages for distress caused by another's suffering.—

In the *Araneta* case, *supra*, it was further held that Benjamin's father was not entitled to moral damages for the pain, anxiety and suffering undergone by him because "moral damages in case of physical suffering are only recoverable by the party who suffered them and not by the next of kin."

Thus, the case of *Strebel v. Figueras* [367] cites the rule that generally "the right of recovery for mental suffering resulting from bodily injuries is restricted to the person who has suffered the bodily hurt, and there can be no recovery for distress caused by sympathy for another's suffering, or for right due to a wrong against a third person. So the anguish of mind arising as to the safety of others who may be in personal peril from the same cause cannot be taken into consideration.[368] Or as stated in another way, "in law mental anguish is restricted as a rule, to such mental pain or suffering as arises from an injury to the person himself, as distinguished from that form of mental suffering which is the accompaniment of sympathy or sorrow for another's suffering or which arises from a contemplation of wrongs committed on the person of another. Pursuant to this rule stated, a husband or wife cannot recover for mental suffering caused by his or her sympathy for the other's suffering." [369]

Illustration of lucro cessante.—

The case of *Server v. Eisenberg & Co. (Phil., Inc.)* [370] is a striking illustration of damages in the form of unrealized profits resulting from the vendor's breach of contract of sale. It appears in that case that on July 18, 1950 defendant company agreed to supply plaintiff Server nail wire at the rate of 200 tons a month for the months of August, September and October, 1952. The price was $70 dollars a ton. The nail wire was to be imported from Japan. Plaintiff's obligations were to secure an import license and open a letter of credit in a Tokyo bank. Plaintiff secured the import license and asked the defendant to designate the Tokyo bank wherein the letter of credit would be opened. But defendant rescinded the contract on the pretext that the price of the nail wire had risen to $110 a ton due to the Korean war.

In view of defendant's failure to deliver the nail wire, plaintiff sued it for damages. *Held:* Defendant vendor, having breached the contract, was liable for damages. The contract was entered into after the outbreak of the Korean war. So the war was not an unforeseen event which would relieve defendant from the fulfillment of its obligation. The evidence shows that from the 600 tons of undelivered nail the plaintiff could have manufactured 13,200 kegs of nails, which could have been sold at a profit of P5 per keg, or a total

[367] G.R. No. L-4722, Dec. 29, 1954.
[368] 25 C.J.S. 67.
[369] 15 Am. Jur. 597-598.
[370] G.R. No. L-10741, March 29, 1958.

unrealized profit of P66,000. Defendant was sentenced to pay this amount as damages plus P2,000 as attorney's fees.

Damages for breach of contract of carriage.—

The rule in *Cachero v. Manila Yellow Taxicab Co., Inc.*,[371] that moral damages are not recoverable against the carrier in case of breach of contract of carriage involving physical injuries, was followed in *Necesito v. Paras*.[372] The *Cachero* ruling was based on the fact that article 2219 of the new Civil Code, in enumerating the cases, where moral damages may be recovered, does not mention breach of contract. On the other hand, the *Necesito* case is not allowing moral damages, relies on article 2220 of the new Civil Code, which provides that moral damages may be recovered in breaches of contract only "where the defendant acted fraudulently or in bad faith." It was not proven in the *Paras* case that the carrier acted fraudulently or in bad faith.

It should be noted that in the *Necesito* case substantial indemnities were adjudged by the court. Thus, an indemnity of P5,000 was awarded for the "abrasions and fracture of the femur, including medical and hospitalization expenses," of the injured passenger, a one year old child. For the death of the child's mother, also a passenger, who was 33 years old, with seven minor children, an indemnity of P15,000 was awarded to cover the losses of property (cash, wristwatch and merchandise) that she carried at the time of the accident, burial expenses, loss of earnings and "the deprivation of her protection, guidance and company." The case of *Alcantara v. Surro* [373] was invoked. Attorney's fees amounting to P3,500 were also awarded.

The case of the passenger who died in the course of an accident due to the negligence of the carrier's employees is an exception to the rule in article 2220, in view of the provisions of articles 1764 and 2206(3), allowing moral damages in case of the passenger's death. In other words, the special rule in articles 1764 and 2206 prevails over the general rule in article 2220. *"It thus appears that under the new Civil Code, in case of accident due to a carrier's negligence, the heirs of a deceased passenger may recover damages, even though a passenger who is injured, but manages to survive, is not entitled to them."* The rulings in the *Necesito* and *Cachero* cases are consistent.

The award of substantial attorney's fees in the *Necesito* case was justified by the reasonableness of the claim of the plaintiffs who were entitled to moral damages in addition to compensatory damages. Moral damages are not determined by set and invariable bounds. It was also noted in the *Necesito* case that the right of the plaintiffs to attorney's fees is not altered by the fact that their counsel was on a contingent basis. The award of attorney's fees to the plaintiffs is an indemnity to the party and not to the counsel. A litigant who improvidently stipulates counsel fees higher than those to which he is lawfully entitled to recover does not for that reason earn the right to a larger indemnity, but, by parity of reasoning, he should not be deprived of an allowance for counsel fees if by law he is entitled to recover them.

Moderate damages.—

The *Necesito* case, *supra* [374] also cited article 2224 of the new Civil Code, which provides that "temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court

[371] 54 O.G. 6599 (1957).
[372] G.R. No. L-10605, June 30, 1958 and Sept. 11, 1958.
[373] 49 O.G. 2769 (1953).
[374] See note 372.

finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved." The Code Commission says that "there are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business is often hard to show with certainty in the terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress, from the defendant's wrongful act."

Moral damages for acts of lasciviousness.—

The rule in article 2219 of the new Civil Code that moral damages may be granted in case of acts of lasciviousness was applied in *Dominding v. Ng.*[375] The *Dominding* case also lays down certain rules for the ascertainment of moral damages. One rule is that the trial court should state the bases of its award for moral damages. It should specify such circumstances as the bearing, manners, personality, education and so forth, of the parties. The social and financial standing of the offender and offended parties should also be considered. While it is true that social dignity does not depend upon the wealth or poverty of a person, the amount necessary to repair the damage thereto depends on the offended party's own social and financial standing of the offender is a convenient gauge for the determination of the amount necessary to repair the injury caused. The human value and "the dignity of man are also of paramount importance.[376]

In the *Dominding* case, it appears that on May 25, 1953 Trinidad Ng purchased from Jose Dominding and David Arañas 150 baskets of mangoes. Arañas offered to take Trinidad home in a taxi. Trinidad accepted the invitation, having known Arañas for the past 10 years. Once in the taxi, Arañas ordered the driver to proceed to Luneta. Trinidad objected, telling the driver to bring her to her home on Tennessee Street, Manila. At that instant, Arañas immediately embraced her, kissed her, tried to push down her panties and touch her private parts. She struggled against his assaults and hit him. He embraced her back and kissed her on the neck and on the breast. She told the driver to stop. The taxi did not stop but moved slowly. She was able to open the door and jump out of the taxi. She took another taxi and went home crying. She told her husband about the incident. They filed a complaint for *abusos dehonestos* but it was later dropped.

Dominding and Arañas sued Trinidad and her husband for the recovery of the price of the mangoes. Trinidad and her husband filed a counterclaim for moral and exemplary damages and attorney's fees. She was sentenced to pay the price of the mangoes but Arañas was sentenced to pay her ₱1,000 as moral damages, ₱2,000 as punitive damages and ₱1,000 as attorney's fees.

The moral damages were fixed at ₱1,000 (instead of ₱50,000 fixed by the trial court) because the offended party was an exporter of mangoes who did not have much capital. Arañas was not financially well off. He was only the manager of Dominding's mango store. He was required to pay punitive damages "because his act in abusing the confidence of a customer belonging to the weaker sex bespeaks of a perverse nature dangerous to the community."

[375] G.R. No. L-10872, Feb. 28, 1958, 55 O.G. 10.
[376] Victorino v. Nora, CA 52 O.G. 911; 25 C.J.S. 560-571; Layda v. Court of Appeals, G.R. No. L-4487, Jan. 29, 1952; Alcantara v. Surro, 49 O.G. 2769.

Malicious prosecution.—

Article 2219 of the new Civil Code allows moral damages in case of malicious prosecution. However, it should be noted that the crime of malicious prosecution punished in article 326 of the old Penal Code is not found in the Revised Penal Code whose article 363 punishes incriminatory machinations. The case of *Buenaventura v. Sto. Domingo* [377] throws some light on the nature of the action for damages in case of alleged malicious prosecution. The provision of article 2219 should not be construed in such a way as to prevent resort to the courts. Said the Supreme Court:

"While we must look upon the plight of hapless victims of unfounded and malicious prosecutions with tolerance and sympathy, sound principles of justice and public policy dictate that persons shall have free resort to the courts for redress of wrongs and vindication of their rights without fear of later on standing trial for damages where by lack of sufficient evidence, legal technicalities or a different interpretation of the laws on the matter, the case would lose ground and therein defendants are acquitted. Proof and motive that the prosecution or institution of the action was prompted by a sinister design to vex and humiliate a person and to cast dishonesty and disgrace must be clearly and preponderantly established to entitle the victims to damages and other rights granted by law; otherwise, there would always be a civil action for damages after every prosecution's failure to prove its resulting in the consequent acquittal of the accused therein."

Malicious prosecution implies that the person to be held liable for moral damages should have acted deliberately and with knowedge that his charge against the offended party was false and groundless. The act of a complainant in submitting his case to the authorities for prosecution does not make him liable for malicious prosecution because it is the Government or representative of the State that takes charge of the prosecution of the offense. Where, a person who believed in good faith that he was the owner of coconut land, charged with qualified theft the persons gathering coconuts therefrom over his opposition, and later the charge was dismissed, said complainant and the Chief of Police are not liable for damages due to alleged malicious prosecution.

One factor that should be taken into account in malicious prosecution is that the findings of fact of the court, which resulted in the criminal judgment for acquittal, cannot be considered as strictly binding upon the offended party since he is powerless to contest them no matter how baseless and erroneous they might have been.[378]

Provisions on moral damages have no retroactive effect.—

Except as a concomitant to physical injuries, moral and corrective damages were not recoverable, under the Civil Code of 1889. Recovery of such damages was established for the first time in 1950 by the new Civil Code, and cannot he made to apply retroactively to acts that occurred under the prior law in view of the punitive or deterrent character of these damages.[379]

Interest from date of default.—

Under article 2209 of the new Civil Code, formerly article 1109, delay in the payment of money renders the debtor liable to pay interest. Delay or

[377] G.R. No. L-10651, March 29, 1958, 54 O.G. 8489.
[378] Salvador v. Ang, CA-G.R. No. L-17564-R, April 16, 1958.
[379] Jalandoni v. Martir-Guanzon, G.R. No. L-10423, Jan. 31, 1958. But see Co Tao v. Vallejo, 55 O.G. 282 (1957) where moral damages were granted under art. 21 of the new Civil Code in connection with an act which occurred in 1958. Also Gatus v. Sy, CA 52 O.G. 911. In People v. Alejaga, CA 49 O.G. 232 the provisions o moral damage were not given retroactive effect.

default occurs generally from the date of judicial or extrajudicial demand, according to article 1169 of the new Civil Code. Hence, if there was no extrajudicial demand for the payment of the amount due, the interest would be collectible only from the date of judicial demand.[380]

Other rulings.—

(1) Where the action of the plaintiff against the defendant for the recovery of broker's commission was not clearly unfounded, its dismissal would not justify an award of damages and attorney's fees against the plaintiff.[381]

(2) No attorney's fees should be awarded to the plaintiff where defendant's refusal to pay the amount claimed in the complaint, which prompted the suit, was not due to malice but to the fact that plaintiff demanded more than what it should, and, consequently, defendant had the right to refuse payment.[382]

(3) Where the plaintiff's action for annulment of a sale was dismissed, the trial court's award of ₱1,000 as moral damages to the defendant and ₱500 as attorney's fees is not warranted because the action brought by the plaintiff was not malicious.[383]

(4) Purely speculative damages cannot be allowed.[384]

(5) Where there was no stipulation for attorney's fees in the collection of certain promissory notes and the case does not fall under article 2208, it is error to award attorney's fees.[385]

(6) Where a third person assumed the debtor's obligation under a contract which stipulates attorney's fees in case of litigation, said third person is liable to pay attorney's fees when sued by the creditor.[386]

Illustration of liquidated damages.—

In *Albert v. University Publishing Co., Inc.*[387] it appears that the defendant company agreed to pay Justice Mariano Albert the sum of ₱30,000 in eight installments as consideration for the publication of his Commentaries on the Revised Penal Code. The company paid Albert only ₱7,000. It was stipulated in the contract that failure on the part of the company to pay any installment would render all the installments due and payable. Albert sued the company for the recovery of the balance of ₱23,000.

Held: Albert's suit was not for "rescission" of a contract but for the resolution of reciprocal obligations upon the failure of one of the obligors to comply with his obligation as provided in article 1191 of the new Civil Code, formerly article 1124. The demand for ₱23,000 should be considered as a claim for liquidated damages in accordance with article 2226 of the new Civil Code. But since the amount appears to be excessive, it was reduced to ₱15,000 in accordance with article 2227 of the new Civil Code.

No distinction between penalty and liquidated damages.—

The case of *Joe's Radio & Electrical Supply v. Alto Electronics Corporation*[388] clarifies the nature of penalty and liquidated damages. It was held

[380] Joe's Radio & Electrical Supply v. Alto Electronics Corporation, G.R. No. L 12376, Aug. 22, 1958 citing Veloso v. Fontanosa, 13 Phil. 79.
[381] Worcester v. Lorenzana, G.R. No. L-9435, July 31, 1958.
[382] Globe Assurance Co., Inc. v. Arcache, G.R. No. L-12878, May 28, 1958.
[383] Hermosa v. Zobel, G.R. No. L-11835, Oct. 30, 1958.
[384] Tomassi v. Villa-Abrille, G.R. No. L-7047, Aug. 21, 1958.
[385] Jimenez v. Bucoy, G.R. No. L-10221, Feb. 28, 1958.
[386] Hodges v. Repospole, G.R. No. L-10878, April 16, 1958.
[387] G.R. No. L-9300, April 18, and Sept. 17, 1958.
[388] G.R. No. L-12876, Aug. 22, 1958.

in this case that while under the new Civil Code penalties and liquidated damages are dealt with separately, nevertheless, the fundamental rules governing them still remain basically the same, making them subject to reduction where equity so requires. This dictum is consistent with the old ruling that "in this jurisdiction there is no difference between a penalty and liquidated damages so far as legal results are concerned. Whatever difference exists between them as a matter of language, they are treated the same legally."[389]

In the *Radio & Electrical Supply* case, it was argued that the stipulated liquidated damages cannot be reduced in case of partial or irregular performance because article 1229 of the new Civil Code, which provides that "the judge equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor," applies only to a penalty and not to liquidated damages, which are governed by article 2227 of the same Code, providing that "liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable." *Held:* The distinction has no justification. Even liquidated damages may be reduced in case of partial performance. Article 2228 of the new Civil Code provides that "when the breach of the contract committed by the defendant is not the one contemplated by the parties in agreeing upon the liquidated damages, the law shall determine the measure of damages, and not the stipulation." Article 2228 is equivalent to article 1229. Article 2215 of the new Civil Code, which authorizes the courts to equitably mitigate the damages, where the plaintiff has derived some benefits as a result of the contract, also supports the view that liquidated damages may be reduced in case of partial performance of a contract.

Where there is partial or irregular performance in a contact poviding for liquidated damages, the court may reduce the sum stipulated therein since it is to be presumed that the parties only contemplated a total breach of the contract. And this is usually so because of the difficulty or sometimes inability of the parties to ascertain or gauge beforehand the amount of indemnity in case of a partial breach, just as it is equally perplexing to foresee the extent of a partial or irregular performance. And so it has been held that a stipulation for liquidated damages in case of a total breach of the contract cannot be enforced if the party has accepted a partial performance thereof.[390]

In the *Radio & Electrical Supply* case, it was stipulated in a dealership agreement for the sale of 500 television sets that in case of default, the vendor would pay damages equivalent to 20% of the total cost of 250 television sets. The vendor delivered the first 250 sets, but was able to deliver only 66 of the second batch of 250 sets. The question was whether the vendor should be required to pay the sum of ₱39,780 as damages equivalent to 20% of the cost of the undelivered television sets.

It was held that the 20% liquidated damages clause contemplated a failure to comply with the terms of the entire agreement regarding the 500 sets. To permit the vendee to collect the same amount of liquidated damages after more than half of the sets were delivered and received would amount to doubling the stipulated damages in case none of the sets had been delivered. It is immaterial whether the questioned clause in the dealership agreement is a provision for liquidated damages, or deemed a penalty clause. The damages have to be reduced in either case. If damages they have to be reduced because they are unconscionable; if a penalty, it has to be reduced because of partial

[389] Lambert v. Fox, 26 Phil. 588 (1914); Leaureano v. Kilayco and Lizares de Kilayco, 32 Phil. 194 (1915); Treasurer of the P.I. v. Rodis, 40 Phil. 850, 852 (1920).
[390] 25 C.J.S. 695.

performance. The damages were reduced to ₱15,719, with legal interest from April 2, 1955, the date of the filing of the supplemental complaint for its recovery.

CONCURRENCE AND PREFERENCE OF CREDITS

Claim for rentals is preferred over movables found in leased premises.—

In *Sheriff of Manila v. Angel Jose Realty Corporation, Inc.*,[391] it appears that Jose Romualdez owed the Angel Jose Realty Corporation, Inc. rentals for the period from July to September 1955. The lessee's movables in the leased premises were levied upon by a judgment creditor of Romualdez pursuant to a writ of execution issued on September 10, 1955 and they were sold at public auction. Conflicting claims on the proceeds of the sale amounting to ₱783 were made by the judgment creditor and by the lessor who had also secured a judgment against Romualdez and by virtue of this later judgment a writ of execution was likewise issued on March 10, 1956. The lessor's preferential claim was based on article 2241 of the new Civil Code which provides that "credit for rent for one year," shall be preferred upon the personal property of the lessee existing on the immovable leased and on the fruits of the same. On the other hand, the judgment creditor claimed preference under article 2244 which provides that credits evidenced by a final judgment shall have preference among themselves according to the priority of the dates of the judgment.

Held: The lessor's claim is preferred because the money involved comes from specific movable property. It is article 2241, not 2244, which applies. As said movables were found on the leased premises, the lessor had a preferred claim thereon for the unpaid rentals.[392]

Credits evidenced by final judgments are preferred in the order of priority of dates.—

The case of *Cordova v. Narvasa*[393] applies articles 2242 and 2244 of the new Civil Code to the conflicting claims for preference of a mortgage credit and a credit established by final judgment. Article 2244 provides that with reference to real and personal properties of the debtor, a credit which appears in a final judgment and which was the subject of litigation, is considered preferred and the preference is determined by considering the priority of the dates of the judgment. Under Article 2242 a recorded mortgage credit is preferred with respect to the mortgaged property over unsecured credits.

In the *Cordova* case, it appears that Co Bun Kim mortgaged his building to Concha Apacible for ₱20,986. The mortgage was duly recorded. On August 31, 1951 Apacible foreclosed the mortgage. In 1952 judgment was rendered in favor of Apacible.

On the other hand, Co Bun Kim was sued by Jacinta Abella for the recovery of the rentals due on the land on which Co's building stood. Judgment was rendered in favor of Abella for rentals corresponding to the years 1953 to 1955. This judgment was affirmed by the Supreme Court in 1957. The question was which of the two credits should be preferred with respect to the building of the debtor.

[391] G.R. No. L-11787, Nov. 28, 1958.
[392] McMicking v. Padern, Moreno Jimenez & Co., 36 Phil. 987; Relativo v. Castro, 76 Phil. 563.
[393] G.R. No. L-12348, May 28, 1958.

Held: Apacible's credit, which was secured and was established by prior judgment, is superior to that of Abella's which was unsecured and was established in a later judgment.

Refectionary credit.—

The term "real property" in paragraph 6 of article 2243 of the new Civil Code, corresponding to paragraph 5 of article 1923 of the old Code, may refer to the building alone since a building is real property.[394] Therefore, the refectionary credit belonging to a person who supplied the materials for the construction of a building is a lien on the building alone but not upon the land.

TRANSITIONAL PROVISIONS

(1) Article 2257 of the new Civil Code, which provides that provisions of the new Code which attach a civil sanction or penalty cannot be given retroactive effect, was cited to support the opinion that the provisions of the new Code on moral damages cannot be applied to acts which occurred before its effectivity.[395]

(2) Following article 4, 2252 and 2253 of the new Civil Code, it was held in *Laperal v. Katigbak*,[396] that the new requirement in article 161 of the new Civil Code, that the obligations contracted by the husband, to be enforceable against the conjugal assets, must be for the benefit of the conjugal partnership, being in the nature of a new right declared for the first time in the Code, cannot be given retroactive effect because to do so would impair the vested right of the creditors of the conjugal partnership who had already acquired a sort of lien on the conjugal assets by virtue of their credits before the new Code took effect.

(3) For the same reason, the new rule in article 144 of the new Civil Code regarding the properties acquired by a man and woman living as husband and wife without benefit of marriage, which rule is different from the rule laid down before the new Civil Code took effect, cannot be given retroactive effect because to do so would impair vested rights.[397]

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[394] Lopez v. Orosa, G.R. No. L-10807, Feb. 28, 1958. See Luzon Lumber and Hardwood Co., Inc. v. Quiambao, G.R. No. L-05688, March 30, 1954; Director of Public Works v. Sing Juco, 53 Phil. 205.

[395] Jalandoni v. Martir-Guanzon, G.R. No. L-010428, Jan. 21, 1958, 54 O.G. 2907, but see Co Tao v. Vallejo, 55 O.G. 232 where the provisions on moral damages were given retroactive effect. In People v. Alejaga, CA 49 O.G. 2833 the provisions on moral damages were not given retroactive effect.

[396] G.R. No. L-11418, Dec. 27, 1958.

[397] Comparedondo v. Cruz Aznar, G.R. No. L-11483, Feb. 14, 1958.