CIVIL LAW*

ROMULO S. GATILAO*
TEODORO B. PISON**

The tremendous quantity of civil law controversies which are continually tested and retested in the great laboratories of the Philippine Supreme Court reflects a healthy trend in Philippine civil law jurisprudence.

In dovetailing the codal provisions and age-old doctrines with new conditions, the Supreme Court has, in the true tradition of the ultimate arbiter of justice, developed a fine process of putting life into the words of the law. The process is indeed a difficult one, and the Court is "saddled with a heavy and burdensome jurisdiction"[oo] but its disciplined reason, its consummate eagerness, and its judicial and juristic experience have given institutional direction in the dispensation of justice amidst the flux of contentious social demands.

A great many of the civil law cases decided by the Supreme Court in 1959 are of substantial significance. A considerable number distinguish themselves as precedents, one may well be considered a borderline case, a few repudiate outmoded doctrines, and the rest are emphatic restatements, clarifications, modifications, or amplifications of past rules.

Effort has been made in this survey to condense the civil law rules found in the Supreme Court General Reports and to correlate them with the pertinent provisions of the New Civil Code in the order in which they are found in the Code, and with other applicable laws and settled principles.

HUMAN RELATIONS

Article 30 of the New Civil Code lays down the rule that when a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall be sufficient to prove the act complained of. And paragraph (c) of Rule 107 of our Rules of Court provides that "after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted and the same shall be suspended in whatever stage it may be found until final judgment in the criminal proceedings has been rendered."

The foregoing rules were applied in the recent case of *Jerusalem* v. *Zurbano*[1] wherein Jerusalem instituted an action for legal separation against her husband Joaquin on the ground that the latter had been committing an act of

* The authors gratefully acknowledge the invaluable assistance rendered by Miss Bernardina R. Ariñas, Mr. Lauro L. Baja, Jr., Miss Aurora P. Cortes, Mr. Andres V. Los Baños and Miss Fe M. Mariano, all members of the Student Editorial Board, **Philippine Law Journal** in making the digests of the cases appearing in this survey article.

* B.S.J. (U.P.); Notes & Comment Editor, PHIL.L.J. Student Editorial Board, 1959-60; Member, Special Board of Editors, PHIL. L. J. Golden Jubilee Number, 1960-61.
** Administrative Assistant, PHIL. L. J., 1959-60; Staff Member, The Law Registrar, 1959-60.

oo AQUINO, Civil Law Survey — 1957, 33 PIL. L. J. No. 165 (1958).

1 G.R. No. L-11935, April 24, 1959.

concubinage with another woman. Subsequently, the provincial fiscal charged Joaquin and one Natividad Samson of the crime of concubinage. Joaquin moved that the civil case be held in abeyance pending the final determination of the criminal case, in view of the fact that the former is based upon the same offense charged in the latter. The Supreme Court held that the instant case clearly falls within the purview of Rule 107 paragraph (c) which applies to any civil action arising from the same offense which is the subject matter of the criminal prosecution, for the petitioner's action for legal separation is based exclusively upon the very crime of concubinage charged in the criminal case.

CIVIL PERSONALITY

Philippine Veterans Board is not a juridical person.—

Article 44 of the New Civil Code which enumerates the different classes of juridical persons[2] was invoked by the appellant in the case of *Roldan v. Philippine Veterans Board*[3] to support his view that the Philippine Veterans Board is a juridical entity within the meaning of said Article. Considering that the Board was created under Section 7 of Republic Act No. 65 under the Department of National Defense to carry into effect the purposes of said Act, and to take charge of effectuating the duties assigned to it by law; that the Board is composed of a chairman and four members to be appointed by the President with the consent of the Commission on Appointments from among veterans of the Philippine Army and of recognized guerilla organizations; that said members are entitled to per diems of ₱15. each for meeting actually attended, the Supreme Court ruled that the Philippine Veterans Board cannot be considered a juridical person, within the meaning of the law, capable of being sued, especially for the recovery of back salaries, which salaries are appropriated only by Congress. So, a suit like the present one against the Board is in a reality an action against the government itself.

CITIZENSHIP AND NATURALIZATION

Applicant for naturalization must enroll minor children of school age during the period of ten years.—

(1) The failure of the petitioner to enroll his children in public schools or private schools recognized by the government as required by Sections 5 and 6 of Commonwealth Act No. 575 is fatal and cannot be overcome by petitioner's contention that his children did not complete their education — elementary and high school—because they have long been married and have instead of schooling worked to support their families. That circumstance is not sufficient to bring the case within the purview of *Pritchard v. Republic*,[4] which laid down the rule that an applicant may be exempt from the requirement that he must have given his children opportunity to finish primary and secondary education, when there

---

2 Article 44 of the NEW CIVIL CODE provides:
"The following are juridical persons:
"(1) The State and its political subdivisions;
"(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
"(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member."

3 G.R. No. L-11972, January 30, 1959.

4 81 Phil. 244 (1948).

are valid reasons that render it impossible for him to comply with said provision. Applicant in the instant case of *Yu Sean v. Republic*[5] failed to give valid reasons.

(2) In *Lo Chee v. Republic*,[6] the Supreme Court held that the applicant failed to comply with the requirement of section 6, paragraph (b) of the Naturalization Law which exempted an alien from filing a declaration of intention if he has resided continuously in the Philippines for 30 years and has given primary and secondary education to all his children in a public or private school recognized by the government. In this case, it appears that one of applicant's daughters reached only grade five while the other daughter reached only third year high school and then transferred later to an exclusive Chinese school where Philippine government and civics were not taught. The Court likewise declared that the fact of marriage by the daughter is not an excuse for not finishing high school.

(3) In *Chan Lai v. Republic*,[7] the fact that the applicant could not finance the return of his minor children to the Philippines, in addition to the strictness of the Philippine immigration authorities, was not considered as valid excuse for non-compliance with the requirement of sections 2 and 6 of Commonwealth Act No. 473 that he must have enrolled his minor children of school age during the required period of residence.[8] As to the claim that the requirement applies only to the children who are minors and of school age at the time of naturalization so that it would no longer apply to petitioner since his four children who were left in China are now of majority age, married and emancipated, the Court said that the provision of law clearly and expressly requires the applicant to enroll his minor children of school age in our recognized local schools during the entire period of residence required of him.[9]

(4) Again, in the case of *Lim Siong v. Republic*,[10] where the evidence showed that the two sons of the applicant were left in China and finished their elementary education there, and subsequently came to the Philippines in 1948 and continued their studies here, but that they have not been enrolled during the entire period of the residence required of the applicant prior to the filing of the petition, the Court held that there was no substantial compliance with the requirement of the law. The Court emphasized that the evident purpose of the requirement is to have the children given the training that the country desires of its citizens, so that they will become useful members of the country upon their parent's admission.[11]

Residence Requirement.—

(1) In *Daragani v. Republic*,[12] the Court held that the claim that actual physical presence is not required every day of the statutory period is correct.

5 G.R. No. L-11426, April 29, 1959.
6 G.R. No. L-12408, December 28, 1959.
7 G.R. No. L-11803, September 23, 1959.
8 Citing Tan Hi v. Republic, G.R. No. L-3354, January 25, 1951.
9 See also. Dy Chian Tiao v. Republic, G.R. No. L-6630, August 31, 1954; Ng Sin v. Republic, G.R. L-7590, September 20, 1955; Quing Ku Chay v. Republic, G.R. No. L-5477, April 12, 1954.
10 Liung Siong, v. Republic, G.R. No. L-12668, April 30, 1959.
11 In So Kio v. Republic, G.R. No. L-13408, September 24, 1959, the Supreme Court denied petitioner's application for naturalization, because it appeared that 5 years prior to the filing of his petition, his son in China was only a minor, 16 years of age, and was still living. It did not appear that petitioner had exerted any effort to bring him to the Philippines in order to enroll him in the school as provided in paragraph 6, section 9 of the Revised Naturalization Law.
12 G.R. No. L-11525, December 24, 1959.

Not every absence is fatal to the continuous residence requirement. In the instant case, however, petitioner's absence of six years from the Philippines was not of a short duration. There was no evidence tending to prove that he left properties or was engaged in business in the Philippines when he left for India in 1941. He came to the Philippines in 1936 originally as a salesman of his uncle. His purpose in leaving the country was not known and there was no evidence that when he left he had the positive intention to return. Therefore, his absence of six years from the Philippines interrupted the continuity of his residence.

Good moral character; knowledge of the Constitution.—

(1) The case of *Sy Kiam v. Republic*[13] which in effect held that the marriage of the applicant for naturalization to a woman with whom the former had cohabited, begetting with her 13 children, six months before applying for naturalization, did not cure his lack of moral character, as to entitle him to be admitted as a citizen was reiterated in the recent case of *Lo Kio v. Republic*.[14]

In the *Lo Kio* case, it appears that during his first visit to China in 1931, the petitioner married a Chinese woman and begot with her a son. He returned to the Philippines in 1932, leaving his wife in China who died in 1941. He however learned of her death only in 1949. From 1941 to 1952, he cohabited with Luisa Alejo, begetting with her 4 children. He finally married her on September 9, 1952. Petitioner contended that his subsequent marriage to Luisa cured his lack of moral character and thereby qualified him for admission as a citizen. *Held*: Contention is without merit. Petitioner's behavior falls short of the "proper and irreproachable conduct" that our naturalization law requires.

(2) The *Lo Kio* case was cited in the subsequent case of *Tak Ng v. Republic*[15] which held that the act of cohabiting with a woman for six years without the benefit of marriage indicates bad moral character which disqualifies petitioner from naturalization as a Filipino citizen.

(3) In the 1953 cases of *Tan Chong Yao v. Republic*[16] and *Chua Chiong Chia v. Republic*[17] it was held that unintentional failure to file income tax returns or delay in the payment of income taxes is not a justification for denying the petition for naturalization. In the case of *Lion Siong v. Republic*[18] however, where it appears that petitioner's average income is ₱6,000 a year but in the income tax returns he reported only ₱1,982.89, the Supreme Court held that his failure to report his income accurately affects his honesty to the detriment of the country he wants to be a citizen of. Accordingly, his petition was denied.

(4) The failure of the petitioner to register his children as aliens in the Bureau of Immigration does not disqualify him from being naturalized. This case is to be distinguished from the case of *Tiao v. Republic*[19] where the presumption of good faith was destroyed by petitioner's failure to mention in his *application* that he had a child in China. Likewise, the failure of the petitioner

13 G.R. No. L-10008, December 18, 1957.
14 G.R. No. L-13408, September 24, 1959.
15 G.R. No. L-13017, December 23, 1959 See section 2(3) Commonwealth Act No. 473.
16 G.R. No. L-5074, March 3, 1953.
17 G.R. No. L-5029, May 22, 1953. See 1 AQUINO, CIVIL CODE OF THE PHILS. 101-102 (1958).
18 G.R. No. L-12668, April 30, 1959.
19 G.R. No. L-6430, August 31, 1954.

to enumerate the three branches of the government, the lack of evidence to show his knowledge of the principles it safeguards, his continuous association with the Chinese community where he resides and lives, and his quarrelsome character are not sufficient to disqualify him from becoming a citizen of the Philippines by naturalization for he was not being tested on his proficiency in political science; such association does not exclude the association with Filipinos as found by the trial court; and such character is not proved by the single act which may be the result of the mood a person may have in a certain moment of his life. This was the holding in the case of *Boon Bing Ng Lim v. Republic.*[20]

(5) In *Tan Deit v. Republic,*[20a] the petitioner demonstrated not only sufficient knowledge of the principles underlying the Constitution, but also our history and government. His failure to answer the questions of the trial judge on what the Constitution is and the date of its approval and to correctly answer the questions on the number of the articles in the Constitution and on the President who approved it, is offset by the sufficient knowledge of the principles underlying our Constitution and of our history and government brought out during his cross examination.

(6) In the case of *Hao Bin Chiong v. Republic,*[21] the Supreme Court ruled that the use of aliases before the granting of the petition for naturalization does not disqualify the petitioner from taking the oath and receiving his certificate if he has fulfilled the requirements during the two-year probationary period. Such use of aliases is a minor transgression which does not involve moral turpitude. There was no confusion or prejudice caused to the interest of the nation.

(7) Conviction for profiteering involves moral turpitude. Moral turpitude has been defined as an act of baseness, vileness, or depravity in the social and private duties which a man owes his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man or conduct contrary to justice, honesty, modesty, or good morals. The petitioner is disqualified under section 4(d) of Commonwealth Act No. 437.[22]

Violation of election law is ground for disqualification.—

The case of *Benluy v. Republic*[23] was the first of the cases to hold that a violation of section 56 of the Revised Election Code which prohibits foreigners from giving aid to any candidate directly or indirectly or from taking part in any election would disqualify an applicant from becoming a Filipino citizen.

(1) In the recent case of *Go v. Republic,*[24] the above rule was reiterated. In this case, the Court observed that any direct or indirect participation by a foreigner in our local elections is considered a serious offense which is penalized and the foreigner concerned is disqualified for that reason from naturalization.

(2) In the case of *Kiat Chum Tan v. Republic,*[25] a Chinese subject was disqualified from naturalization because he took part in the 1946 elections by casting his vote, in violation of Section 56 of the Revised Election Code. The

20 G.R. No. L-11642, November 28, 1959.
20a G.R. No. L-11189, April 30, 1959.
21 G.R. No. L-13526, November 24, 1959.
22 Tak Ng v. Republic, G.R. No. L-13017, December 23, 1959.
23 50 O.G. 140, 142.
24 G.R. No. L-12101, January 24, 1959.
25 G.R. No. L-12494, August 31, 1959.

petitioner had failed to conduct himself "in a proper and irreproachable manner in relation to the government and the community" as required by section 2 of Commonwealth Act No. 473 as amended.

(3) Again, in the case of *Jesus Go. v. Republic*,[26] it was held that an alien who violated the election law when he solicited votes of his Filipino friends for the candidates of his preference is disqualified from being naturalized.

Mere suspicion of subversive activities not ground for disqualification.—

In the case of *Romulo Qua v. Republic*,[27] the Court of First Instance of Manila denied petitioner's application for naturalization on the ground that the Philippine army's G-2 department refused to give petitioner a clearance because he was suspected by two army officers of subversive activities. It appeared, however, that the two officers who testified on the supposed subversive activities refused to specify and reveal what those supposed subversive activities were on the ground that the same were confidential. *Held*: We cannot deny a petition for naturalization on mere suspicion from the armed forces of the Philippines, supposed to investigate alleged subversive activities. If those suspicions are supported by facts they should be placed on record so that the petitioner may have an opportunity to examine and if possible refute them.

Provisional dismissal of criminal charge cannot adversely affect petition for naturalization.—

In the case of *Chee Ng v. Republic*,[28] the evidence showed that appellee had a theft case which was provisionally dismissed and that he was prosecuted for interfering with police duties and assault upon a person in authority, which although dismissed may be reopened at any time because it had not yet prescribed. Are these sufficient to deny applicant's petition for naturalization? The Supreme Court ruled that they cannot adversely affect the petition because with the admitted dismissal of the criminal charges, there is nothing that may be considered as tainting appellee's character.

Failure to object to evidence of petitioner's occupation during trial constitutes waiver.—

In the case of *Lim Nan Yong v. Republic*,[29] the solicitor general appealed the decision of the Court of First Instance granting Yong's petition for naturalization on the ground that the trial court erred in allowing proof of petitioner's employment in the absence of any allegation to that effect in his petition.

The Supreme Court ruled that solicitor general's objection was without merit. The evidence of petitioner's trade or occupation should have been blocked during the trial since it was argued that there was no corresponding allegation in the petition. Failure to do so constituted a waiver of its inadmissibility. And even assuming that at the time of the filing of the petition, the petitioner had not complied with the requirement that the applicant must have a lucrative trade or occupation, the deficiency was cured and the qualification was possessed

26 G.R. No. L-11895, December 29, 1959.
See also, Benluy v. Republic, 50 O.G. 142; Go v. Republic, G.R. No. L-12101, January 24, 1959, supra; Yu Keng v. Republic, G.R. No. L-4747, October 24, 1952.
27 G.R. No. L-12279, June 30, 1959.
28 G.R. No. L-10956, May 27, 1959.
29 G.R. No. L-11367, May 27, 1959.

when, at the time of the trial, the petitioner was able to prove that he not only was employed in the Building Craft Construction Co. with a monthly salary of ₱200 but was likewise a partner therein.

What may constitute sufficient evidence of lawful entry.—

In the case of *Ang Bien Phek v. Republic*[30] where the petitioner, to establish his lawful entry, presented in evidence an Immigration Certificate of Residence, a Certificate of Arrival, an Alien Certificate of Registration and the certificate of the Bureau of Immigration that the petitioner's name appears in the Master List of registration of aliens on file in said office, the Supreme Court held that these documents are sufficient to satisfy the requirements of the law as to the entry and residence of the petitioner.

Declaration of intention.—

(1) Under section 6, paragraph (b) of the Naturalization law, an alien is exempted from filing a declaration of intention to become a Filipino citizen if he has resided in the Philippines for 30 years continuously and has given primary and secondary education to all his children in private schools recognized by the government.[31]

(2) It is clear from section 2 of Commonwealth Act No. 473 that the children's schooling requirement is prescribed not only for petitioner's exemption from filing a declaration of intention but also as one of the qualifications to become a Filipino citizen.[32]

Fact of Birth may be proven by parol evidence in the absence of birth certificate.—

The recent case of *Qua v. Republic*[33] reiterated the rule in the cases of *Chay Guan Tan v. Republic*[34] and *Yap Subieng v. Republic*[35] that the fact of birth of petitioner may be sufficiently proven even in the absence of his certificate of birth by the testimony of the petitioner himself and corroborated by an unsworn certificate of the doctor who purportedly attended the delivery. In the *Qua* case, the petitioner tried to establish his birth in Manila by his own testimony, his alien certificate of registration, his native born certificate of residence, and the testimony of Juliana Panganiban, a witness to his birth. In holding that the above-mentioned evidence are sufficent, the Court further observed that an alien certificate of residence and a native born certificate of residence are official documents, and, unless their genuineness is assailed, have probative value.

Qualifications of witnesses.—

(1) The fact that one of the witnesses had known the petitioner for 13 years before he testified and became close friends, that they often go, together to church and excursions, and attend each other's parties, qualified the witness to vouch for his character and conduct. Likewise, the fact that the other witness had known him for 10 years, before giving his testimony in court, that as

30 G.R. No. L-13303, December 10, 1959.
31 Lo Chee v. Republic, G.R. No. L-12408, December 28,1959, cf. Pritchard v. Republic, 81 Phil. 244; Yu, v. Republic, G.R. No. L-6036, March 17, 1953.
32 ChanLai, v. Republic, G.R. No. L-11803, September 23, 1959. See also, Dy v. Republic, G.R. No. L-5098, November 27, 1953.
33 G.R. No. L-12279, June 30, 1959.
34 G.R. No. L-9682, 53 O.G. 6107.
See Lorenzo v. Republic, G.R. No. L-9601, April 22, 1957.
35 G.R. No. L-10234, January 24, 1958.

they are close friends, they sometimes go out together with their respective families and attend each other's parties, placed the witness in a position to vouch for the petitioner's character and conduct.[36]

(2) In order that the witness may qualify, he need not have seen the applicant every day and every week.[37]

Residence means domicile.—

Section 8 of the Revised Naturalization Law[38] provides that the Court of First Instance of the province in which the petitioner has resided at least one year immediately preceding the filing of the petition shall have exclusive original jurisdiction to hear the petition. Our Supreme Court in a long line of cases has held that the residence contemplated under this section need not be actual as long as the applicant's domicile is in that province.[39]

In the case of *Republic v. Tan Bee Chiu*,[40] the Court observed that the fact that the petitioner worked in Cebu from 1954, one year before filing his application, did not change his legal residence in Leyte, for there is no doubt that one person may actually live and work in one place and yet continue to have the legal residence in his place of birth.

Effect of marriage of alien woman to Filipino.—

Section 15 of the Revised Naturalization Law which provides that "any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines" has been interpreted by our Supreme Court in the recent case of *Lee Suan Ay v. Galang*[41] to mean that "the marriage of an alien woman to a Filipino does not automatically confer Filipino citizenship upon the woman. She must possess the qualifications required by law to become a citizen by naturalization." In other words, she must prove that she might herself be lawfully naturalized. The previous ruling in the case of *Giok Ha v. Galang*[42] was cited.

Withdrawal by applicant.—

In the case of *Go Kian Lam v. Republic*,[43] the Solicitor-general appealed from a decision granting petitioner's application for naturalization as citizen of the Philippines, on the ground that Hernandez, one of the character witnesses for petitioner, came to know him in 1953 only, after he established himself in 1952 in Davao, or less than 5 years prior to the institution of this case, which is in violation of section 7 of Commonwealth Act No. 473. Instead of filing his brief in reply, petitioner moved that his petition for naturalization be withdrawn, without prejudice to presenting another petition. The requirements of the law not having been complied with, the Supreme Court granted petitioner's prayer.

---

36 Tan Diet v. Republic, G.R. No. L-11189, April 30,1959.
37 Republic v. Tan Bee Chiu, G.R. No. L-12409, April 1, 1959.
38 Commonwealth Act No. 473 (Revised Naturalization Law) (June 17, 1939).
39 King v. Republic, G.R. No. L-2755, May 18, 1951; Republic v. Lim, G.R. No. L-3030, January 31, 1951. See collection of cases, 1 AQUINO, CIVIL CODE 130, supra.
40 G.R. No. L-12409, April 1, 1959.
41 G.R. No. L-11855, December 23, 1959.
42 54 O.G. 356; see also, Cua v. Board, 53 O.G. 8567.
43 G.R. No. L-13571, January 31, 1959.

MARRIAGE

Presumption of validity of marriage; power of Commissioner of Immigration to determine validity of marriage.—

The rule in our New Civil Code which states that every intendment of law or fact leans toward the validity of marriage and the indissolubility of the marriage bonds[44] was applied by the Supreme Court in the case of *Brito v. The Commissioner of Immigration.*[45] In this case, it appeared that in 1954, Brito, a Filipino citizen, married Tan So in the Crown Colony of Hongkong. Tan So was allowed to enter the Philippines in 1955. In 1957, the Commissioner of Immigration issued a warrant of arrest against Tan So on discovery of a marriage contract entered into between Brito and one Narcisa Maya in Manila in 1943. After the petitioners filed the present petition for prohibition, mandamus and injunction against the Commissioner of Immigration in the Court of First Instance of Manila, the latter ordered the Commissioner to refrain from arresting or deporting Tan So until a final decision has been rendered by a competent court on the issues raised in said proceedings. The pivotal issue was whether or not the Commissioner has the power to determine the validity of marriage contracted by petitioners for the purpose of arresting and deporting Tan Soo. *Held*: There is no doubt that the power to deport is limited to aliens, that the citizenship of the respondent in deportation proceedings is determinative of the jurisdiction of the commissioner, and that the power to deport carries that of determining the respondent's nationality. But if the question of nationality is dependent upon the respondent's marriage, may the Commissioner pass judgment thereon?

It is true that in relation to the marriage of petitioners, no assumption can arise or should be made from the mere discovery of a marriage contract between Brito and Maya executed in 1943, without proof that the first wife is still alive or that said first marriage was otherwise still subsisting in 1954. As a matter of fact, it is to be supposed that the marriage between the petitioners is valid, although this is only a prima facie presumption which may be overcome by evidence that it was contracted during the lifetime of Narcisa Maya and before the first marriage of Brito was annulled or dissolved. These considerations, however, were not considered by the Court to be an obstacle to the preliminary proceedings conducted by the Commissioner pursuant to Section 37 (a) of the Immigration Act, as amended, hence, the decision of the trial court was reversed.

Vice-Mayor "acting as mayor" has authority to solemnize marriages.—

The recent case of *People v. Bautista*[46] is authority for the rule that a vice-mayor who is "merely acting as mayor" or becomes "acting mayor" may solemnize marriages. In this case, the accused was charged with bigamy. Relying upon Article 56 of the New Civil Code which provides for the persons who may solemnize marriages (among them, the mayor of a city or municipality) the accused contended that there could not have been a second marriage because Vice-mayor Nato who solemnized it was merely acting as mayor when he celebrated the same, hence, he acted without authority of law to do so. *HELD*:

---

44 Article 220 NEW CIVIL CODE OF THE PHILS.; ARTICLE 52, NEW CIVIL CODE OF THE PHILS.

45 G.R. No. L-12325, October 30, 1959.

46 G.R. No. L-11598, January 27, 1959.

Untenable. When the issue involves the assumption of powers and duties of the mayor by the vice-mayor when proper, it is immaterial whether it is because the latter is acting mayor or merely acting as mayor, for in both instances, he discharges all the duties and wields the powers appurtenant to said office.[47]

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Case where a disposition is not a donation at all.—

Article 126 of the New Civil Code provides that donations by reason of marriage are those which are made (1) before its celebration, (2) in consideration of the same, and (3) in favor of one or both of the future spouses. Donations *propter nuptias* "do not include those made in favor of other persons, although by reason of the marriage."[48] The foregoing requisites must concur, otherwise, there would be no donation *propter nuptias.*

On the other hand, if the donation is *inter vivos,* or that which takes effect independently of the donor's death[49] it must be executed and accepted in accordance with the formalities prescribed in Articles 748 and 749 of the New Civil Code.[50] And if the donation is *mortis causa,* or that which takes effect upon the death of the donor,[51] "the donation must be in the form of a will, with all the formalities for the validity of wills."[52]

Estanislao Serrano v. Melchor Solomon,[53] illustrates a case where the deed executed by the deceased failed to comply with any of the foregoing requisites. In this case, it appeared that Solomon executed in 1948 a supposed deed of donation *propter nuptias* on the same day of his marriage to Alejandria Feliciano, but before the ceremony. The pertinent portion of the deed recites: my properties "are donated in accordance with the existing laws of the Philippines and our children out of the wedlock will be the ones to inherit the same with equal shares. But if God will not bless our union with any child, one-half of all my properties including the properties acquired during our conjugal union will be given to my brothers or sisters or their heirs if I x x will die before my wife, and if my beloved wife will die before me, one-half of all my properties and those acquired by us will be given to those who have reared my wife in token of my love for her." The wife since childhood had been left in the care of a friend named Serrano. Nine months after the marriage, the wife died and Serrano brought this action to enforce the terms of the donation. The trial court found that the donation could not be regarded as a donation *propter nuptias,* for the reason that though it was executed before the marriage, it was not made in consideration of the same, and what is more important, that the donation was not made to one or both of the marriage contracting parties but to a third person.

The Supreme Court affirmed the lower court's decision for the following reasons: (1) The marriage in itself was not the only consideration or condition under which the terms of the donation would be carried out. The marriage would have to be childless and one of the spouses would have to die before the

47 Revised Administrative Code, Sec. 2139.
48 9 MANRESA, 214 (5th Ed.) cited in 1 AQUINO 272 **supra.**
49 2 TOLENTINO 465 (1953).
50 **Ibid.** at 467.
51 Article 728 NEW CIVIL CODE OF THE PHILS.
52 Laureta v. Mata, 44 Phils. 668; Cariño v. Abaya, 70 Phils. 182, cited in 2 TOLENTINO, 467, **supra.** See also. Article 728, NEW CIVIL CODE OF THE PHILS.
53 G.R. No. L-12093, June 29, 1959.

donation would operate. So, strictly speaking, the donation may not be regarded as one made in consideration of marriage. (2) The donation was not made in favor of the wife but in favor of third persons, and therefore does not fall within Article 126 of the New Civil Code which provides that "donations by reason of marriage are those which are made before its celebration, in consideration of the same, and in favor of one or both of the future spouses."

But may the donation be still considered as a donation *inter vivos?* Hardly, because it was never accepted by the donee either in the same instrument of donation or in a separate document as required by Articles 748 and 749 of the Civil Code.

Again, may it be considered as a donation *mortis causa*, and given effect? No, for the reason that such a donation is equivalent to a disposition or bequest of property by last will and testament, and should be executed in accordance with the requisites and strict provisions governing the execution of wills. Undoubtedly, the deed in question does not fulfill the said requirements. Moreover, here, the donor is still alive and naturally even if the donation were otherwise valid, still the time and the occasion have not arrived for considering its operation and implementation.

CONJUGAL PARTNERSHIP

Sale of conjugal property by surviving spouse void as to deceased spouse's share.

Act No. 3176 which was passed on November 25, 1924, in essence provides that after the dissolution of the conjugal partnership by the death of a spouse, any sale, transfer alienation or disposition of the conjugal property without the formalities established for the sale of the property of deceased persons laid down in the Rules of Court shall be "valid only as regards that portion that belonged to the vendor at the time the liquidation and partition was made."[54]

Prior to the passage of Act No. 3176, our Supreme Court already found occasion to announce the doctrine in substantially the same tenor.[55] In the case of *Coque v. Sioca*,[56] Mr. Justice Street said:

"While the husband has the power to dispose of the property pertaining to the conjugal partnership either during the life of his wife or afterwards, nevertheless where a transfer of conjugal property is made by the husband upon a fictitious consideration for the purpose of defrauding the wife and her collateral heirs, such transfer is invalid. In such a case, the nullity extends to that interest in the property which would have pertained to the heirs if the transfer had not been made. The transferee under such a conveyance acquires the interest of the husband..." This is so, because by law, the deceased partner's share passes to his legal heirs.[57] And Article 221 of the New Civil Code provides that "any simulated alienation of property with intent to deprive the compulsory heirs of their legitime shall be void and of no effect."

The same rules were followed in the 1911 case of *Santiago v. Cruz*,[58] in the 1923 case of *Velasquez v. Teodoro*,[59] in the 1951 case of *Ocampo v. Potenciano*,[60] and in the 1952 case of *Talag v. Tankengco*,[61]

54 Talag v. Tangkengco, G.R. No. L-4623, October 24, 1959.
55 For a more extended discussion on this subject, see 1 AQUINO, CIVIL CODE 364-389 (1958).
56 54 Phil. 430, 443 (1923).
57 Coronel v. Ona, 33 Phil. 456 (1916).
58 19 Phil. 144 (1911).
59 46 Phil. 751 1923).
60 G.R. No. L-2263, May 31, 1951.
61 G.R. No. L-4623, October 1952; see 1 AQUINO, 364-389 (1958).

Again, in the recent case of *Cuison v. Fernandez*,[62] it appeared that the spouses Vicenta Mejia and Domingo Cuison were owners of 2 parcels of land. Two years after the wife died, or on July 1, 1925, the husband sold the 2 parcels of land to defendant Fernandez who registered the deed of sale and the Transfer Certificate of Title issued in his name by the Register of Deeds. It appeared, also, that on May 9, 1922, the spouses Vicenta and Domingo Cuison sold the 2 parcels of land by way of pacto de retro to one Ferrer within a period of 3 years from said date; and on July 2, 1925, Cuison repurchased the 2 parcels. Fernandez has been in continuous adverse possession from 1925 to 1950.

Is the sale to Fernandez by the surviving spouse valid?

Held: As the two parcels of land belonged to the conjugal partnership of the spouses, the same could not be sold by the surviving spouse without the formalities established for the sale of the property of deceased persons; and such sale by the surviving spouse is void as to the share of the deceased spouse for the benefit of her heirs, the *cestui que trustent*. Prescription cannot be set up as a defense in an action that seeks to recover property held in trust for the benefit of another. Neither could laches be set up as a defense, it being similar to prescription.

The heirs could not be deprived of their respective interests in the share of their mother and grandmother Vicenta Mejia in the conjugal partnership property. But since appellant Fernandez was a purchaser in good faith who had been in possession of the land for nearly 25 years, he could not be held liable during that period for the produce of one-half of the parcels of land that he held in trust for the heirs of Vicenta Mejia Cuison.

PATERNITY AND FILIATION

Cause of action may be based on lost authentic writing of recognition.—

In the case of *Costa v. Balmes*,[63] the plaintiff Manuel Costa filed a complaint in the Court of First Instance in which he alleged that he is the son of intestate Alejandro Costa and Maria Mojica, both single and without impediment to marry each other at the time of plaintiff's conception, and prayed that Genoveva Balmes be ordered to render a true inventory of the properties left by the deceased and that the partition thereof be made by the heirs with the inclusion of plaintiff. In his amended complaint, the plaintiff alleged that the authentic writing of his recognition as natural child was an affidavit executed by deceased and attached to certain marriage papers when deceased manifested his consent to plaintiff's marriage, but that these can no longer be located. *Held*: The lower court's holding that the plaintiff's cause of action is not based on any evidence of voluntary recognition sought for by him as provided in Article 278 of the New Civil Code, to wit: "Recognition shall be made in the records of birth, a will, a statement before a court of record or in any authentic writing" and that such failure does not give rise to a cause of action, is erroneous. The mere fact that the complaint alleged that the authentic writing was lost does not justify the conclusion that the same is nonexistent.

---

62 G.R. No. L-11764, January 31, 1959.
63 G.R. No. L-11836, January 20, 1959.

SUPPORT

Appeal in action for support, jurisdiction.—

Where in an appeal from the decision of the Court of First Instance, the plaintiff contended that under the facts found by the trial judge, he was entitled to support, as an illegitimate child who is not natural, and the defendant meets the points raised and discusses the vital question of paternity, the appeal should be referred to the Court of Appeals for adjudication, since it involves questions of fact and the amount in controversy is less than ₱50,000.[64]

Minors' funds due from U.S. Veterans Administration cannot answer for mother's loan intended for their support.

Article 302 of the New Civil Code provides that "neither the right to receive legal support nor any money or property obtained as such support or any pension or gratuity from the government is subject to attachment or execution." According to the Code Commission, this article is intended to protect veterans' pensions.[65] In this connection, it must be noted that Republic Act No. 360, passed on June 9, 1949, exempts from taxation, claims of creditors, attachment, levy or seizure, payments of benefits under the U.S. Veterans law[66] Under Republic Act No. 390, approved on June 18, 1949, the guardian cannot apply any portion of the income or the estate for the support of any other person than the ward, the spouse and minor children of the ward, and even in the latter case, he can only do so by order of the Court after following the procedure laid down in said law, or without such order but with the written approval of the Chief Attorney of the U.S. Veterans Administration, when the expenditure involves a less amount.[67]

The above rules were applied in the case of *Porcuna v. U.S. Veterans Administration*.[68] In this case, the petitioner alleged that from December 20, 1951 up to April 30, 1953, the petitioner gave loans to Visitacion Almonte for the support of the latter's minor children on condition that they would be paid by Visitacion from the money due to the minors from the U.S. Veterans office. As soon as the minors received certain sums from the U.S. Veterans office, petitioner filed a claim in court to recover her loans. The U.S.V.A. opposed the petition on two grounds, namely, (1) that Visitacion was personally liable for for the payment of Porcuna's claim and (2) that even granting that the petitioner obtained the loan for the support, maintenance and education of the minors, these amounts were not payable from the minor's estate because Visitacion had no power to encumber the property of said wards. The U.S.V.A. established in evidence that Visitacion received from the U.S.V.A. from December 12, 1951 to November 10, 1952 the sum of $2,322.50 as indemnity for the insurance due to the minors' father, and another ₱2,600. as gratuity pay due to Visitacion and that she had been receiving a monthly pension of $92.90. After citing Articles 290, 291, and 293 of the New Civil Code the Supreme Court ruled that granting that the sum lent was spent for the maintenance, support and education of the wards, still, their funds due from the U.S.V.A.

64 Vergel Rosales v. Jose Rosales, G.R. No. L-12749, July 4, 1959, citing Moran, Vol. I Rules of Court 674 (1957).
65 Report, CODE COM. 90.
66 See AQUINO, supra, at 302.
67 Sections 17 and 18, Republic Act No. 390)June 18, 1949).
68 G.R. No. L-11563, May 29 1959.

cannot legally be made answerable for the loan secured by their mother, because the latter was in duty bound to support them at the time they did not have the means to support themselves, and she was in a position to do so.

But Porcuna contends that pursuant to articles 320 and 326 of the New Civil Code, the mother is the administratrix and guardian of the child's properties; that the incurring of debts for the purchase of necessaries and for the support of the child is a pure act of administration which may be exercised without previous authority of the Court, and that pursuant to section 2, Rule 97, such debts must be paid out of the ward's personal estate and the income of his real estate.

Disposing of this contention, the Court emphasized that Republic Act. No. 390 governs guardianship of incompetent veterans, other incompetents, and minor beneficiaries of U.S. Veterans Administration. Being a special law limited in its operation to money received from the U.S.V.A., it prevails over the provisions of the New Civil Code.[69] And as was held in the case of *U.S.V.A. v. Bostos*,[70] the mother has no power to encumber the property of the ward to guaranty the loan thus secured, or to bind for the payment of the loan the pensions that the minors may be entitled to receive thereafter. Only the judicial guardian of the ward's property may validly do so, and even then, only with the Court's approval.[71] Republic Acts 360 and 390 were likewise cited.

SUBSTITUTE PARENTAL AUTHORITY AND CUSTODY OF MINOR

Minor should be released from the custody of employer with whom she had adulterous relations even if she expressed preference to remain.—

In all that concerns the exercise of substitute parental authority as provided in Article 349 of the New Civil Code as well as the custody of minors, our Supreme Court has always held fast to the view that the best interest and welfare of the child must be the primordial consideration.[72] This salutary view is in keeping with that provision of the New Civil Code which states that in all questions on the care, custody, education and property of children, the latter's welfare shall be paramount."[73]

Thus, where the brother who wields substitute parental authority over his minor sister, placed the latter in the employ of another person but such employment degenerated into an adulterous and scandalous relation between the minor and the employer, the fact that the minor girl expressed preference to stay with employer is no valid reason for denying the release of the minor from said custody.

This was the ruling enunciated in the case of *Susana Macazo and Pacita Nunez v. Benildo Nunez & Epifania Nunez*.[74] In this case, it appeared that Benito Nunez and his wife had taken in their employ as a laundrywoman, Susana Macazo at the request of Susana's brother who then exercised substitute parental authority over her. While living with the couple, Susana gave birth to Pacita. The paternity of Pacita was admitted in open court by Benildo to

69 Baja v. Phil. National Bank, 52 O.G. 6140.
70 48 O.G. 5240, 5242.
71 Rule 96, RULES OF COURT IN THE PHILS.
72 See Flores v. De Leon, 51 O.G. 4525, Murdock v. Chiudian, 52 O.G. 5833, Perez v. Samson 48 O.R. 5368; Perkins v. Perkins, 57 Phil. 217.
73 Article 363, NEW CIVIL CODE.
74 G.R. No. L-12772, January 24, 1959.

be his. At the time the petition for a writ of habeas corpus was filed, Susana was 18 years of age, single, without parents and a deaf-mute. In denying the petition, the trial court declared that it can grant the writ only on two grounds, one of which is when someone is prevented from exercising the legal custody to which he is entitled over another person. As to this ground, the Civil Code expressly enumerates the persons who could exercise substitute parental authority (which carries the right of custody over the persons subject thereto) and the petitioner is not one among those mentioned. *Inclusio unius est exclusio alterius*, the trial court said. *Held*: The court below should not have overlooked the fact that by dismissing the petition, it was virtually sanctioning the continuance of an adulterous and scandalous relation between the minor and her married employer against all principles of law and morality. It is no excuse that the minor has expressed preference for remaining with said respondent because the minor may not choose to continue on illicit relation that morals and law repudiate.

USE OF NAMES

Change of name or use of an alias name.—

Article 376 of the new Civil Code provides that "no person can change his name or surname without judicial authority." Article 178 of the Revised Penal Code penalizes the use of fictitious name and the concealment of true name.[75] And the use of alias name is regulated by Commonwealth Act No. 142 which took effect on November 7, 1936.[75a]

Construing Section 2 of Commonwealth Act No. 142, our Supreme Court. in the recent case of *Yo Kheng Chian v. Republic* held that a petitioner seeking the change of his name or the use of an alias name, as in the instant case, must show to the satisfaction of the Court, "proper and reasonable grounds", in order to entitle him to the grant of his petition. An order granting or denying the petition is a matter of judicial discretion, not of right. There can hardly be any doubt that the petitioner's use of the alias "Kheng Chian Young", in addition to his real name, "Yu Kheng Chian" could add to more confusion That he is known in his business, as manager of the Robert Reid, Inc., by the former name, is not sufficient reason to allow him its use. After all, petitioner admitted that he is known to his associates by both names. Neither would the fact that he had encountered certain difficulties in his transactions with government offices which required him to explain why he bore two names justify the grant of his petition. The fact that petitioner intends to reside permanently in the Philippines as shown by his having filed a petition for naturalization argues more against his petition, because, if naturalized as Filipino citizen, there would then be no necessity for his further using said alias, as it would be contrary to the usual Filipino way of using only one name in ordinary as well as in business transactions. If he believes after he is naturalized that it would be better for him to write his name following the occidental method, he can easily file a petition for change of name.

---

75 U.S. v Piu, 35 Phil. 4 (1916).

75a I AQUINO, CIVIL CODE 680 (1958). C.A. No. 142 were applied in the cases of People v. Pio, G.R. No. L-11489, December 23, 1957; People v. Yu, CA 52 O.G. 4703; Ong Tan v. Republic,G.R No. L-19683, May 30, 1957.

76 G.R. No. L-14022, December 28, 1959. See also the cases of Chosiu v. Civil Register of Manila, G.R. No. L-9203, September 28, 1956; Ong Peng Oan, v. Republic, G.R. No. L8301, April 28, 1956.

PRESUMPTION OF DEATH

Presumption of death yields to preponderance of evidence.—

In previous cases decided by the Philippine Supreme Court and the Court of Appeals, the doctrine familiar in American jurisprudence was followed to the effect that the presumption of death such as the one found in Article 391 of the New Civil Code[77] cannot substitute facts which are demonstrative of death to a moral certainty.[78] And in the latest case of *Madrigal Shipping Co. v. Nieves Baens del Rosario*[79] the Supreme Court ruled that if additional facts and circumstances appear in the case, that would not only establish affirmatively the destruction or sinking of the vessel but would also rationally lead to a moral certainty that the person aboard the vessel had perished with it, the presumption in Article 391 would not apply but yield to the application of the rule of preponderance of evidence.[80]

In the *Madrigal* case, it appeared that Mrs. Baens del Rosario, associate commissioner of Workmen's Compensation Commission ordered the Madrigal Shipping Co. to pay a sum of money to the widow of Ernesto Tolentino who perished while working as an engineer in Madrigal Shipping's vessel, M/S "Cetus". The Commissioner found as established by evidence that Tolentino was aboard the M/S "Cetus" acting as apprentice engineer, at the time said vessel sank off Aparri, Cagayan, during the storm on November 26, 1955; that he was last seen swimming with others and disappeared completely when the boat was swallowed up by raging sea; that of the 30 members of the crew, aboard the vessel, 14 survived, 4 dead bodies were recovered, and 12 missing in spite of intensive search conducted, and continued to be missing up to the decision of this case in the Commission, or nearly 2 years after the disaster. Upon these facts, the Commissioner held as proven, not presumed (Art. 391, New Civil Code) the death of Tolentino. Madrigal Shipping Co., in this appeal, argued that the presumption of Tolentino's death had not yet arisen, hence, the claim for compensation was premature. *Held*: The Commissioner reasons, not without logic, that the presumption of death stated in Article 391 of the Civil Code applies to cases where a vessel cannot be located nor accounted for, or when its fate is not known or there is no trace of its whereabouts. The word "lost" used in referring to a vessel must be given the same meaning as "missing" employed in connection with an aeroplane, both being mentioned in the same sentence. "Where a person was last seen in a state of imminent peril that might probably result in his death and has never been seen or heard from again, though diligent search has been made, inference of immediate death may be drawn."[81] The Court cited volume 16 American Jurisprudence, page 25, and the cases of *Joaquin v. Navarro*,[82] *People v. Ansang*[83], and *People v. Sosota*,[84] to support its decision.

---

77 NEW CIVIL CODE, Article 391 provides:

"The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

"(1) A person on board a vessel lost during a sea voyage, or aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane; . . ."

78 Joaquin v. Navarro, G.R. No. L-5428, May 29, 1953; Jacosalem v. Javellana CA, 51 O.G. 1443.

79 G.R. No. L-13130, October 31, 1959.

80 Citing Joaquin v. Navarro, supra, at note 78.

81 Brownlee v. Mutual Benefit Assoc., 29 Fed. (2nd) 71.

82 G.R. No. L-5426, May 29, 1953.

83 G.R. No. L-4847, May 15, 1959.

84 G.R. No. L-3544, April 18, 1952.

Likewise, in the recent case of *Victory Shipping Lines Inc. v. Workmen's Compensation Commission*,[85] the rule in the case of *Madrigal* was reiterated. In this case, Pedro Icong, an employee of the petitioner, while sleeping on board the petitioner's vessel, was awakened when the vessel caught fire and jumped overboard. He has not been heard from since then. The Supreme Court held that the presumption of death in Article 391 cannot apply to him.

CIVIL REGISTRY

Citizenship is an important controversial matter that should be threshed out in an appropriate action.

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" was again applied in the recent case of *Tan Su v. Republic*,[86] after citing the previous cases of *Ty Kong Tin v. Republic*[87] and *Ansaldo v. Republic*[88] where the Supreme Court held that citizenship is an important controversial matter which can only be threshed out in an appropriate action.

In the *Tan Su* case, it appeared that Su filed in the Court of First Instance a petition praying that the Civil Registrar of Cebu City be ordered to correct the citizenship of his minor daughter. The trial court rendered a decision ordering the Civil Registrar to change not only the citizenship of Rosa Tan but also that of the father and mother from Chinese to Filipino. It was contended by Tan Su that the midwife of Rosa, when she was born, gave wrongly the information that she was a chinese citizen. In this appeal, the Supreme Court held that the change cannot be allowed. There must be an appropriate action wherein all parties who may be affected by the entry are notified or represented.

OWNERSHIP

Declaration of ownership in final judgment res judicata.

In the case of *Matias v. Chua Gua*,[89] where the Court had declared by previous final judgment that Chua Guan had become the legal owner of the shares of stock in controversy, subject to the liens of Lucia Matias and the Philippines Guaranty Company, and that the proprietary title invoked by Matias rested merely on the sale to her as the highest bidder and the sheriff's certificate of sale had no prior right than the sale in favor of Chua Guan, the ownership is, consequently, *res judicata*, and Matias may not litigate anew to assert the same title.

Article 443, applied.—

Article 356 of the Old Civil Code, now Article 443 of the New Civil Code, is a part of Section 1, Chapter 11, Title 11, Book 11 of the Civil Code, which section regulates the "right of accession with respect to the *products* of property." Viewed in this light, the work done and the improvements introduced by the lessee and the lessee's agent on the leased premises are not "products" of the lessor's property.

---

85 G.R. No. L-9268, November 28, 1959.
86 G.R. No. L-12140, April 29, 1959.
87 50 O.G. No. 3, 1077.
88 G.R. No. L-10226, February 14, 1958; see 34 PHIL. L. J., 171 (1959).
89 G.R. No. L-11355, February 27, 1959.

Article 443 refers to "*expenses* of production, gathering, and preservation" of *fruits* received by the owner of a property, not to improvements.[89a]

Article 448, construed.—

Article 448 of the New Civil Code, (formerly, Article 361) provides that "the owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent." From the Spanish text of this provision, it is clear that its application is limited to "buildings" constructed on another's land or "terreno", not to partitions, railings, counters, shelves, and other fixtures made in a building belonging to the owner of the land. Although the verb "edificar" in Spanish is roughly synonymous with "build" in English, the latter is broader in its connotation than the former. Literally, "edificar" is to undertake the construction of an edifice, such as a fort, castle, house, church, market, tower, stadium, barrack, stable or other similar structure. Upon the other hand, one may build a house, as well as a fence, partition, window, door, or even a desk or a chair, but it would be improper to use the verb "edificar" to describe the making of such fence, partition, window, etc.[89b]

Upon failure of builder in good faith to pay the value of land demanded by landowner, the latter does not automatically become owner of improvements.—

Under Article 448 of the New Civil Code, the owner of the land has the right to choose between appropriating the building by reimbursing the builder in good faith of the value, or compelling the builder to pay for the land. Even this second right cannot be exercised if the value of the land is considerably more than that of the building. In addition to the right of the builder in good faith to be paid the value of his improvements, Article 546 gives him the corollary right of retention of the property until he is indemnified by the owners of the land.[90] But there is nothing in the language of these two articles which would justify the conclusion that upon failure of the builder to pay the value of the land, when such is demanded by the landowner, the latter becomes automatically the owner of the improvements under Article 445 of the New Civil Code.

The foregoing was the ruling laid down in the recent case of *Filipinas Colleges Inc. v. Timbang & Timbang v. Gervasio Blas.*[91] In this case, the Court of Appeals adjudicated the rights of the litigants as follows: (1) Filipinas Colleges Inc. was declared to have acquired the rights of the spouses Timbang in and to the lot and was ordered to pay the same; (2) Maria Gervasio Blas was declared to be a builder in good faith of the school building constructed in the lot in question; and (3) In case Filipinas Colleges failed to deposit the value of the land within 90 days, it would lose all its rights to the land and the spouses Timbang would then become the owners thereof. In that eventuality, the spouses Timbang could make known their option under Article 448 of the Civil Code whether they would appropriate the build-

89a Lao Chit v. Security Bank & Trust Co., G.R. No. L-11028, April 17, 1959.
89b Ibid.
90 See the cases of Misa v. Pascual, 25 Phil 540; Wolfson v. Aenll, 46, Phil. 518; Mendoza v. Guzman, 52 Phil 164.
91 G.R. No L-12812, and G.R. No. L-12813, September 29, 1959.

ing in question or would compel the Filipinas Colleges to acquire the land and pay the price. Filipinas Colleges failed to deposit the amount and Timbang made known to the Court their decision that they had chosen to compel Filipinas Colleges to acquire the land and pay the price. Subsequently, a levy was made on the house by virtue of the writ of execution. The sheriff sold the building in a public auction in favor of the spouses Timbang as the highest bidders. As a result of this, Blas filed a motion praying that the sheriff or Timbang be ordered to pay and deliver to her the proceeds of the auction sale. Timbang opposed. It is contended that because the builder in good faith has failed to pay the price of the land after the owners thereof exercised their option under Article 448 of the Civil Code, the builder lost his right of retention provided in Article 546 and by operation of Article 445, the appellant as owners of the land automatically became the owners of the building. And since they are owners *ipso facto* the execution sale of the house in their favor was superfluous. Consequently, they are not bound to make good their bid as that would be to compel them to pay for their own property. By the same token, appellants continued, Blas' claim for preference on account of the purchase price of the house does not apply because preference applies only with respect to the property of the debtors Blas.

Held: Appellant's contention is without merit. After discussing the effects of Articles 448 and 546, the Supreme Court observed that there is nothing in the language of said sections which would justify the conclusion of appellants, that upon failure of the builder to pay the value of the land, when such is demanded by the landowner, the latter becomes automatically the owner of the improvements. The appellant owners of the land, instead of electing any of the alternatives above indicated, chose to seek recovery of the value of the land by asking for a writ of execution, levying on the house of the builder and selling it at public auction. And because they were the highest bidder in their own auction sale, they claimed they acquired title to the building without the necessity of paying in cash on account of their bid. In other words, they in effect pretended to retain their land and acquired the house without payment. The Supreme Court declared that this claim was likewise untenable. For the Court has already held in the case of *Matias v. Sheriff of Nueva Ecija*[92] that while it is the invariable practice that, where the successful bidder is the execution creditor himself, he need not pay down the amount of the bid if it does not exceed the amount of his judgement, nevertheless, where there is a claim by a third party to the proceeds of the sale superior to his judgement credit, the execution creditor as successful bidder, must pay in cash the amount of his bid as a condition precedent to the issuance of the certificate of sale to him.

Choice made under Article 448 in conformity with Court decision is converted into a money obligation.—

Tayag v. Yuseco[92a] is authority for the rule that once a party, in conformity with a Court decision, has made his choice and has duly informed the Court of said choice under Article 448 of the New Civil Code, and is accordingly ordered to comply with the same by buying the building erected on his land and pay the value thereof fixed by the Courts, that duty is converted

92 75 Phil. 326.
92a G.R. No. L-14043, April 16, 1959.

into a money obligation which can be enforced by execution, regardless of the unwillingness and alleged inability of the party concerned to pay the amount.

Article 453, paragraph 2, applied.—

According to the case of *Lao Chit v. Security Bank & Trust Co.*,[92b] Article 365 of the Old Civil Code, now Article 453, paragraph (2) of the New Civil Code, which states that "there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part" involves a person who builds, plants, or sows upon a land not knowing that it belongs to another. Viewed in this light, compliance with a valid contractual obligation whereby the lessee had a *legal right* to make the improvements and the *lessor was legally bound* to permit the former to enter into the premises and make the improvements thereon does not, and cannot constitute bad faith on the part of the lessor.

Issue of ownership must be threshed out in an ordinary action.—

In the case of *Angeles v. Razon*[93] where the petitioner Angeles filed a petition in the Court of First Instance of Pampanga in its capacity as a cadastral court, praying for the cancellation of the original certificate of title issued in favor of Razon and the issuance of a new transfer certificate of title in his favor under the provisions of section 112 of the Land Registration Act, the Supreme Court held that the trial court had no jurisdiction to act thereon, it appearing that the ownership of the property covered by the Torrens Title was controverted and under the law and jurisprudence prevailing should be threshed out in an ordinary action.

Effect of failure to nullify defective title.—

In *Tiburcio v. P.H.H.C.*[94], where plaintiffs alleged that for many years prior to March 25, 1877 and up to the present they had been in actual, adverse, open, public and exclusive possession of certain large tracts of land in litigation but it appeared that the land has been registered in the name of the defendant's predecessor-in-interest since 1914 under the Torrens System and that the plaintiffs never took any step to nullify said title which they claimed to lack the essential requirements prescribed by law for their validity, until 1957 when they instituted the instant case, the Supreme Court held that the plaintiff's action must be dismissed for, under the law, a decree of registration can be set aside only within one year after entry thereof on the ground of fraud provided no innocent purchaser for value has acquired the property.

CO-OWNERSHIP

Appointment of receiver in partition among co-owners.—

While in a partition proceeding, it is generally unnecessary for the Court to appoint a receiver, however, as was held in the case of *Tuason v. Concepcion*,[95] where the relations among co-owners are strained and no satisfactory arrangement as to the administration of the property can be accomplished, the appointment of a receiver is justified.

92b G.R. No. L-11208, April 17, 1959.
93 G.R. No. L-13679, October 26, 1959.
94 G.R. No. L-13779, October 31,, 1959.
95 54 Phil. 408 (1930).

This ruling in the recent case of *Chunaco v. Quicho*[96] is confirmed by Article 492 of the New Civil Code, paragraph (3), authorizing the appointment of an administrator (which term would include a receiver) in cases where the action of the majority of the co-owners results in serious prejudice to the minority.

No prescription among co-heirs.—

Article 494 of the New Civil Code which provides that "no prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognized the co-ownership" has been invariably applied by our Supreme Court in a number of cases the past years. Indeed, the rule is well-settled that the relationship between co-owners and co-heirs is one of trust and general acquisitive prescription cannot be pleaded between them except when one heir openly and adversely occupies the property for a period sufficiently long enough to entitle him to ownership under the law.[97]

The above rule was reiterated in the case of *Mabana v. Mendoza.*[98] It appeared in this case that Evaristo Mabana, former occupant of a parcel of land in question, had five children, namely, Felix, Eulogio, Benita, Luis and Alberto. Luis applied for a homestead patent for the land in 1932, having obtained after complying with the requirements of the law a certificate of title therefor which was issued in the name of his heirs. Before applying for said patent, however, it was agreed between Luis and his co-heirs, that the application and corresponding title would be placed in the name of Luis subject to the condition that he would recognize the right of the other heirs to the property. Plaintiffs herein came to know later that the property was placed in the name of Marcelina Mendoza, widow of the son of Luis Mabana, and after obtaining the title in her name, Marcelina executed a deed of partition with Mariano Mabana who was actually in possession of the property in question. Since the property is owned *pro-indiviso* by plaintiffs and defendants, plaintiffs brought the present action of partition. Defendants invoked the defense of *prescription.* Held: The defense of prescription cannot be availed of. While a Certificate of Title issued by the Register of Deeds covering land granted by the Bureau of Land by virtue of a homestead patent becomes conclusive and indefeasible after the lapse of 1 year as provided in section 38 of Act No. 496, the same is immaterial in determining the action of the plaintiff. There was an understanding that while a title was to be issued in the name of Luis, a partition of the property would later be effected between him and his co-heirs. There is therefore a relation of trust between Luis and his co-heirs which gives to the latter the right to recover their share in the property unimpaired by the defense of prescription.

POSSESSION

Concept of possessor in good faith; bad faith cannot be presumed.—

Article 526 of the New Civil Code lays down the rule that a possessor is deemed in good faith if he is not aware that there exists in his title any flaw

96 G.R. No. L-13774, January 30, 1959.
97 Cordova v. Cordova, G.R. No. L-9936, January 14, 1958; Cenido v. C.A. G.R. No. L-10634, May 28, 1958; see other cases cited, infra, under the heading, "Prescription."
98 G.R. No. L-12540, February 28, 1959.

which invalidates it.[99] Article 1127 of the same Code provides that the person from whom he received the thing was the owner thereof, and could transmit his ownership."[100]

The case of *Paraiso v. Camon*[101] illustrates the above rules. Agustin Paraiso, father of the plaintiffs, bought the lot in question from the San Sebastian Subdivision on installment basis. When he died, his widow continued paying the installments. And having paid the price in full on February 3, 1951, the vendor executed a deed of definite sale in her favor and a transfer Certificate of Title was issued. In 1954, the widow sold the lot to Jesus Camon with a right to repurchase the same within a period of one year. The widow failed to redeem the land within the stipulated period, hence, Camon consolidated his ownership over the property and obtained a new title in his name. Appellants claimed that the lot in question is conjugal because it was their father who initiated the purchase and had paid several installments on the same. They presented evidence to show that a portion of the consideration of the sale was paid by their father and the rest was paid by their mother out of the proceeds of her husband's backpay, but their attempt was objected to by defendant and sustained by the trial court. On appeal, the Supreme Court held that the trial court's action cannot be considered as erroneous considering that the lot in question was covered by a Torrens title issued exclusively in the name of their mother. It must be noted that the defense of the appellee is that he bought the land from said widow in the belief that she was the exclusive owner of the same in view of the fact that it appears issued in her name and there was nothing to indicate that it suffered from any lien or encumbrance. There was no clear evidence showing that appellee acted with knowledge of the origin of the property or that it was conjugal in nature other than a mere conjecture. Bad faith cannot be presumed but must be established by a clear evidence, more so when the property subject of the sale which is sought to be annulled is covered by a Torrens Title. A person dealing with registered land is not required to go behind the register to determine the condition of the property.

Supersedeas bond in forcible entry and detainer case.—

In the case of *Ocampo-Caniza v. Hon. Justice Martinez et. al.*,[101a] it appeared that only the possession of the leased premises was given to the plaintiff-lessor. The back rentals remained unpaid, as shown by the fact that said back rentals were included in the decision of the trial court. Hence, it was clear that the judgment was only partly executed. Was the filing of the supersedeas bond by the defendant proper under these circumstances? *Held*: It should be borne in mind that there are two parts to an execution of a judgment in a forcible entry and detainer case: one is the restoration of the possession to the plaintiff; second, is the payment of back rentals. It is therefore a fact that, the filing of the supersedeas bond of the defendant was not

---

99 See also, 4 Manresa 98-99; 3 Sanchez Roman, 436; 2 Tolentino, 206 (1954).

100 See Arriola v. Gomez, 14 Phil. 627.

101 G.R. No. L-13919, September 18, 1959. The concept of good faith is further illustrated in the cases of Leung v. Strong, 37 Phil. 644; Ozoa v. Montaño, G.R. No. L-8621, August 21, 1956; Lopez v. Phil. Eastern Theatrical Co., G.R. No. L-8010, January 31, 1956, 52 O.G. 1452; Llanos v. Simborio, 53 O.G. 1759; Labajo v. Enriquez, G.R. No. L-11093, January 27, 1958; Co Tao v. Tan Chico, 83 Phil. 543; Chua Hai v. Kapunan, G.R. No. L-11108, January 30, 1958.

101a G.R. No. L-13272, December 26, 1959.

wholly useless and without a purpose for the reason that the defendant was allowed to prosecute his appeal from the judgment of the lower court without paying back rentals.

Only possession in concept of owner can serve as title.—

Only the possession acquired and enjoyed in the concept of owner can serve as a title for acquiring dominion.[102] The possession of a real property, when devoid of the requisites prescribed by law, as that of a lessee, of a trustee, of a tenant on shares or planter, and of all those who hold in the name and representation of another, can not serve thereon to found prescription.[103] This is so, because occupation and use, however long continued, will not confer a prescriptive title unless coupled with the element of hostility towards the right of the true owner.[104] And, as explained in the case of *Lopez Inc. v. Philippine Eastern & Theatrical Trading Co.*,[105] the rule regarding possessors in good faith refers only to a party who occupies property in the belief that he is the owner thereof. In the case of a tenant or lessee, it is clear that he knows he is not the owner of the leased premises. Neither can the lessee or tenant deny the ownership or title of his lessor or landlord.

In the recent case of *Lim v. Velasco*,[106] it appeared that the defendant claiming ownership of a parcel of land took possession thereof without the plaintiff's consent and since then has been excluding the plaintiff from the possession and enjoyment of the same. Defendant's only evidence is the fact that he has been a tenant of one Butac, holding possession for the plaintiff. Plaintiff filed an action against the defendant for the recovery of the land on the ground that she is the registered owner thereof, as evidenced by a transfer certificate of title in her favor. Who has a better right to the land? *Held*: Plaintiff's certificate of title is incontestable already. What is more, the rights of possession regulated in Title V, Book II of the New Civil Code, entitled, "Possession" refer only to those possessions acquired and enjoyed in the concept of owner, not those possessions by persons who hold the land as tenants of another.

Possessor in good faith for nearly 25 years not liable for produce of land held in trust.

The rule in Article 544 of the New Civil Code that "a possessor in good faith is entitled to the fruits received before the possession is legally interrupted" was applied in the case of *Cuison v. Fernandez*.[107] In this case, the Supreme Court noted that although the sale of conjugal lands by the surviving spouse was void as to that part which pertained to the share of the deceased spouse, the vendee was nevertheless considered a purchaser in good faith and had been in possession of the land for nearly 25 years. For these reasons, the Court held him not liable during that period for the produce of one-half of the parcels of land he held in trust for the heirs of the deceased spouse who succeeded thereto.

---

102 Article 540, NEW CIVIL CODE.
103 Cumagun v. Allingay, 19 Phil. 415 (1911)
104 Corporation de PP. Dominicos v. Lazaro, 42 Phil. 119 (1921).
105 G.R. No. L-8010, January 31, 1959.
106 G.R. No. L-11743, May 25, 1959.
107 G.R. No. 11764, January 31, 1959

Possessor in good faith has right to a part of net harvest.—

Article 545 of the New Civil Code which states that "if at the time the good faith ceases, there should be any natural or industrial fruits, the possessor shall have a right to a part of the expenses of cultivation, and to a part of the net harvest, both in proportion to the time of the possession," was invoked in the recent case of *Azarcon v. Eusebio.*[107a]

In the *Azarcon* case, the petitioners and respondents had a dispute over the possession of a certain parcel of land in 1954. The lower court decided in favor of Eusebio and a writ of execution was issued ordering Azarcon, *et. al.*, to "forthwith remove from said premises and that plaintiff have restitution of the same." Azarcon nevertheless entered into the land to gather palay which was then pending harvest. The rice found on the land at the time of the service of the order of execution had been planted by Azarcon, *et al* who appeared to have been in possession of the land from 1951. In this appeal, the Supreme Court noted that while the trial court ordered Azarcon *et al* to move out from the premises, it did not prohibit them from gathering the crop then existing thereon. Under the law, a person who is in possession and who is being ordered to leave a parcel of land while products thereon are pending harvest, has a right to a part of the net harvest, as expressly provided by Article 545 of the Civil Code.

Right of judgment debtor in possession to civil and natural fruits.—

The rule enunciated in the cases of *Riosa v. Verzosa,*[108] *Velasco v. Rosenberg,*[109] and *Powell v. PNB,*[110] to the effect that where a judgment debtor is in possession of the property sold, he is entitled to remain in possession and to collect the rents and profits of the same during the period of redemption was reiterated in the recent case of *Gorospe v. Gochangco.*[111]

USUFRUCT

Usufruct is extinguished only by the total loss of the thing in usufruct.—

Article 603, paragraph (5) of the New Civil Code provides that a usufruct is extinguished by the total loss of the thing in usufruct. If the thing given in usufruct should be lost only in part, the right shall continue on the remaining part.[112] Under Article 607 of the Civil Code, " if the usufruct is constituted on immovable property of which a building forms part, and the latter should be destroyed in any manner whatsoever, the usufructuary shall have the right to make use of the land and the materials." So much so that when a person constitutes a life usufruct on the rentals of the "*fincas,*" which term includes not only the building but the land as well, and the building is later destroyed, the usufruct is not deemed extinguished.

This was the ruling in the case of *Grey vda. de Alvar v. Fabie vda. de Carangdang.*[113] Doña Rosario Fabie y Grey owned a lot with a building and improvements thereon. She died, leaving a will in which she devised the naked ownership of the property to petitioner Rosario Grey but the usufruct to re-

107a G.R No. L-11977, April 29, 1959.
108 Riosa v. Versosa, 26 Phil. 86 (1913).
109 Velasco v. Rosenberg, 32 Phil. 72 (1915).
110 Powell v. P.N.B., 54 Phil. (1929).
111 G.R. No. L-12735, October 30, 1959.
112 Article 604 NEW CIVIL CODE.
113 G.R. No. L-13361, December 29, 1959.

spondent. The will provided that "Lego a mi ahijada menor de edad, Maria Josefa de la Paz Fabie, en usufructo vitalicio las rentas de las fincas . . . en la calle Ongpin." During the war, the buildings were destroyed. After the war, a Chinese offered to lease the lot and to construct a building thereon to replace the destroyed one. The War Damage Commission awarded a sum to the petitioners for the loss of the building. Now the petitioner brings this action alleging that since the old building was destroyed, the usufruct was extinguished, and that the respondent usufructuary is only entitled to receive the legal interest on the value of the land. The usufruct according to the petitioner was only on the building and was extinguished when the building was destroyed. The respondent usufructuary contends that the usufruct was on the land and the building and that she was therefore entitled to the usufruct of the new buildings since they are accessories to the land. *Held*: We have previously held that there can be no building without the land. When the deceased constituted a life usufruct on the rentals of the "fincas," she meant to impose the encumbrance both on the building and the land on which it was erected. The term "fincas" has a broad scope. It includes not only the building but the land as well. Considering that only the building was destroyed and the usufruct was constituted both on the land and the building, the usufruct was not extinguished by the destruction of the building. Usufruct is extinguished only by the total loss of the thing. (Article 603) Under Article 607, the usufructuary has the right to make use of the land and the materials despite the destruction of the building. Hence, the usufruct of the respondent continues on the land and the new buildings thereon. The sum awarded by the War Damage Commission is also subject to the usufruct because it was intended as indemnity for the loss of the building.

REGISTRY OF PROPERTY

Unrecorded lease cannot prejudice innocent purchaser for value.—

Article 709 of the New Civil Code which provides that "titles of ownership, or of other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property, shall not prejudice third persons," is illustrated in the case of *Dagdag v. Nepomoceno, et. al.*[113a]

In the *Dagdag* case, it was proven that Lot No. 3786 was covered by a Sales Patent inscribed in the Office of the Register of Deeds on July 11, 1927 and Original Certificate of title issued in the name of *J*. *J* later sold the land to *B*, who in turn sold it to *BI*, and finally to Dagdag, with the corresponding transfer certificate of title issued out in each case. At the same time, it was also covered by a lease executed by the Bureau of Lands in 1916 in favor of *V*. Subsequently, *V* transferred his rights under the lease to Nepomoceno. Dagdag's title and those of his predecessors contained no annotation of such lease. After the lease expired in 1941, it was extended for another 25-year period in 1949. Nepomoceno refused to surrender the land to Dagdag. Whose right shall prevail? *Held*: Dagdag's title prevails. The sales patent issued to *J* having been registered with, and title issued by the Register of Deeds, Lot No. 3786 was brought under the operation of the Land Registration Act. The land was transferred successively, until acquired by Dagdag and the certificate of title was issued in his name, free from any lien or encumbrances,

113a G.R. No. L-12691, May 29, 1953.

as well as the claim of lessee Nepomoceno. The lease not having been annotated on the certificate of title, and it not having been proven that Dagdag had knowledge of the lease in question, it cannot prejudice Dagdag who is presumed to be an innocent purchaser for value. The fact that the lease in favor of *V* had been registered, cannot bind and prejudice Dagdag, for, the lot in question being a registered land, Dagdag need not go further than the title.

Rulings under Homestead Law, C. A. No. 141.—

(1) The provision of section 20 of Commonwealth Act No. 141, that transfer of homestead rights is allowable only prior to the making of the final proof of the application but not thereafter, has no application to a case where the subject of an agreement between the parties is not the homestead right but the property itself, after it has been acquired and title thereto issued in favor of the applicant. Such undertaking to divide, and convey portions of the land to those who have jointly occupied, cleared and cultivated the land, as in this case, does not run counter to any provision of the Public Land Law. As was held in the case of *Gauiran v. Sahagun*:[114]

> "Where the homestead applied for was acquired by means of joint occupation, clearing and cultivation of the land by both petitioners and respondent, it is held under a joint tenancy, and the promise of the latter to convey a part thereof to the former is not the alienation or encumbrance prohibited by sections 16, and 22 of Act 2874, now C.A. No. 141."[115]

(2) The absence of approval by the Secretary of Agriculture and Natural Resources does not invalidate a sale of a homestead made upon the expiration of the 5 year period, for in such event, the requirement of section 118 of the Public Land Law becomes merely directory. The approval may therefore be secured later, producing the effect of ratifying and adopting the transaction as if the sale had been previously authorized.[116]

(3) A public land patent, when registered in the corresponding register of deeds office, is a veritable Torrens title, and becomes as indefeasible as a Torrens title.[117]

(4) A certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued as a consequence of a judicial proceeding, as long as the land disposed of is really a part of the disposable land of the public domain, and becomes indefeasible and incontrovertible upon the expiration of one year from the date of issuance thereof. Hence, an action to nullify the certificate of title to a public land grant cannot be brought after the expiration of the one-year period above indicated. The provision of Article 1144 of the Civil Code which states that "actions upon a written contract, an obligation created by law, or upon a judgment must be brought within ten years from the time the right of action accrues" cannot apply.[118]

---

114 G.R. No. L-4645, May 29, 1953.

115 Jacinto v. Jacinto, G.R. No. L112314, July 31, 1959.

116 Ibid., citing the cases of Evangelista v. Montano, G.R. No. L-5567, May 29, 1953; Flores v. Plasina, G.R. No. L-5727, January 12, 1954; and De Los Santos v. Roman Catholic Church, G.R. No. L-6088, February 25, 1954.

117 Director of Lands v. Heirs of Carle, G.R. No. L-12485, July 31, 1959, citing the cases of Dagdag v. Nepomoceno, supra, G.R. No. L-12691, February 27, 1959; Ramoso v. Obligado, 70 Phil. 86; Manolo v. Lukban, 48 Phil. 973; El Hogar Filipino v. Olviga, 60 Phil. 17.

118 Ibid., citing the case of Lucas v. Durian, G.R. No. L-7886, September 23, 1957.

(5) In order to constitute a violation of section 118 of Commonwealth Act No. 141, it is not necessary that the encumbrance or alienation be registered in the office of Register of Deeds; it is enough that the homestead be encumbered or alienated within the prohibitive period of five years.[119]

PATENT AND TRADEMARKS

Ruling under the Patent Law.—

Republic Act No 165 is the Patent Law of the Philippines. Under said law, the Rules of Court, and other pertinent laws on the matter, may a member of the Philippine bar of good standing, practice his profession in the patent office, without taking an examination for patent attorneys as required by the circular of the Director of Patents?

The Supreme Court in *Philippine Lawyers Association v. Agrava*[120] answered the question in the affirmative. The reason given by the Court is that much of the business in said patent office involves the interpretation and determination of the scope and application of the Patent Law and other laws applicable as well as the presentation of evidence to establish facts involved therein. Moreover, part of the functions of the Patent Director are judicial or quasi-judicial, so much so that appeals from his orders or decisions are, under the law, taken to the Supreme Court. Only a member of the bar can competently handle these tasks.

Trademarks.—

The requisites provided by Republic Act No. 166 for the registration and cancellation of trademarks were extensively discussed by the Supreme Court in the recent case of *La Estrella Distillery, Inc. v. Director of Patents.*[121]

DONATION

Case where requisites for donation were not complied with.—

The rule is settled that donations *inter-vivos* must be executed and accepted in accordance with the formalities prescribed in Articles 748 and 749 of the New Civil Code. In order that the donation of an immovable may be valid, it must be made in a public document. The acceptance may also be made in the same deed of donation or in a separate public document, and, in the latter case, the donor must be notified thereof in an authentic form.[122] A donation of a movable may be made orally or in writing. An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated. If the value of the movable donated exceeds ₱5,000, the donation and acceptance must be made in writing. Otherwise, the donation shall be void.[123] Donations *mortis causa*, in order to be valid, must be made in accordance with the formalities required by law for the validity of wills.[124]

---

119 Republic of the Phils. v. Garcia et. al., G.R. No. L-11597, May 27, 1959.
120 G.R. No. L-12426, February 16, 1959.
121 G.R. No. L-11818, July 31, 1959.
122 Article 749, NEW CIVIL CODE.
123 Article 748, NEW CIVIL CODE
124 Article 728, NEW CIVIL CODE For an enlightening discussion on the distinction between donation mortis cause and inter vivos, see Justice J.B.L. Reyes' opinion in the leading case of Bonsato v. C.G., 50 O G., 3568, G R No. L-6600, July 30, 1954 30; PHIL. L. J. No. 2205 (1955).

The case of *Serrano v. Solomon*[125] illustrates an instance where the deed executed by the deceased failed to comply with any of the foregoing requisites. The pertinent portion of the deed in that case recites: My properties "are donated in accordance with the existing laws of the Philippines and our children out of wedlock will be the ones to inherit the same with equal shares. But if God will not bless our union with any child, one-half of all my properties will be given to my brothers or sisters or their heirs if I x x will die before my wife, and if my wife will die before me, one-half of all my properties and those acquired by us will be given to those who have reared my wife in token of my love for her." The wife since childhood had been left in the care of a friend named Serrano. Nine months after the marriage (the deed was executed on the same day of his marriage, but before the ceremony), the wife died and Serrano brought this action to enforce the terms of the donation. Question: May the donation be considered as donation *inter-vivos?* Hardly, the Supreme Court ruled, for the reason that it was never accepted by the donee either in the same instrument of donation or in a separate document as required by Articles 748 and 749 of the Civil Code. Again, may it be considered as a donation *mortis causa* and given effect? The Court answered this question in the negative because the donation in question is equivalent to a disposition or bequest by last will, and should be executed in accordance with the requisites and strict provisions governing the execution of wills. Undoubtedly, the deed in question does not fulfill the said requirements. Moreover, the donor is still alive and naturally even if the donation were otherwise valid, still the time and the occasion have not arrived for considering its operation and implementation.

SUCCESSION

General rules as to heirs or successors.—

The recent case of *Martir v. Trinidad*[126] reiterated some of the more fundamental rules regarding heirs or successors as follows:

"The heir or successor acquires the rights of the predecessor and no more. 'The heir represents the person of the deceased, and both are even considered as one and the same person: *haeres consetur cum defuncto una eademque persona;* 'according to law,' says law 13, tit. 9, Part 7, 'the person of the heir and that of him from whom he inherits is considered as one.' "[127]

"He who succeeds to the right or property of another must use the same rights as he: *qui in jus dominumve alterius succedit, jure ejus uti debet.* The successor cannot be in a better condition than his predecessor: *non debeo merlioris esse conditions quam auctor meus, a quo jus ad me transit.*"[127a]

Acknowledgment before notary public is indispensable for validity of will.—

If the will is not holographic, the Civil Code provides that "every will must be acknowledged before a notary public by the testator and the witnesses."[127b] A will which does not comply with this requisite formality cannot be probated.[127c]

---

125 G.R. No. L-12093, June 29, 1959.
126 G.R. No. L-12057, May 20, 1959.
127 ESCRICHE'S DICTIONARY, on "Heredero".
127a Quijano v. Cabale, 49 Phil. 267, 269.
127b Article 806, NEW CIVIL CODE.
127c See Article 839, NEW CIVIL CODE.

This rule was enunciated in the matter of the *Testate Estate of Alberto*.[128] The probate court in this case disallowed the will of Alberto on the ground that the same did not comply with the requirement of the law to the effect that a will must be acknowledged before a Notary Public by the testator and the witnesses. The executrix appealed and contended that legalistic formalities should not be permitted to obscure the use of good, sound common sense in the consideration of wills and that where there has been substantial compliance with the requirements of the law, the will should be allowed to probate. *Held*: Article 806 of the New Civil Code is an indispensable requisite for the validity of a will. Reflecting such intention is the provision of Article 839 of the same Code which provides that "the will shall be disallowed if the formalities required by law have not been complied with."

Allowance of will; service of notice on individual heirs is not a jurisdictional requisite.—

It is well-settled that where a will is duly probated after publication pursuant to the Rules of Court, the order admitting the will is, in the absence of fraud, effective against all persons. The fact that an heir or other interested party lives so far away as to make it impossible for such party to be present at the date appointed for the probate of the will does not render the order of probate void for lack of due process.[129]

The case of *Perez v. Perez*[130] reiterates the above rule. In a summary settlement of a testate estate, appellant in the *Perez* case contended that the lower court did not "acquire jurisdiction to receive the evidence for the allowance of the alleged will" because two heirs had not been notified in advance of the hearing for the allowance of such will. Appellee on the other hand maintained that the persons mentioned were not entitled to notice, since they were not forced heirs — being grandnephew and grandniece — and had not been mentioned as legatees or devisees in the will. *Held*: Appellee's contention is sustained. The omission did not affect the jurisdiction of the court. It constituted a mere procedural error. The Court acquires jurisdiction over all persons interested in the estate through the publication of the petition in the newspapers. Service of notice on individual heirs is a matter of procedural convenience, not a jurisdictional requisite.[131]

Allowance of will during testator's lifetime is conclusive only as to the validity of its execution.—

Article 838 allows the testator, during his lifetime, to petition the court having jurisdiction for the allowance of his will. Subject to the right of appeal, the allowance of the will during the lifetime of the testator is conclusive only as to its due execution. Once the will is probated, the only question that may remain for the courts to decide after the testator's death will refer to the intrinsic validity of the testamentary disposition.[132]

The case of *Juan Palacios v. Maria Catimbang*[133] illustrates the above rule. In this case, it appeared that in 1946, Palacios executed a last will and testament. In 1956, he filed a petition for the allowance of his will in the

128 G.R. No. L-11948, April 29, 1959.
129 In re estate of Johnson, 39 Phil. 159 (1918).
130 G.R. No. L-12359, July 15, 1959.
131 Nicholson v. Leathan, 153 Pac. 965, 2 MORAN, RULES OF COURT 355 (1957); Manalo v. Paredes, 47 Phil. 938.
132 COM. REP. 53-54, cited in 3 TOLENTINO CIVIL CODE 134 (1955).
133 G.R. No. L-12207, December 24, 1959.

Batangas Court of First Instance. Catimbang opposed his petition alleging that she was an acknowledged natural daughter of the petitioner and that the will in question impaired her legitime. The trial court admitted the will to probate. After due hearing, the court declared the oppositor the natural child of the petitioner and annulled the will in so far as it impaired the legitime. Palacios appealed. The Supreme Court noted that Catimbang did not object to the probate of the will in so far as its due execution was concerned. She objected mainly to its intrinsic validity. The Supreme Court, therefore held that the opposition of Catimbang was not proper. The allowance of a will under paragraph (2) of Article 838 of the New Civil Code is concerned merely with questions regarding the due execution of the will. It is not concerned with the validity of its dispositions, much less with the question of whether Catimbang is an acknowledged natural child who allegedly has been ignored in the will, for such issue must be raised in a separate action. The question as to the impairment of the legitime of the oppositor cannot now be decided.

Special administrator, by authority of probate court, may sell only perishable property.—

In the case of *Buenaventura v. Philippine Trust Co.*,[134] where the chattels ordered to be sold by the probate court, consisting of furnitures and fixtures are not perishable, and the only reason given by the special administrator for authority to sell the chattels was that it was for the best interest of the estate, the Supreme Court held that the order given by the probate court was unauthorized. The special administrator, by authority of the probate court, may only sell perishable and other property as the court may direct.

Probate court cannot order cancellation of title of purchaser after termination of proceedings.—

Where it appeared that the probate proceedings had already been terminated upon the approval by the probate court of the project of partition and the court issued the order of distribution directing the delivery of the properties to the heirs in accordance with the adjudication made in the will, it was held that the probate court has no more authority to order the cancellation of the certificate of title issued in the name of Manalo, a vendee third party.[135]

Same; declaration of nullity of deed of sale cannot be obtained through mere motion in probate proceedings.—

Even assuming that in view of the lack of proof of compliance by the executor of the order of distribution of the properties, the proceedings might still be considered as open, the declaration of nullity of the deed of sale and the consequent cancellation of the certificate of title issued in favor of the vendee cannot be obtained through a mere motion in the probate proceedings over the objection of a third party adversely affected and over whom the probate court had no jurisdiction.[136] Even granting arguendo that the presentation of the deed of sale for registration and the issuance of the new certificate of title in the name of the vendee were, in view of the circumstances,

134 G.R. No. L-10832, June 29, 1959.
135 Tagle v. Manalo, G.R. L-12657, July 14, 1959, cf., Santiesteban v. Santiesteban, 68 Phil. 367.
136 Ibid., citing De Paula v. Escay, G.R. No. L-8559, September 28, 1955.

far from regular, nevertheless, the vendee has acquired, and is actually asserting, a claim of ownership over the parcel of land covered by said deed of sale and certificate of title of which he cannot be deprived except in an appropriate independent action in the proper court.

Reserva Troncal, requisites; relative nearest in degree excludes the more distant ones.—

Article 891 of the New Civil Code which provides that "the ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came," creates what is known as reserva troncal.[137]

Reserva troncal is again illustrated in the recent case of *Maria Cano v. Director of Lands*.[138] In a land registration case brought in 1951, the decree and certificate of title over a parcel of land was issued in the name of plaintiff subject to a reserva troncal in favor of Guerrero. In October 1955, reservee Guerrero filed a motion with the Cadastral court alleging the death of the *reservista* (plaintiff) and praying that a new certificate of title be issued in his (Guerrero's) favor. Opposition was made by the sons of the *reservista* on the ground that the operation of the *reserva troncal* should be ventilated in an ordinary contentious proceeding. The lower court granted the petition for the reason that the death of the *reservista* vested the ownership of the property in the petitioner as the sole *reservatario* (or *reservee*) troncal. On appeal, oppositors contended that the reversion requires the declaration of the existence of the following facts: (1) the property was received by a descendant by gratuitous title from an ascendant or from a brother or sister; (2) said descendant dies without an issue; (3) the property is inherited by another ascendant by operation of law; and (4) the existence of relatives within the third degree belonging to the line from which the property came. *Held*: Appeal is untenable. The requisites outlined above have already been declared to exist by the decree of registration which stated that the lot in question was acquired by the applicant Cano by inheritance from her deceased daughter who in turn inherited the same from her father, and that each of the private oppositors are within the third degree of consanguinity of the decedent father and who belong to the same line from which the property came. It appears, however, that with the exception of petitioner Guerrero, who is the only living daughter of the decedent Evaristo Guerrero, by his former marriage, all the other oppositors are grandchildren of said Evaristo by his former marriage. The petitioner being the nearest of kin, excludes all the private oppositors, whose degree of relationship to the decedent is remoter.[139]

The decree of the constituent elements having been declared, the only requisites for the passing of the title from the *reservista* to the *reservee* are: (1) the death of the *reservista*, and (2) the fact that the *reservee* has survived the *reservista*. Both facts are admitted in this case.

137 "Reserva troncal" is likewise illustrated in the cases of Edroso v. Sablan, 25 Phil. 295; Lunsod v. Ortega, 46 Phil. 664; Cabardo v. Villaueva, 44 Phil. 186; Paz v. Madrigal, G.R. No. L-8981, October 23, 1956; Padura v. Baldovino, G.R. No. L-11960, December 27, 1958.

138 G.R. No. L-10701, January 16, 1959.

139 NEW CIVIL CODE, Article 962.

Reservatario's position, explained.—

The eminent authority on civil law, Mr. Justice J. B. L. Reyes, cogently explained the nature of the rights of the *reservatario* in the *Cano* case, *supra*, as follows:

The *reservatario* (or *reservee*) is not the *reservista's* successor *mortis causa* nor is the reservable property part of the *reservista's* estate. The *reservatario* receives the property as a conditional heir of the descendant (*prepositus*), the said property merely reverting to the line of origin from which it had temporarily strayed during the *reservista's* lifetime. The authorities are all agreed that there being *reservatarios* that survive the *reservista*, the latter must be deemed to have enjoyed no more than a life interest in the reservable property.

It is a consequence of these principles that upon the death of the *reservista*, the reservatario nearest to the *prepositus* becomes, *automatically and by operation of law*, the owner of the reservable property. The reservable property is no part of the estate of the *reservista*, and does not even answer for the debts of the latter. Hence, its acquisition by the *reservatario* may be entered in the property records without necessity of estate proceedings, since the basic requisites therefore appear of record. It is equally well-settled that the reservable property cannot be transmitted by a *reservista* to her or his own successors *mortis causa*, so long as a *reservatario* within the third degree from the *prepositus* and belonging to the line whence the property came, is in existence when the *reservista* dies.

Of course, where the registration decree merely specifies the reservable character of the property, without determining the identity of the *reservatario*, or where several reservatarios dispute the property among themselves, further proceedings would be unavoidable.[140]

Old Civil Code applied: Usufructuary rights of surviving spouse over wife's paraphernal property.—

Under Article 834 of the Old Civil Code, "the surviving spouse received a share in usufruct equal to the share of the legitimate child; but if there was only one child, the surviving spouse received in usufruct the one-third available for betterment." Under Article 892 of the New Civil Code, "the legitime of the surviving spouse has been changed from usufruct to full ownership."[141]

In the case of *Gamis v. Court of Appeals*,[142] the Supreme Court applied Article 834 of the Old Civil Code, which was the law applicable,[143] because the deceased spouse whose inheritance was in question, died on January 17, 1909.

Court that approved partition may later annul it on grounds of fraud, undue influence, lesion.—

Article 1097 of the New Civil Code provides that a partition may be rescinded or annulled for the same causes as contracts. It may also be rescinded on account of lesion, when any one of the co-heirs received things

140 Cano v. Director of Lands, G.R No. L-10701, January 16, 1959.
141 COM. REP. 23, cited in 3 TOLENTINO, CIVIL CODE 275 (1955).
142 G R No. L-10732, May 23, 1959.
143 NEW CIVIL CODE, Article 2263 provides: "Rights to the inheritance of a person who died, with or without a will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court..."

whose value is less, by at least one-fourth, than the share to which he is entitled.[143a] And the weight of authority is to the effect that the Court that approved the partition may annul the same in case such approval was obtained by deceit, fraud or mistake. The petition must be filed in the intestate proceedings, for the general rule is, that probate courts are authorized to vacate any decree or judgment procured by fraud, not only while the proceedings in the course of which it was issued are pending, but even during a reasonable time thereafter.[144]

The foregoing rules found application in the recent case of *Yusay v. Yusay-Gonzales*.[145] In the *Yusay* case, it appeared that Matias Yusay died, leaving a legitimate son, Jose, and an acknowledged natural daughter, Lilia and a considerable property. Lilia, while already of age, executed a document wherein she acknowledged having received from her brother 18 parcels of land with a total area of around 24 hectares as her just and legal share in the estate of their father, and wherein she waived her right to rescind the agreement on the ground of lesion. Thereafter, Jose and Lilia executed a project of partition, in which Lilia reiterated having received said 18 parcels of land. The lower court approved the partition in 1954. Less than a month after the court's approval, Lilia filed a motion for reconsideration, alleging that her consent to the partition was obtained through fraud and false representation, and that she was unjustly deprived of nine-tenths of her legal share. The lower court annulled the project of partition. The Supreme Court, in this appeal by the representatives of deceased Jose, after citing the case of *Arroyo v. Gerona*,[146] ruled that "a project of partition, although made and subscribed by all the heirs and so, ordinarily binding on them, even when approved by the probate court, does not mean that said court is thereafter divested of jurisdiction over the same. If later, especially within a reasonable time after the approval of said partition, it is proven that fraud or deceit was practiced in procuring the approval of the project of partition by the heirs or some of them, the probate court may still modify or even set aside its order approving the said project of partition. The Supreme Court also found that there was fraud and undue influence in securing Lilia's signature and approval because she was not made to realize at the time what rights and interests she had. The estate left by the deceased was considerable and having in mind the insignificant portion alloted to Lilia, the project was unreasonable, even unconscionable. Furthermore, she was not a legitimate child, but only an acknowledged natural daughter, and had therefore, one may call an inferiority complex. Added to this was the fact that she went to live with Jose and his family after the death of their father. This must have been a great favor to her.

PRESCRIPTION

Moratorium Law suspends the running of the period of prescription.—

The recent case of *Bachrach Motor Co. v. Lejano*,[147] reiterated the ruling laid down in the case of *Parsons Hardware Co. v. San Mauricio Mining Co.*[148] and a long line of decided cases to the effect that "the moratorium law suspended

143a NEW CIVIL CODE. Article 1098.
144 Arroyo v. Gerona, 54 Phil. 909, 913 (1930).
145 G R. No. L-11378, August 31, 1959, citing cases.
146 Arroyo v. Gerona, supra, note 144 (1930).
147 G R. No. L-10910, January 16, 1959
148 G.R. No. L-9584, April 27, 1957.

the running of the period of prescription and the enforcement of the payment of all debts and other monetary obligations payable within the Philippines from March 10, 1945 to July 26, 1948, or a period of three years, four months, and sixteen days."

Interruption of Statute of Limitations.—

The Statute of Limitations is only suspended by war, rebellion, insurrection when the regular course of justice is interrupted to such an extent that the courts can not be kept open.[148a] Or, as was held in another case,[148b] the interruption in the functions of the courts by war interrupted the running of the prescriptive period of actions.[148c]

Prescription does not run against minor who has no legal guardian.—

Under the law prior to the new Civil Code, the failure or neglect of the mother as a natural guardian of her minor children to present within the period provided in the Workmen's Compensation Act[149] the claim for compensation, which is a property right, could not be imputed to the minors, and consequently, in the absence of a properly appointed guardian, the running of that period was tolled during their minority. Of course, under the New Civil Code, the guardianship of the father or mother over children under parental authority extends to both the persons and the properties of their wards, albeit a bond has to be given, with court approval, where such properties are worth more than ₱2,000.[150] But the new Civil Code took effect only in 1950, and, as already stated, in 1949 the mother of the herein minor claimants asked the petitioner company for financial help on account of the death of her husband. At that time, the four awardees were still minors. Therefore, the right of these claimants is not barred by the statute.

The foregoing rule in the case of *Luzon Stevedoring Co. v. Hon De Leon*,[151] which cited the old case of *Wenceslao v. Calimon*,[152] should be read in connection with Article 1108 of the New Civil Code. Under this Article, where the minors have guardians or other representatives, prescription runs against them. "But when such minors...do not have such parents, guardians or legal representatives, then the saving provisions (Sections 42 and 45 of the Code of Civil Procedure)[153] will apply to them, and they may bring their actions within three or two years, as the case may be, after their disability has been removed."[154]

Prescription does not run against co-heirs.—

In the case of *Mabana v. Mendoza*[115] where there was an understanding that while the title was to be issued in the name of Luis, a partition of the property would later be effected between him and his co-heirs, the Supreme Court held that there was a relation of trust between Luis and his co-heirs which gives to the latter the right to recover their share in the property unimpaired by the defense of prescription.[156]

148a España v. Lucido 8 Phil. 419, 420; Palma v. Aldo, 46 O G Supp. No. 11, 98.
148b Talens v. Chuakay & Co. G R. No. L-10127, June 30, 1958.
148c Rio y Compañia v. Jalkipli, G.R No. L-12501, April 13, 1959.
149 Workmens Compensation Act, Section 24.
150 NEW CIVIL CODE, Articles 320 and 326.
151 G.R. No. L-9521, November 28, 1959.
152 46 Phil. 406 (1924).
153 Act 190 (Code of Civil Procedure)
154 4 TOLENTINO, CIVIL CODE 5 (1956).
155 G R No. L-12540, February 28, 1959.
156 The cases of Manalang v. Canlo., G R. No. L-6307, April 30, 1954, Sevilla v. de los Angeles, G R. No. L-7745, November 18, 1955, and a long line of decided cases were cited.

No prescription in property held in trust; laches.—

In the case of *Cuison v. Fernandez*,[157] *supra*, the sale of the conjugal land by the surviving spouse without the formalities established for the sale of properties of deceased persons was declared void as to the share of the deceased spouse for the benefit of her heirs. In such a case, the Supreme Court ruled that the purchaser holds the property in trust for the benefit of the heirs, and prescription cannot be set up in an action by the heirs to recover the same. Neither could laches be set up as a defense, it being similar to prescription.

Article 1116 applied; possession in the concept of owner.—

Article 1116 of the New Civil Code which provides that prescription already running before the effectivity of this Code shall be governed by laws previously in force,[158] was applied by the Supreme Court in *Jose de la Cruz v. Telesforo de la Cruz*[159] in upholding the trial court's decision to the effect that "Section 41 of the Code of Civil Procedure which was then the law in force at the time the sale was made makes no distinction as to the manner the possession has commenced. In other words, a person who possessed a land for ten years continuously, publicly and in the concept of an owner acquired the land by prescription even though he has no title to the same."[160] The Supreme Court in this case held that appellee has acquired title to the land in question in view of the fact that his possession was actual, open, public, peaceful and continuous under a claim of title exclusive of any other right and adverse to all claimants, since March 26, 1940, when the land was sold to him by plaintiffs' mother.

Purchaser in good faith.—

In prescription, the good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.[161] The possessor must believe that the title for his acquisition is sufficient.[162]

Thus, in *Paraiso v. Camon*[163] where the purchaser bought the land from a widow in the belief that she (widow) was the exclusive owner of the same considering that its title appears issued in her name and there is nothing thereon to indicate that it suffers from any lien or encumbrance, nor is there evidence to show that he acted with knowledge of the origin of the property, or that it is conjugal, the Supreme Court held that he was a purchaser in good faith. Bad faith cannot be presumed but must be established by clear evidence, more so when the property subject of the sale is covered by a Torrens title.

Action based on written contract prescribes in 10 years.—

Article 1144 of the New Civil Code which provides that actions upon a written contract must be brought within ten years from the time the right of action accrues was applied in the case of *Filipinas Peralta de Guerrero v. Madrigal Shipping Co.*[167]

157 GR. No. L-11764, January 31, 1959.
158 applied in Francisco v. Borja, February 28 1956; Osorio v. Jongko, 51 O.G. 6221.
159 G R No. L-11105, June 30, 1959.
160 Act No. 190, section 41 (Code of Civil Procedure).
161 NEW CIVIL CODE, Article 1127. See Santiago v. Cruz, 19 Phil. 145; Doliendo v. Biarnesa, 7 Phil. 232.
162 4 TOLENTINO, CIVIL CODE 24 (1956).
163 G R No. L-13919, September 18, 1959.
167 G.R. No. L-12951, November 17, 1959.

In the *Peralta de Guerrero* case, Acacio, a passenger of defendant company's vessel, died when the vessel capsized. Plaintiffs, wife and daughter of the deceased, brought an action to recover damages resulting from the death of Acacio, on April 30,1957, or more than six years from the time of the alleged breach of contract, when the vessel capsized (which was on November 1, 1949). The trial court held that since the nature of the action was one for the recovery of damages which was not based on a written contract, the action was barred by the statute of limitations. *Held*: The action was for a breach of contract of carriage. It is a matter of common knowledge that when a passenger boards a ship, he is issued a ticket by the shipper wherein the terms of the contract are specified. While the Supreme Court remanded the case to the trial court for admission of evidence to show that the contract of the parties was really written, and not merely oral, it is clear that the Court would have sustained the plaintiff's action if the written contract of carriage were shown in evidence. In the instant case, plaintiff filed his action a little more than 7 years after the breach of the contract in question. Under the Civil Code, the prescriptive period for actions based upon a written contract is 10 years from the time the right of action accrues.[168]

Action upon a written contract.—

Again, in the recent case of *Garcia v. Ocampo*,[169] Article 1144 of the New Civil Code was involved. The Supreme Court in this case quoted with approval the trial court's decision as follows: "The plaintiff contends that her right of action does not consist in the enforcement of any judgment but for the enforcement of the sale in her favor executed by the sheriff. But the court finds that even in the latter cause of action of the plaintiff has prescribed, because the deed of sale was executed by the sheriff in 1933, and, from that date to March 20, 1956, when the present case was filed, 23 years have elapsed. Article 1144 of the New Civil Code as well as Section 43 of Public Act No. 190, provides that action upon a written contract must be filed within 10 years. By virtue of said deed of sale in favor of the plaintiff, she had her right of action since 1933 to ask for the cancellation of the certificate of title for the purpose of issuance of another, wherein she should appear as owner of one-half of the land in question. So that from said year, 1933, up to 1956, the ten year prescriptive period has elapsed. Adverse possession, as alleged by the plaintiff, in having possessed the land in question for such a long time is not a means of acquisition, because a registered land can not be lost or acquired by adverse possession."

Action based upon written contract; interruption of period.—

Rio y Compania v. Jolkipli,[170] illustrates a case where the moratorium period was deducted from the period that elapsed from the accrual of the cause of action to the filing of the complaint. In December, 1939, Rio y Compania entered into a contract with Jolkipli wherein the latter agreed to undertake the exploitation of a timber concession of the former in Palawan. To give Jolkipli the opportunity to carry on the venture, Rio y Compania extended credit to him. As of January, 1939, Jolkipli had incurred an outstanding obligation of ₱620.82 in favor of the plaintiff, and as of the filing of complaint in April, 1954, the accumulated interest from January 1939 amounted to ₱948.11. The trial court

168 NEW CIVIL CODE, Article 1144.
169 G R. L-13029, June 30, 1959.
170 G R. No. L-12301, April 13, 1959.

dismissed the complaint on the ground of prescription. On appeal, plaintiff contended that the trial court erred in declaring that the moratorium period to be deducted from the term of extinctive prescription extended only from March 10, 1945 (as declared by Pres. Osmeña's Executive Order) to July 26, 1948 when the Moratorium Law[171] was enacted. *Held*: Since the obligation in question was contracted before December 31, 1941, the moratorium order applicable was Executive Order No. 32.[172] Regardless of whether or not the local court was open during the occupation, the period for the enforcement of appellant's cause of action stopped running on that date. If the defendant was not a war sufferer, the suspension ran only from March 10, 1945 to July 26, 1948, when Republic Act No. 342 went into effect. But if the defendant was a war sufferer, and had filed a war damage claim, then the period of suspension extended from March 10, 1945 until May 18, 1953, when the decision in the *Rutter* case,[173]holding unconstitutional the further operation of Republic Act No. 342, became operative. Thus, if defendant was a war damage claimant, appellant's action was initiated only 7 years, 1 month and 10 days after the cause of action accrued, well before the expiration of the 10 year limitation period;[174] because from the total of 15 years, 3 months and 18 days that elapsed from the accrual of the cause of action on January 1, 1939, to the filing of the complaint on April 15, 1954, we must deduct the moratorium period of 8 years, 2 months and 8 days (from March 10, 1945 to May 18, 1953).

Action upon an obligation created by law prescribes in 10 years.—

An action to recover under the Workmen's Compensation Act is based on a liability created by statute[175] and prescribes in 10 years from the time the right of action accrues as provided by Article 1144 of the New Civil Code.[176]

Action to recover for injury to the rights of plaintiff prescribes in four years.—

Article 1146 of the New Civil Code which provides that actions upon an injury to the rights of the plaintiff must be instituted within four years, was applied in the case of *Valencia v. Cebu Portland Cement Co.*[177] In this case, the Court of Industrial Relations adjudged that the plaintiff was separated from service illegally and awarded him payment for his services. The plaintiff was separated from the service on November 16, 1950. On June 22, 1956, plaintiff brought another action for damages for unjustifiable removal from service. The defendant contended that action had prescribed. *Held*: The action had prescribed, as correctly contended by the defendant. The second action was an action to recover for injury to the rights of the plaintiff. It was not an action based on a former judgment. The former judgment was for payment for services and was already satisfied. The former judgment did not include recovery for injury to the rights of the plaintiff. Hence, the action should have been brought within four years.

Prescription of action based on fraud.—

The rule in Section 43, paragraph (3) of Act 190 that an action to recover property based on fraud must be instituted within a period of four

171 Republic Act No. 342
172 Bartolome v. Ampil, G.R. No. L-8436, August 28, 1956.
173 Rutter v. Esteban, 49 O G. 1906
174 NEW CIVIL CODE, Article 1144.
175 Pan Phil. Corp. v. Commissioner, G.R No. L-9807, April, 1957.
176 Luzon Stevedoring Co., v. De Leon, G.R. No. L-9521, November 28, 1959.
177 G R. No. L-13715, December 23, 1959.

years from the discovery of fraud was applied by the Supreme Court in at least two cases decided in 1959.

In *Llancra v. Lopos*,[178] Gregorio Llanera died single and intestate on October 13, 1942, leaving an estate consisting of the proceeds of life insurance policy amounting to $5,150. A petition for the settlement of his estate was filed on September 1948. After hearing, the Court found that deceased died without parents, brothers, sisters, nephews or nieces, but left three aunts and one uncle *and* seven first degree cousins. The estate was distributed equally between the two groups, each *per stirpes*. On May 28, 1949, the Court ordered the termination of the proceedings. It developed later, however, that the deceased had a brother who died in 1955, leaving a son Eligio. And when in 1953 Eligio came to know of his uncle's death, he filed a motion in the CFI of Albay which adjudicated the estate, alleging that he was the sole heir of the deceased. He withdrew this motion later, and in 1955 he filed this action in the CFI of Laguna to recover the proceeds of insurance policy, alleging misrepresentation on the part of the other heirs. It was therefore clear that plaintiff's action was one for the recovery of property on the ground of fraud, not one for the settlement of the estate of the deceased. In holding that the action had prescribed, the trial court, opined that "Article 1100 of the New Civil Code however, provides that action for rescission on account of 'lesion' shall prescribe after four years from the date the partition was made. Considering that judicial partition of the estate of Gregorio was made in 1949, hence plaintiff's action was commenced beyond the prescriptive period provided by law." The Supreme Court, speaking through Mr. Justice Bautista Angelo, ruled that the trial court overlooked the fact that the present action was not for rescission of a contract based on lesion but an action to recover property based on fraud which under our law may be filed within a period of four years from the discovery of the fraud.[179] Since fraud was discovered only in 1953 and the action was brought in 1955, it is clear that plaintiff's action has not yet prescribed.

In *Mauricio v. Villanueva, et. al.*[180] it appeared that on January 5, 1944, while the mortgage in favor of the Iñigos was in force, Candida Agustin sold the land in question to Mauricio. The deed of sale was not registered, and the land remained in the possession of Candida Agustin, who, on June 21, 1946 sold the property to the mortgagees — the Iñigos. The deed of conveyance in favor of the Iñigos was registered on July 1, 1946, and they have been, since then, in possession of the land openly and continuously. Nine years later, or on August 13, 1955, Mauricio instituted the present action, praying that the deed of sale and the certificate of title in favor of the Iñigos be declared void on the ground that they were secured fraudulently and in bad faith. The trial court sustained the defense of prescription. *Held*: The action had already prescribed, for the reason that plaintiff sought relief on the ground of fraud, which may be applied for within four years from the discovery of the fraud.[181] The discovery of fraud took place on July 1, 1946, so that plaintiff's cause of action prescribed on July 1, 1950. Plaintiff's allegation that he had no knowledge of the fraud until 1952 was untenable for

178 G.R. No. L-12588, August 25, 1959.
179 Act No. 190, Section 43, paragraph (3).
180 G.R. No. L-11072, September 24, 1959.
181 Act 190, Section 43, paragraph (3).

the evidence showed that he was informed of the sale in favor of the Iñigos in 1946. Besides, the registration of the deed of sale in favor of the Iñigos in 1946 was a notice to the whole world, including plaintiff herein.

Likewise, in the case of *Martir v. Trinidad, et. al.*[182] the Supreme Court, speaking through Mr. Justice Labrador, said: "The cause of action arose in 1940, when the supposed deed of conditional sale was supposedly secured through fraud and deceit by the defendants... The cause of action arose from that date, as there is no allegation that fraud was discovered later. The cause of action accrued not in favor of the minors herein, but in favor of their father who was the person against whom fraud was committed. Their father died in 1943, and upon his death the four year period of filing the action on the ground of fraud had not yet expired. But the disability of the plaintiffs can not be tacked to the disability caused by their father's death, because tacking of disabilities is not allowed."[183] Upon their father's death, the heirs had the right to continue the action, which has already started to accrue, for the remaining period, which is only one year. Instead of filing the action within that remaining period of time, the heirs brought the same only after 13 years from the time the right to bring it had expired. Hence, the action had prescribed.

OBLIGATIONS

Contract of lease which fixes date of performance without reference to any other event is not conditional.—

In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the event which constitutes the condition.[184] In the case of *Sto. Domingo v Chua Man,*[185] the plaintiff leased two parcels of land to defendant to enable the latter to construct thereon a building to be used as a cabaret. The contract was to take effect on January 1, 1953. Upon being sued for rentals and taxes, the defendant lessee denied liability on the ground that the proposed operaton of the cabaret did not materalize. The Court found, however, that the parties never intended this event to be treated as a condition as shown by the fact that they had expressly provided a fixed date for the commencement of the lease.

Non-fulfillment of the condition.—

The case of *Dagdag v. Flores*[186] involved a compromise agreement wherein Formoso and Sambrano transferred to the Quirits all their rights and interest in a certificate of public convenience. The compromise was approved by the lower court only on the condition that further approval of the Public Service Commission be secured. Inasmuch as the latter condition was not fulfilled, the compromise was declared ineffectual.

Slight delay in performance of reciprocal obligation does not justify rescission if time is not of essence.—

Under Art. 1191 of the New Civil Code, "the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply

182 G.R No. L-12057, May 20, 1959.
183 Cf. WOOD ON LIMITATIONS, (3rd Ed.) 554,. 557; Messenger v. Foster, 101, N.. Supp. 387.
184 Art. 1881, NEW CIVIL CODE.
185 G.R. No. L-9998, February 28, 1959.
186 G R. No. L-111554, May 27, 1959.

with what is incumbent upon him." It should be noted that this power is not absolute as the very same article authorizes the courts to fix a period if there be just cause.[187]

Thus, in the case of *Biando v. Embestro*,[188] the Court refused to decree rescission predicated merely on slight delay in performance. It appeared that the lower court ordered the defendant to execute to plaintiff a deed of reconveyance of land and the plaintiff to pay the price therefor, as soon as the decision becomes final. Plaintiffs were able to deposit the full amount only 21 days after the judgment became final, whereupon the defendant refused to comply with his undertaking. Such delay, the Court said, did not vitiate the reciprocal obligation since time was not essential.

Only such breaches as are substantial give rise to rescission.—

The general rule is that rescission will not be permitted for a slight or casual breach of a contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties in making the agreement.[189] This rule was reiterated in the case of *Villanueva v. Yulo*[190]. The respondent Yulo sold to petitioner Villanueva her rights over a parcel of land for a certain sum of money, with the oral agreement that the petitioner would pay ₱8,000 in addition to the main consideration. This amount was to be paid to the Japanese as bribe money so that they would not confiscate the building situated on the land. The Supreme Court declared that failure to pay the additional amount did not entitle the respondent to rescind. The payment of the main consideration was sufficient to effect a transfer of ownership over the land.

Art. 1196 applies only if the parties have fixed a period.—

Art. 1196 of the New Civil Code provides that "whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or the other." This rule, as pointed out by the Supreme Court in the case of *Orit v. Balrodgan Co., Ltd.*,[191] applies only where the parties to the contract have fixed a period themselves. In this case, the parties mutually agreed to submit to the court a fixed date when the defendant should pay his obligations to the plaintiff, such submission to be made not later than November 6, 1596; and that upon their failure to submit on said date, the court shall have full power to fix a reasonable time when the defendant should pay. Pursuant to this, the court fixed the time for payment within 30 days from notice of the decision. On appeal, the defendant, citing Art. 1196, alleged that the period redounded to the benefit of the creditor only and prayed for at least one year within which to pay. It was held that Art. 1196 cannot be applied to the case at bar where the parties have entered into a compromise agreement ending a controversy and authorizing the court to fix a reasonable period within which defendant should pay.

187 Kapisanan Banahaw v. Dejarme, 55 Phil. 338; Ocejo, Perez & Co. v. International Banking Corp. 37 Phil. 631.
188 G.R. No. L-11919, July 27, 1959.
189 Song Fo & Co. v. Hawaiian-Philipppines Co., 47 Phil. 821
190 G.R. No. L-12985, December 29, 1959.
191 G.R. No. L-12277, December 29, 1959.

Obligation without period.—

Art. 1197, New Civil Code: "If the obligation does not fix a period, but from its nature and circumstances it can be inferred that a period was intended, the courts may fix the duration thereof."

This rule was first applied in the case of *Eleizegui v. Manila Lawn Tennis Club*[192] and was reiterated in the recent case of *Hahn v. Lazatin*.[193] It appears in this case that the defendant spouses were indebted to the National Life Insurance Co., such indebtedness being secured by a first mortgage on their properties. Upon Hahn's offer to pay the indebtedness, the defendants obligated themselves to execute a mortgage on the properties "as soon as Hahn shall have paid in full." It was contended that the plaintiff's obligation to pay was demandable at once and failure to comply therewith constituted a breach of the reciprocal obligation. *Held*: This is obviously a case where the parties intended to, but did not fix a period for performance. If defendants felt that there was undue delay, they should have requested the court to fix a period.

Penalty may be reduced when unconscionable; penalty substitutes interest only in absence of contrary stipulation.—

In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.[194] Where the penalty is iniquitous or unconscionable, it may be reduced by the courts.[195] These provisions were applied by the Court in the case of *Umali v. Miclat*.[196] The contract in question provides that if Umali should fail to pay the balance of ₱675 after the lapse of 30 days from the date of the exhibition of the film for which the posters and advertisements were made, he shall pay a surcharge of 10% every 30 days thereafter until the amount is fully paid. This practically amounted to 120% a year and there can be no doubt that it was unconscionable. The Court reduced it to 20% per annum.

Appellant also disputed the portion of the decision which ordered the payment of 6% interest per annum from the date of the filing of the complaint until full payment of the obligation due. This is in fact supported by the provisions aforecited to the effect that the penalty takes the place of interest only if there is no stipulation to the contrary. In this case, there is express stipulation to pay the interest in addition to the penalty. Besides, the appellant has refused to pay the penalty.

In the case of *Sto. Domingo v. Chua Man*,[197] a clause in the lease contract provided that upon its termination, by expiration or for any other lawful causes, the lessor shall retain the building constructed by the lessee together with all other improvements, without indemnifying the latter. At the time of the termination of the lease due to breach, the improvements were worth

192 2 Phil. 309 (1903).
193 G.R. No. L-11549, June 30, 1959.
194 Art. 1226, NEW CIVIL CODE.
195 Art. 1229, NEW CIVIL CODE.
196 G.R. No. L-9262, July 10, 1959.
197 G.R. No. L-4998, February 28, 1959.

₱80,000 and the plan to use these for a cabaret had not materialized because of error attributable to both parties. This was declared to be iniquitous and the Court ordered the lessor to pay the lessee one-half of the value of the improvements or to allow the lessee to remove them, under Art. 1658 on lease.

Obligations payable during Japanese occupation should be revalued according to Ballantyne scale—

Where a debt could be paid at any time during the Japanese occupation, the Ballantyne scale should be applied if actual payment is made after liberation.[198] This rule was reiterated in the recent case of *Fernandez v. National Insurance Co. of the Philippines.*[199] This case involves an insurance policy that matured during the Japanese occupation when the insurance company was still open for business.

This rule is also applied to *pacto de retro* sales when the period of redemption falls within the Japanese occupation, as was held in the case of *Medel v. Eliazo.*[200]

Obligations maturing after the war should be paid in the currency prevailing—

Where the parties have agreed that the payment of the obligation shall be made in the currency that would prevail by the end of the stipulated period, and this takes place after the liberation, the obligation shall be paid in accordance with the currency then prevailing, or the Philippine currency.[201] This rule was reiterated in the case of *De Villa v. Fabricante*[202] wherein the loan made to defendant was payable only after the liberation.

The same rule is applied to *pacto de retro* sales where repurchase could be exercised only after the liberation.[203] Thus, in the case of *Ceynas v. Ulanday,*[204] where the vendors were allowed to exercise their right to repurchase within the period of 10 years from the date of execution (February 22, 1944) on condition that they may exercise their right only after the expiration of the first five years, they could redeem only in present currency since their right to repurchase vested only after the liberation.

In this connection, it would do well to note that even when the parties do not stipulate that payment should be made in any specified currency, genuine or otherwise, it is always understood that an obligation should be paid in legal tender.[205]

Requisites of consignation—

Subject to the exceptions mentioned in Art. 1256 of the New Civil Code, a consignation, to be valid, must be preceded by a refusal without just

198 Hilado v. de la Costa, 46 O G. 4572; Soriano v. Abalos, 47 O G. 168; De Asis v. Agdamag, G R No. L-3709, October 25, 1951; Ang Lam v. Peregrina, G.R. No. L-4871, January 26, 1953; Wilson v. Berkentotter, G R No. L-4476, April 20, 1953; Samson v. Andal de Aguila, G R. No. L-5932, February 25, 1954; Valero v. Sycip, G R No. L-11119, May 23, 1958.

199 G.R. No. L-9146, January 27, 1959.

200 G.R. No. 12617, August 27, 1959.

201 Roño v. Gomez, 46 O.G., Supp. 11, 339;Gomez v. Tabia 47 O G. 641; Londres v. National Life Insurance Co., G R. No. L-5921, March 29, 1954;

202 G R No. L-13463, April 30, 1959.

203 Gutierrez v. Zarate, G R. No. L-9631, December 18, 1956; Ponce de Leon v. Sy Juco, G R. No. L-3316, October 31, 1959; San Pedro v. Ortiz., G.R. No. L-9698, November 28, 1956; Gustilo v. Jagunap, G R No. L-4249, November 20, 1951; De Asis v. Agdamag, G R. No. L-3709, July 31, 1956.

204 G R No. L-12700, June 29, 1959.

205 Gutierrez v. Zarate, note 203. Under Republic Act No. 529, payments of all monetary obligations shall be made in currency which is the legal tender in the Philippines and any stipulation to the contrary shall be null and void.

cause to accept a debtor's tender of payment. In the case of *Hahn v. Lazatin*[206] such condition was absent. In fact, the express terms of the contract that payment shall not be made within one year from the execution of the mortgage denies the right of debtor to tender payment at an earlier date.

CONTRACTS

Contract to follow up application for license with Import Control office or Central Bank declared void as against public policy—

The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order or public policy.[207] Any contravention of this provision renders the contract void or inexistent.[208]

These fundamental principles found application in the case of *Tee v. Tacloban Electric Ice Plant*.[209] The plaintiff sought to collect from defendant an amount representing 10% of a $243,500 allocation for services in filing of application, following them up in different government offices and securing their approval. The Court declared the contract between the plantiff and defendant to be void *ab initio*. Sec 3 of Art. IV of the Central Bank Circular No. 44 explicitly provides that all applications for foreign exchange shall be made through authorized agent banks, which are the only parties authorized to deal with the Central Bank. It further declares that "under no circumstances should any applicant, his agent and representative follow up an application with the Central Bank."

Barely four months after, the Supreme Court was faced with an almost identical problem in the case of *Sy Suan and Price, Inc. v. Regala*.[210] Here, Sy Suan authorized Regala to follow up his application for import license with the Import Control office. They agreed verbally that the remuneration would be 10% of the total value of the amounts approved. Again, there was no hesitation in condemning the contract void as against law and public policy. Sec. 18 of Rep. Act 650 reveals the policy that applications should be considered and acted upon strictly on the basis of merit and not on corrupt influence. "The question whether a contract is against public policy depends upon its purpose and tendency and not upon the fact that no harm results from it. In other words, all agreements the purpose of which is to create a situation which tends to operate to the detriment of the public interest are against public policy, whether in the particular case the purpose of the agreement is or is not effectuated."

Minority is a personal defense; liability by estoppel—

In the case of *Braganza v. Villa Abrille*,[211] Rosario de Braganza and her minor sons Rodolfo and Guillermo borrowed money from defendant. On due date, she refused to pay on the ground that her co-signers were then minors. *Held*: Minority is merely a personal defense and may be invoke only by those who are so incapacitated. However, such defense will benefit her to the extent of the shares for which the minors may be responsible.

206 supra
207 Art. 1306, NEW CIVIL CODE.
208 Art. 1409, NEW CIVIL CODE.
209 G.R. No. L-11980, February 14, 1959.
210 G.R. No. L-9506, June 30, 1959.
211 G.R. No. L-12471, April 13, 1959.

The other issue was whether the minors were liable by estoppel. The Court of Appeals cited the case of *Mercado v. Espiritu*[212] to the effect that "when minors pretend to be of legal age when in fact they are not, they will not later on be permitted to excuse themselves from the fulfillment of the obligation contracted by them or to have it annulled." The Supreme Court held the application of this principle in the present case to be in error and attempted to draw a line of distinction. In the *Mercado* case, the minor was guilty of active misrepresentation when he specifically stated that he was of age; in the case at bar, the misrepresentation was merely passive since the promissory note which they signed contained no statement about their age. There was no juridical duty to disclose their inability. "Mere silence as to age does not constitute a fraud which can be made the basis of an action for deceit."

However, the minors are bound to make restitution under Art. 1399, New Civil Code, which provides that "when the defect of the contract consists in the incapacity of one of the parties, the incapitated person is not obliged to make a restitution except insofar as he has been benefited by the thing or the price received by him."

Ambiguity cannot favor one who has caused it—

The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.[213] This rule of construction was applied in the case of *Ildefonso v. Sibal*.[214] In a compromise agreement, Sibal promised that within two years from the date of execution thereof, he shall "course" through the plaintiff as realtor all his real estate transactions and should he fail to do so, he shall be liable for damages in the sum of ₱2,000. Pursuant to this, the defendant authorized the plaintiff to sell some of his real properties. Plaintiff never made a sale during the two-year period and it was the defendant himself who sold his own lands after the expiration thereof. On the other hand, plaintiff, on the expressed wishes of the defendant, offered to sell to the latter some properties. Defendant found the terms to be beyond his means. Hence, this action for damages.

Held: As indicated by the word "course", Sibal merely constituted Ildefonso his exclusive agent in the purchase or sale of real estate during the two-year period. There is no undertaking to purchase under any terms whatsoever. The contract was prepared by the plaintiff and it creates obligations in his favor. Whatever ambiguities exist in the wordings of the contract cannot redound to his benefit.

Collective duress not a ground for annulment; acceptance of benefits amounts to ratification—

The Supreme Court, in a long line of cases, has consistently rejected the theory of "collective" or "general" duress allegedly exercised by the Japanese military occupant over the inhabitants of this country as ground to invalidate acts that would otherwise be valid and voluntary if done in

212 37 Phil. 215 (1917).
213 Art. 1377; H E. Heacock Co. v. Macondray & Co., 42 Phil. 205; Asturias Sugar Central v. v. Pure Cane Molasses Co., Co., 57 Phil. 519; Halili v. Lloret, 50 O.G. 2493.
214 G R. No. L-12181, September 30, 1959.

times of peace.[215] In the case of *Liboro v. Rogers*,[216] the plaintiff, in 1942 sold six parcels of land to a corporation organized under the laws of Japan for ₱112,000. He received in cash only ₱12,000 and the vendee undertook to pay some outstanding obligations of the vendor. Liboro alleges that the contract is voidable for having been executed under duress.

Held: Assuming that the plaintiff was compelled to execute the disputed deed of sale, the duress invoked was no more than the general feeling of fear on the part of the Filipinos brought about by the excessive show of might by the military occupants. Furthermore, Liboro may be said to have tacitly ratified the contract by accepting benefits therefrom. It is a settled rule that where "a party is able to carry out an act redounding to his exclusive benefit simultaneously with the asasiled contract, he cannot successfully claim in the latter case to have acted mechanically under the influence of violence or intimidation.[217]

Sale in fraud of creditor—

Alienation by onerous title is presumed by law to be fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued.[218] In addition to this, the Supreme Court has considered certain factual situations, such as the following, as badges of fraud: 1) the fact that the consideration of the conveyance is fictitious or inadequate; 2) a transfer made by the debtor after suit has been begun and while it is pending against him; 3) a sale upon credit by an insolvent debtor; 4) evidence of large indebtedness or complete insolvency; 5) transfer of all or nearly all of his property by the debtor, especially when he is insolvent or greatly embarassed financially; 6) the fact that the transfer is made between father and son when there are present others of the above circumstances; and 7) the failure of the vendee to take exclusive possession of all the property.[219]

Some of the above-mentioned facts appear in the case of *Orsal v. Alisbo*.[220] Mogat, the driver of Alisbo was convicted of homicide through reckless imprudence and sentenced to pay the parents of the victim an indemnity of ₱6,000. The defendant, upon learning of the judgement sold all of his properties to one Medel. The plaintiffs brought an action to enforce the subsidiary liability of defendant and to have the sale rescinded.

Held: A sale made by persons against whom judgement has been rendered is presumed fraudulent by Art. 1387 of the Civil Code. The sale in question is also fraudulent in fact as indicated by the following circumstances: 1) the transfer was made after the judgment against Mogat, knowing that Mogat was insolvent and that as employer, the vendor would be subsidiarily iable; 2) defendant spouses transferred all their property without leaving anything which may be levied upon to satisfy the judgment; and 3) the defendant continued to be the manager of the business after the sale and there is no evidence that a purchase price has ever been paid.

215 Phil. Trust Co. v. Araneta, 46 O.G. 4254; People v. Pagalewis, 44 O.G. 2655; People v. Quilloy, G.R. No. L-2313, January 10, 1951; Fernandez v. Brownell, G.R. No. L-4436, January 28, 1955.

216 G.R. No. L-11046, October 30, 1959.

217 Reyes v. Zaballero, G.R. No. L-3561, May 23, 1951; Martines v. Hongkong-Shanghai Bank, 15 Phil., 252; Vales v. Villa, 35 Phil. 769; Tacalinar v. Corro, 34, Phil. 898.

218 Art. 1387, NEW CIVIL CODE.

219 Oria v. McMicking, 21 Phil. 243.

220 G.R. No. L-13310, November 28, 1959.

Sale of homestead before expiration of 5-year period: pari delicto *rule not applicable*—

The rule of *pari delicto* to the effect that "a party to an illegal contract cannot come into a court of law and ask to have his illegal object carried out" is subject to one important limitation: "whenever public policy is considered advanced by allowing either party to sue for relief against the transaction."[221] The philosophy and the policy underlying the Public Land Act comes squarely under this.[222] These principles were reiterated in the case of *Medel v. Eliazo*[223] It appeared that Medel, predecessor in interest of the plaintiff was granted a homestead patent in Aug. 1940. In 1944 and before the expiration of the five-year period provided by law, he sold the homestead to the defendant with a right to repurchase within a period of four years. This right had not since then been exercised. In 1955, plaintiff brought the present action to annul the sale. *Held*: The sale of the homestead in question is void. But it does not mean that since plaintiffs continue to be owners of the land, they should not return the sums received by them as the sale price. It is a case of mutual restitution incident to the nullity *ab initio* of the contract.[224]

NATURAL OBLIGATIONS

Payment made by virtue of writ of execution is not voluntary as to constitute natural obligation.—

Art. 1423, New Civil Code, provides that "natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof." It is the element of voluntariness that distinguishes a natural obligation from *solutio indebiti* where payment is made when not due and under mistake. In the case of *Manila Surety and Fidelity Co., Inc. v. Lim*,[225] the plaintiff, a licensed surety, made payment under a writ of execution which was subsequently declared void. The defendant refused to return the amount on the ground that he was authorized to retain it under Art. 1423. It was held that no natural obligation resulted because payment was made under a coercive process. Neither could there be *solutio indebiti*. Plaintiff is entitled to reimbursement only because the writ was void and payment under it was also void.

SALES

Contract of sale converted to lease.—

In the case of *Bacani v. Macadaeg*,[226] the petitioner was the owner of a mortgaged parcel of land and a house erected thereon which was sold at public auction where the respondent corporation was the highest bidder. After the expiration of the period of redemption and when the ownership was consolidated in respondent, petitioner offered to repurchase the property for ₱10,569.23 with

221 Rellosa v. Gaw Chee Hun, 49 O G. 4345.
222 De los Santos v. Roman Catholic Church of Misayap, 50 O.G. 1588; Pascual v. Talens, 45 O.G. 413.
223 G.R. No. L-12617, August 27, 1959.
224 Santander, et, al. v. Villanueva, et al., G R. No. L-6184, February 28, 1958; Felices v. Iriola, G.R. Noo. L-11269, February 28, 1958.
225 G.R. No. L-9343, December 29, 1959.
226 G R. No. L-11716, April 30, 1959.

an initial downpayment of 20% payable in two years and the balance in ten years. The petitioner failed to complete the payment of the first installment whereupon the contract of sale was cancelled and the partial payment of ₱700 was considered as rentals. *Held*: It is clear that the ownership of the property in question was never transferred to the petitioner. By continuing to stay in the premises after it was sold to and absolute ownership was vested in respondent corporation, the petitioner merely acquired the status of lessee. In her offer to repurchase, it was expressly stated that upon failure to complete the down payment, the deposit of ₱700 may be forfeited and applied to rentals.

Nemo dat quod non habet.—

The fundamental rule in sales that no man can transfer to another a better title than he has himself is expressed in Art. 1505 of the New Civil Code: "Subject to the provisions of this title where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title than the seller had, unless the owner of the goods is by his conduct precluded from denying the sellers authority to sell." This rule was applied in the case of *Dagdag v. Flores*[227] where Formoso and Sambrano transferred all their rights over a certificate of public convenience to the Quirits subject to the approval of the Public Service Commission. The Quirits in turn sold their rights to the petitioner. It was held that the latter acquired no title inasmuch as the approval of the Public Service Commission was not secured and consequently, the sale to the Quirits was not valid.

Double sale where subsequent vendee assumes the obligations of the vendor to the prior vendee.—

In the case of *Evangelista v. Deudor*,[228] the plaintiff and defendant entered into an agreement to sell a lot which formed a larger parcel of land that defendant possessed and over which he claimed ownership and possessory rights. In this claim, he was disputed by Tuason & Co. a compromise agreement was drawn up between Deudor and his other vendees on the one hand, and Tuason & Co. and Gregorio Araneta & Co. on the other, whereby Deudor renounced his claim in consideration of ₱1,201,063. The agreement contained a list of persons to whom Deudor had sold or agreed to sell lots within said parcel and who had already made payments, including Evangelista. However, Tuason & Co. contemplated a different sales arrangement. Plaintiff filed this action to compel Tuason & Co. to abide by the terms of the original contract to sell.

Held: When Deudor agreed to sell the lot to Evangelista, it cannot be denied that he had some rights over it as shown by the fact the consideration he received in virtue of a compromise agreement amounted to over a million pesos. In accepting the quit-claim of the plaintiff, Tuason & Co. knew of the obligation of Deudor to the plaintiff. There now exists a sort of contractual relation between plaintiff and Tuason & Co. The case was remanded to the lower court to determine the respective rights of the parties.

Double sale: filing of adverse claim is sufficient recording under Art. 1544.—

In the case of *Jovellanos v. Dimalanta*,[229] the land in question was sold by Rosario Dimalanta to Maria Dimalanta and two years later to Jovellanos.

227 G R No. L-111554, May 27, 1959.
228 G R. No. L-12826, September 10, 1959.
229 G.R. No. L-11736-11737, January 30, 1959.

Neither sale was registered under Act. 496. But in 1943, Jovellanos filed with the Register of Deeds an adverse claim. Pending resolution of this claim, the first vendee, Dimalanta, brought an action praying that she be declared the lawful owner. *Held*: The second paragraph of Art. 1544 confers priority to the purchaser who first records the sale. Under Sec. 110 of the Land Registration Act, the recording of an adverse claim is valid and effective to bind unregistered land until the claim is declared invalid by a competent court. Jovellanos has a better right, pending determination in the cadastral case.

Double sale: registration prevails over possession.—

In the case of *Buasan v. Panuyas*,[230] the spouses Dayao and Vega executed a power of attorney in favor of Bayugan authorizing him to sell their land. After the death of Dayao, his surviving spouse and four children executed a deed of sale conveying the piece of land to the plaintiff, who immediately took possession thru his tenants. Bayugan, without knowing of the sale, also transferred the land to defendant. It appeared that the power of attorney was annotated at the back of the original certificate of title and the sale executed by Bayugan was also annotated thereat. *Held*: The defendant had the transfer of the land to him recorded in good faith and without knowledge of the previous sale. He is therefore entitled to ownership in accordance with Art. 1544.

Art. 1602 creates new rule of law and cannot retroact to the prejudice of vested rights.—

In the case of *Siopongco v. Castro*,[231] the plaintiff sold to defendant a parcel of land with a right to repurchase within 8 years. eH retained possession of the property but after having failed to pay rentals for 7 years, he renounced his right to repurchase but on the same day he was granted the same right, to be exercised within 18 months. Shortly thereafter, he executed another document declaring that he had absolutely sold the land to Castro. He brought an action to have the sale declared an equitable mortgage under Art. 1602, New Civil Code.

The Court refused to apply Art. 1602 because it establishes a new rule of law and under Art. 2253 on transitional provisions, it cannot prejudice or impair any vested or acquired right. Before its enactment, several circumstances mentioned therein were required to concur in order to prove that a sale was actually an equitable mortgage.

Inadequacy of price does not conclusively create a presumption of equitable mortgage.—

In practically all of the so-called contracts of sale with a right of repurchase, the real intention of the parties is that the pretended purchase price is money loaned and a *pacto de retro* sale is drawn up to secure its payment. A supplemental contract of lease accompanies the sale and the rentals paid represent in fact the interest on the money loaned. This practice is employed to circumvent the Usury Law. It was to put an end to this repeated violations that Art. 1602 was included in the Code. This provision does not however preclude the parties from showing good faith and lack of intent to perpetrate usury in agreeing upon a *pacto de retro*.

230 G R. No. L-11815, May 25, 1959.
231 G R No. L-12167, April 29, 1959.

In the case of *Claridad v. Novella*,[232] the spouses Claridad and Tagle sold *a retro* a piece of land to Aposagos. It was agreed that during the period of repurchase, the vendee shall enjoy the land as usufructuary. After the expiration of the period, ownership was consolidated in the vendee. It was contended that the transaction was in reality an equitable mortgage due to the presence of two factors: 1) the inadequacy of the price and 2) the grant of the right of usufruct to the vendee. *Held*: It is an unusual inadequacy of the price that the law contemplates. Mere inadequacy may even be considered as a characteristic of sales *a retro*, it being stipulated in order to give the vendor every facility to redeem the land, unlike in cases of absolute sales where the actual market value is considered. Enjoyment of the usufruct does not negate but even indicates ownership over the land, it being a right normally co-existent with dominion.

Pacto de retro sale takes precedence over chattel mortgage of later date.—

"A sale of personal property under an agreement providing that the seller may repurchase the property within a stated period, and that meanwhile he shall remain in possession of the property as renter and pay a stipulated sum for the use thereof, takes precedence over a chattel mortgage of a later date, executed by the original owner, to secure a loan of money advanced by a person ignorant of the prior sale."[233] This rule was reiterated in the case of *De los Santos v. Gorospe*,[234] where the spouses Era and Ventura sold their house to plaintiff with a right of repurchase. They remained in possession as lessee and upon failure to redeem, the ownership was consolidated in plaintiff. In an action for ejectment, Gorospe intervened, claiming that the same house was mortgaged to him without knowing that it had been previously sold. *Held*: The vendee *a retro* has a better right to the property.

Redemption within 30 days from final judgment.—

In the case of *Ceynas v. Ulanday*,[235] Ceynas, his brothers and sisters executed a deed of sale with right to repurchase of their shares and participation in six parcels of land in favor of Ulanday and his wife. Ceynas filed an action within the 10-year redemption period to have the sale declared a simple mortgage. This was dismissed without prejudice. After the expiration of the period, he amended the complaint to include his brothers and sisters. The lower court declared that only Ceynas could exercise the right of redemption while the others had lost their rights because the action initially brought by Ceynas did not have the effect of tolling the period of redemption as to them. (Art. 1612, New Civil Code). On appeal, the Supreme Court invoked the provisions of Art. 1606 which gives to the vendor the right to repurchase within 30 days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with a right to repurchase. Apparently, the case at bar squarely falls under this, what with the finding of the lower court that the disputed contract was really what it purported to be—*a pacto de retro*.

"Final judgment" in Art. 1606 defined.—

In the case of *Perez, et. al. v. Zulueta*,[236] the plaintiffs brought an action before the CFI of Quezon City to have a *pacto de retro* declared an equitable

232 G.R No. L-12666, May 22, 1959.
233 Lanuza v. Wolfson, 39 Phil. 205 (1918).
234 G.R. No. L-12023, April 29, 1959.
235 G.R. L-12700, June 29, 1959.
236 G.R. No. L-10374, September 30, 1959.

mortgage. The CFI found for the plaintiffs but Court of Appeals, in a decision of May 13, 1955 declared it to be a true pacto de retro. Plaintiffs appealed to the Supreme Court which denied the petition in a resolution of June 24, 1955. Notice of denial was received by plaintiffs on June 29. On August 10 they demanded by letter reconveyance of the property and offered to pay the repurchase price. Defendant alleged that the 30-day period had expired.

Held: The 30-day period is to be counted from the time that the courts have decided by final or executory judgment that the contract was *pacto de retro* and not a mortgage. The judgment in this case became final only on July 14 because up to that time a motion to reconsider could be entertained. The letter of August 10 effected a valid exercise of the right to repurchase and no deposit of money was necessary in view of the persistent declarations by the defendant that the period had already expired, thereby impliedly declining to receive any tender of payment.

Failure to redeem is not a violation of the conditions of sale.—

There is a distinction between an obligation assumed as a result of a contract and the right to redeem under a *pacto de retro sale*. In the latter case, the vendee cannot compel the vendor to redeem the property sold.[237] In the case of *Bunayog v. Chiong*,[238] the defendant sold a piece of land with a right to repurchase to plaintiff on the condition that the defendant would pay damages if he violated any of the conditions of the contract. Defendant failed to redeem the land and plaintiff brought an action to recover damages. *Held*: Redemption is a right of the vendor which he may freely waive without violating the terms of the contract.

LEASE

A case of sublease, not partnership.—

One of the most important issues raised in the case of *Yulo v. Yang*[239] was whether the written contracts executed between plaintiff and defendant are one of lease and not of partnership. It appeared that in 1945, Yang proposed the formation of a partnership between plaintiff and himself to operate a theatre on the premises leased by plaintiff from Santa Marina. The principal conditions are that Yang would guarantee Yulo a monthly participation of ₱3,000. and that the partnership shall be for a period of two and one-half years with the condition that if Yulo's right of lease is terminated by the owner, then the partnership shall be terminated. The "Yang & Co., Limited" was established. The capital was fixed at ₱100,000., ₱80,000. of which was to be furnished by Yang and ₱20,000. by Yulo. All gains and profits were to be distributed among the partners in the same proportion as their capital contribution and the liability of Yulo, in case of loss, shall be limited to her capital contribution. Meanwhile, despite Yulo's objection, the owner of the land terminated the lease. The court ruled in favor of the owner and an ejectment suit was filed against Yulo. During the pendency of the suit, Yulo demanded from Yang her share in the profits of the business. Yang suspended payment of the rentals, alleging that inasmuch as he was a

237 Cordero v. Siasoco, (C.A.) 43 O G. 463
238 G R No. L-13230, November 23, 1959
239 G.R. No. L-12541, August 28, 1959.

subleasee and inasmuch as Yulo had not paid to the lessor the rentals, he was retaining the rentals to make good to the landowner the rentals due from Yulo. Yulo instituted this action, alleging the existence of the partnership. The defendant alleged that it was in reality one of lease and not a partnership; that the partnership was adopted as a subterfuge to get around the prohibition contained in the contract of lease between the owners and the plaintiff against the sublease of the said property. It was shown in evidence that the plaintiff did not furnish the supposed ₱20,000. capital. She did not furnish any help or intervention in the management of the theatre. It did not appear that she had ever demanded from the defendant any accounting of the expenses and earnings of the business. *Held*: The agreement was a sublease, not a partnership. The following are the requisites of partnership: (1) two or more persons who bind themselves to contribute money, property, or industry to a common fund; (2) intention on the part of the partners to divide the profits among themselves.[240] In the first place, plaintiff did not furnish the supposed capital. In the second place, she did not furnish any help or intervention in the management of the theatre. In the third place, it did not appear that she has ever demanded from defendant any accounting of the expenses and earnings of the business. Were she really a partner, her first concern should have been to find out how the business was progressing, whether the expenses were legitimate, whether the earnings were correct. All that she did was to receive her share of ₱3,000. a month, which can not be interpreted in any manner than a payment for the use of the premises which she had leased from the owners.

Rental fixed at 12% of assessed value not excessive.—

The case of *Archbishop of Manila v. Ver*[241] is authority for the rule that a lessor has no absolute right to increase the rental. Any increase that he may effectuate must be commensurate with the increase of the assessment.

In the case of *Teresa Realty, Inc. v. State Construction & Supply Co.*[242] the defendants occupied the property under lease for 30 years or more until 1953 when the plaintiff, upon the expiration of the contract of lease, made a re-appraisal of the rental and fixed a new rate on the basis of 12% of the current assessed value of the property. The Supreme Court held that this can hardly be considered excessive considering that Section 3 of Republic Act 1162 expressly provides that "in the event of lease, the rentals that may be charged by the Government shall not exceed 12% *per annum* of the assessed valuation of the property leased." This is an express recognition that a rental not exceeding 12% *per annum* of the assessed value of the property is not excessive. Indeed, the defendants can not pretend to pay the same or similar rentals to what they had paid during the 30-year period covered by their contract of lease. It is a matter of general knowledge that the values of real estate have steadily gone up with the passing of the years and it is but fair that their productivity be accordingly increased.

240 Article 1767, NEW CIVIL CODE.
241 73 Phil. 363 (1941).
242 G.R. No. L-10883, March 25, 1959.

Lessor not liable for "perturbacion de mero hecho" caused by intruder. (Art. 1664).—

It is settled in this jurisdiction that the disturbance in the possession of the lessee caused by an "act of mere trespass" or "*perturbacion de mero hecho*" does not make the lessor answerable therefor. The lessee has the right to sue the intruders who had disturbed his possession.[243]

The above rule was reiterated in *Madamba v. Araneta.*[244] Since 1935, Madamba was the lessee of an agricultural public land in Isabela. However, owing to delinquency in the payment of stipulated rentals from 1945, said contract was cancelled in 1953 by Agriculture Secretary Araneta. Madamba filed a petition against Araneta and others who allegedly took possession of the above property through force and intimidation. Although admitting non-payment of the stipulated rentals, petitioner maintained that the same did not justify the cancellation of the contract because his omission to pay was due to the usurpation above mentioned. He alleged that the goverment had failed to remove the disturbance in his possession and was therefore guilty of breach of its obligation as a lessor, to keep him, as lessee, in peaceful possession of said property. He predicated his contention upon Article 1658 of the New Civil Code.[245] With Article 1164 of the New Civil Code[246] as starting point, the Supreme Court, speaking through Mr. Justice Concepcion, noted that the disturbance in plaintiff's possession, with respect to small portions of the leased property, was admittedly caused by mere intruders, who acted without any color of title or right. It was apparent that the disturbance in the possession of the petitioner was the product of an "act of mere trespass", "*perturbacion de mero hecho,*" for which "the lessor shall not be liable" or "shall not be obliged to answer", in the language of the Civil Codes of Spain (Article 1560) and the Philippines (Article 1664), respectively. It may not be amiss to note that Article 1658 of the New Civil Code merely implements the obligation of the lessor under Article 1654 thereof, to make "all the necessary repairs" and "to maintain the lessee in the peaceful and adequate enjoyment of the lease," *which he had under Article* 1554 *of the Spanish Civil Code.* Hence, the "peaceful enjoyment" mentioned in Article 1658 of the New Civil Code is nothing but the one referred to in Article 1654 thereof, which, in turn, is identical to that alluded to in Article 1554 of the Civil Code of Spain, and the "act of mere trespass" — disturbing said "peaceful enjoyment" — contemplated in Article 1664 of the former, is the same "perturbacion de mero hecho" for which "the lessor shall be liable", pursuant to Article 1560 of the latter. Obviously, the plaintiff was not entitled to shift to the government, as lessor, the task of suing the intruders, which the law explicitly imposes upon him as lessee.

---

243 Mariano v. De Los Santos, G R No. L-7376, May 31, 1955; Pitargue v. Sorilla, 48 O G. 3849; Ching v. Archbishop, 81 Phil. 601, (1948), Afesa v. Ayala, G.R. No. L-2376, June 27, 1951; Roman Catholic v. Familiar, 11 Phil. 310 (1908).

244 G.R. No. L-12017, August 28, 1959.

245 Article 1658, NEW CIVIL CODE, provides: "The lessee may suspend the payment of the rent in case the lessor fails to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased."

246 Article 1664, NEW CIVIL CODE, 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."

Lessor's tolerance may legalize unlawful possession due to failure to pay rent on demand. (*Article* 1673).[247]—

Under Section 1, of Rule 72 of the Rules of Court, the lessor from whom the possession of leased property is unlawfully withheld after the termination of the right to hold it, may, at any time within 1 year after such unlawful withholding of possession, bring an action for illegal detainer in the Justice of the Peace Court. The one year period for bringing that action is counted from the time the defendant has failed to pay the rent *after demand therefor.* And even if the lessee had failed to pay the rent after a demand had been made, the lessor still had the privilege to waive his right to bring the action, or to allow the lessee to continue possession, thereby legalizing such possession.[248]

In the case of *Cruz v. Hon. Atencio*,[249] the lessor as represented by a special administratrix, appeared to have made use of the above privilege. For, despite the lessee's failure to pay the rent after the first demand, she did not choose to bring an action in Court but suffered the lessees to continue occupying the lands for nearly 2 years, that is, until February 11, 1955, when she made the demand for the payment of all rents due and for the surrender of possession "by virtue of the termination of the lease."

The administratrix having waived the right to bring an action at the time lessee refused her first demand for payment, and allowed the lessee to contnue occupying the lands notwithstanding said refusal, must be deemed to have legalized their possession so that her cause of action for illegal detainer did not accrue until her demand for rents and surrender of possession was not complied with.

Innocent purchaser of land may terminate unrecorded lease thereon. (Article 1676). —

Article 1676 of the New Civil Code provides that "the purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may terminate the lease, save when there is a stipulation to the contrary in the contract of sale, or when the purchaser knows of the existence of the lease." This Article was previously applied in a long line of decided cases.[250]

In the case of *Dagdag v. Nepomoceno*,[251] *supra*, the sales patent issued to *J* was registered with, and title issued by the Register of Deeds. The land covered by the above patent and title was subsequently sold to different purchasers, with the corresponding certificates of title issued out in each case, until it was finally conveyed to Dagdag, whose title thereto was also registered. At

---

247 Article 1673 of the NEW CIVIL CODE, provides: "The lessor may judicially eject the lessee for any of the following causes:
"(1) When the period agreed upon or that which is fixed for the duration of leases under articles 1682 and 1687 has expired;
"(2) Lack of payment of price stipulated;
"(3) Violation of any of the conditions agreed upon in the contract;
"(4) When the lessee devotes the thing leased to any use or service not stipulated which causes the deterioration thereof; or if he does not observe the requirement in No. 2 of article 1657, as regards the use thereof. . ."

248 Zobel v. Abreu, G.R. No. L-7663, January 31, 1956, reiterating the ruling in Lucido v. Vito, 25 Phil. 414. See 4 PADILLA, CIVIL CODE 79 (1956).

249 G R. No. L-11276, February 28, 1959.

250 Vasquez v. Jocson, 62 Phil. 547 ,1935); Cruz v. Lansang, 48 O.G. 551; De Leon v. Chong 75 Phil. 462 (1945) See 4 PADILLA 84 (1956).

251 G R. No. L-12691, February 27, 1959.

the same time, the land was covered by a lease executed by the Bureau of Lands in favor of *V* who later transfered his right to Nepomoceno. Dagdag's title and those of his predecessors contained no annotation of such lease. After the lease expired, it was extended for another 25-year period. Nepomoceno refused to surrender the land to Dagdag despite the Bureau of Lands decision that the lease did not extend to that portion covered by Dagdag's title. Whose right shall prevail? *Held*: The lease not having been annotated in the certificate of title, and it not having been proved that Dagdag had knowledge of the lease in question, it cannot prejudice Dagdag who is presumed to be an innocent purchaser for value. The fact that the lease in favor of *V* had been registered cannot bind and prejudice Dagdag, because the land was a registered one and the latter need not go further than the title.

Improvements made by leesee may become lessor's by virtue of contract and the rule of accession. (Article 1678).

The general rule, as provided in Article 1678 of the New Civil Code is that the lessor is bound to pay the lessee one-half of the value of the useful improvements made by the latter upon the termination of the lease. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements even if it causes damage to the principal.[252] Such improvements, however, may become the property of the owner-lessor, not only by operation of law, as acessions of a building, but also by specific stipulation in the contract of lease between the parties.[253]

The foregoing was the rule laid down in the case of *Lao Chit v. Security Bank & Trust Co.*[254] The Consolidated Investment, Inc. leased to Dikit and Silva part of the lobby of its building. The lessee undertook to construct improvements thereon at his expense, which improvements, according to the lease contract, shall become the property of the lessor "upon the termination or rescission" of the contract. Dikit and Silva also entered into another contract with Lao Chit wherein the latter undertook to furnish the materials and work for said improvements at a total cost of ₱59,365, payable "as soon as the Bank of Manila opens for business, and is given a permit by the Central Bank." The permit was never issued and the bank did not open, and the rentals due under the contract were not paid. In an unlawful detainer case, the municipal court ordered the lessee to vacate the premises. Subsequently, Dikit relinquished his rights over the improvements introduced therein while he was in possession. However, Lao Chit filed against Dikit and Silva an action for the recovery of what was due from them by reason of the improvements. The Court rendered judgment for the plaintiff. Meanwhile, Lao Chit brought the present action against the Security Bank, to which the lessor had leased the premises in question, demanding payment of rental for the use of said fixtures and improvements. In due course, the trial court ordered the Consolidated Investments, Inc. to pay the value of the improvements, and, together with the Security Bank, to pay for the use of the permanent improvements. *Held*: The lower Court's judgment against the bank is erroneous. The bank used the premises in question, including the improvements made therein by Lao Chit, pursuant to a contract of lease entered into

252 See 4 PADILLA CIVIL CODE 90 (1956).
253 Lao Chit v. Security Bank & Trust Co. G.R. No. L-11088, April 17, 1959.
254 G.R. No. L-11028, April 17, 1959.

with the lessor. The improvements made by Lao Chit became the property of the lessor, not only because said improvements were permanent in nature and cannot be removed without impairing the building to which they are attached, but also because the contract of lease between Dikit and Silva on the one hand, and the lessor on the other hand, explicitly provided that the lessor shall own the improvements upon the expiration of the contract. Although Lao Chit was not a party to said contract, this stipulation is binding upon him, he having introduced said improvements pursuant to his contract with Dikit. In short, in so far as the construction thereof, Lao Chit was, vis-a-vis the lessor, a mere agent or representative of Dikit and, as such, was privy to the undertakings of Dikit under his contract of lease with the lessor. The improvements in question became the property of the owner of the building, not only by operation of law, as accessions to said building, but, also, by the specific stipulation in the contract of lease.

Lessee who makes improvements on leased premises is not a builder in good faith.—

The case of *Lao Chit v. Security Bank & Trust Co.*[255] reiterated the rule that a lessee who introduces improvements on the leased premises is not a 'builder in good faith" as contemplated in Article 361 of the Old Civil Code (now, Article 448 of the New Civil Code). Article 448 of the New Civil Code refers to one who builds upon a land which he believes to be *his* property.[256]

Land tenancy on shares not subject to laws on lease.—

Where the cultivation of the land by the defendant and the sharing of the products thereof with the owner of the land characterize the relationship between the defendant and the plaintiff's principal as one of landlord and tenant, and where the defendant had physical possession of the land for the purpose of cultivating it and giving the owner a share in the crop, it is evident that the relationship is one of agricultural tenancy of the kind called share tenancy. The circumstance that the defendant built a dwelling on the agricultural lot does not *ipso facto* make it residential considering that the dwelling does not occupy more than 80 square meters of the 2,000 square meters occupied by him. And as was held in *Tumbagan v. Vasquez*[257] where a farmland occupies agricultural land and erects a house thereon, the tenancy relationship continues subject to tenancy laws — not to those governing leases.[258] In this connection, it must be noted also that Article 1685 of the New Civil Code provides that "land tenancy on shares shall be governed by special laws, the stipulations of the parties, the provisions on partnership, and by the customs of the place."

CONTRACT OF LABOR

Protection to labor does not mean denial of due process to capitalist.—

Article 1702 of the New Civil Code provides that "neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public." And, "in case of doubt, all labor legislation and all

255 G.R. No. L-11028, April 17, 1959.
256 7 Phil. 277 (1907); Cortes v. Ramos, 46 Phil. 184; Rivera v. Trinidad, 48 Phil. 386; Fojas v. Velascoo, 51 Phil. 520 Montinola v. Bantug, 71 Phil. 449; Lopez v. Phil. Eastern Theatrical Co. 52 O.G. 1452.
257 G.R. No. L-8719, July 17, 1956.
258 Marcelo v. De Leon, G.R. No. L-2902, July 29, 1959.

labor contracts shall be construed in favor of the safety and decent living for the laborer."[259] In the case of *Caltex v. Phil. Labor Organization*[260] the Supreme Court, through Mr. Chief Justice Paras, said: "The protection afforded by the Constitution to labor does not mean that the capitalist should be deprived of its right to due process of law. Labor deserves our sympathy in cases where its demands are not abusive. Where there is doubt, we resolve in favor of labor. Where there is no doubt, and in its stead, there is clear evidence that an employee is not an asset to the management, but a liability that delays production and sets a bad example to his co-workers, we do not only concur in his dismissal but will insist in an order to that effect . . . In protecting the rights of the laborers, the law authorizes neither oppression nor self- destruction of the employer. The only exception to this rule is where the suspension or dismissal is whimsical or unjustified . . ."

In compensation cases, the liability of the business partners is solidary. (Articles 1711, 1712, 1207).—

In the case of *Liwanag v. Workmen's Compensation Commission*[261] it appeared that appellants were co-owners of Liwanag Auto Supply. They employed Balderama as a security guard who, while in line of duty, was killed by criminal hands. His widow and children filed a claim for compensation with the Workmen's Compensation Commission which ordered appellants to pay jointly and severally the amount of ₱3,494.40 to the claimants. Appellants in this appeal did not question the right of appellees to compensation nor the amount awarded. They only claimed that under the Workmen's Compensation Act, the compensation is divisible because there is nothing in the Act which provides that the obligation of an employee should be solidary. *Held*: The law governing the liability of partners is not applicable to the case at bar wherein a claim for compensation by dependents of an employee who died in line of duty is involved. And although the Workmen's Compensation Act does not contain any provision expressly declaring solidary obligation of business partners like the herein appellants, there are other provisions of law from which it could be gathered that their liability must be solidary. Articles 1711 and 1712 of the New Civil Code provide:

> "Art. 1711. Owners of enterprises and other employers are obliged to pay compensation for the death of or injuries to their laborers, workmen, mechanics or other employees, even though the event may have been purely accidental or entirely due to a fortuitous cause, if the death or personal injury arose out of and in the course of employment . . .
>
> "Art. 1712. If the death or injury is due to the negligence of a fellow-worker, the latter and the employer shall be *solidarily liable* for compensation . . . "

And Article 1207 of the New Civil Code provides:

> "x x x. There is *solidary liability* only when the obligation expressly so states, or when the law or the *nature of the obligation requires solidarity.*"

The provisions of the New Civil Code above quoted taken together with those of Section 2 of the Workmen's Compensation Act, reasonably indicate that in compensation cases, the liability of business partners, like appellants should be solidary; otherwise, the right of the employee may be defeated, or at least crippled.

---

259 Article 1703, NEW CIVIL CODE.
260 G R No. L-9915, May 27, 1959.
261 G R. No. L-12164, May 22, 1959.

Mr. Justice Alex Reyes disagreed with the majority decision. He said that whether the defendants be regarded as co-partners or as mere co-owners, their liability for the indemnity due their deceased employee would not be solidary but only *pro rata*, as can be gleaned from Articles 485 and 1815 of the New Civil Code. And the Workmen's Compensation Act does not change the nature of that liability either expressly or by intendment.

COMMON CARRIERS

Extraordinary diligence.—

Under Article 1755 of the New Civil Code, "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 the circumstances."[262]

In *Francisco v. De La Serna*,[263] where the truck of the common carrier in which the plaintiff was riding was already at a complete stop when another truck came zigzagging along and then hit the front part of the truck in which plaintiff was embarked, thereby causing physical injuries to the latter, the Supreme Court upheld the trial court's decision to the effect that the carrier cannot be held responsible. The carrier is responsible only in those cases in which it or its employees fail to exercise reasonable diligence. The cases of *Lasam v. Smith*[264] and *Gillaco v. Manila Railraod Co.*[265] were cited.

Registered owner of vehicle liable for injuries to passenger even if the vehicle had already been sold.—

The recent case of *Tamayo v. Aquino*[266] reiterated the rule laid down in previous cases[267] that the registered owner of a public service vehicle is responsible for damages that may be caused to any of the passengers therein, even if the said vehicle had already been sold, leased or transferred to another person who was, at the time of the accident, actually operating the vehicle. This principle was also reaffirmed in the case of *Erezco v. Jepte*.[268] The reason given by the *Erezco* case for the rule is as follows:

> "x x x The law, with its aim and policy in mind, does not relieve him directly of the responsibility that the law fixes and places upon him as an incident or consequence of registration. Were a registered owner allowed to evade responsibilitity by proving who the supposed transferee or owner is, it would be easy for him by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done. A victim of the recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage . . . The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership . . . "

262 To the same effect is the provision of Article 1733, NEW CIVIL CODE.
263 G.R. No. L-12245, August 31, 1959.
264 45 Phil. 65, (1924).
265 G.R. No. L-8034, November 18, 1935.
266 G.R. No. L-12634, May 29, 1959.
267 Timbol v. Osias, G.R. No. L-7574, April 30, 1955; Montoya v. Ignacio, G.R. No. L-5868, December 29, 1953; Roque v. Malibay Transit, G.R. No. L-8561, November 18, 1955; Medina v. Cresencia, 52 O.G. No. 10, 11606.
268 G.R. No. L-9605, September 30, 1957.

Exception to the preceding rule.—

The Supreme Court, while taking cognizance of the above rule, did not find it applicable to the peculiar circumstances in the case of *Francisco v. De La Serna*,[269] *supra*. In the *Francisco* case, the Supreme Court, through Mr. Justice Labrador who likewise penned the decision in the aforecited case of *Tamayo*, noted that the truck in which the deceased passenger was riding, while bearing plate No. A-659 was sold by the Southern Motors Co. to Bolneo on August 8, 1955, and mortgaged by the vendee to the Southern Motors Co. on the same date. The Southern Motors Co. reported the sale in question to the Motor Vehicles Office on August 31, 1955 but Bolneo failed to register it in his name, continuing to use vendor's plate. Hence, the Southern Motors Co. was not the owner of the truck at the time of the accident, although the plate of the truck belonged to it. Under the provisions of the Revised Motor Vehicle Law, Act No. 3992, the vendee is required to register the motor vehicle purchased by him and is prohibited from displaying the dealer's plate number on said truck. Inspite of this prohibition, the purchaser of the truck, Bolneo, continued using the dealer's plate number and did not have it registered in his name. This failure on the part of Bolneo is imputable to him alone, and cannot be a legal ground for holding the vendor liable, because the defendant Southern Motor Co. was no longer the owner of the truck and had complied strictly with the provisions of the law regarding registration.

On the other hand, in the *Tamayo* case, it must be noted that Tamayo did not inform the Public Service Commission of the sale of the vehicle in question to Rayos. Consequently, the Supreme Court held that Tamayo, the registered owner, was primarily responsible for the damage caused, but he has a right to be indemnified by the real or actual owner, Rayos, for the amount he may be required to pay.

Moral damages not recoverable in breach of contract of carriage.—

The recent case of *Fores v. Miranda*[270] reiterated the rule laid down in the cases of *Cachero v. Manila Yellow Taxicab Co.*[271] and *Necesito v Paras*,[272] that moral damages are not recoverable on actions for damages predihated on a breach of contract of transportation, in view of Articles 2219 and 2220 of the New Civil Code. The exceptional rule of Article 1764 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that the carrier is guilty of malice or bad faith.

In the *Fores* case, it appeared that the respondent was one of the passengers of a jeepney driven by Longa. While descending the Sta. Mesa bridge, at an excessive speed, the driver lost control thereof, causing it to swerve and to hit the bridge wall. The respondent suffered a fracture of the upper right humerus. The driver was charged with serious physical injuries through reckless imprudence and sentenced accordingly. The imposition of moral damages in the sum of ₱10,000. in favor of the injured passenger was one of the main problems raised on appeal.

---

269 G.R. No. L-12245, August 31, 1959.
270 G R. No. L-12163, March 4, 1959
271 G.R. No. L-8721, May 23, 1957.
272 G.R. No. L-10605, June 30, 1958.

The problem of awarding moral damages was clarified even more extensively in this case. The Supreme Court, again speaking through Mr. Justice J. B. L. Reyes who wrote the decisions in the cases of *Cachero* and *Necesito*, *supra*, said:

> "By contrasting the provisions (of Articles 2219 and 2220), it immediately becomes apparent that:
>
> "(1) In cases of breach of contract (including one of transportation) proof of bad faith or fraud (*dolus*), *i.e.*, wanton or deliberately injurious conduct, is essential to justify an award of moral damages; and
>
> "(2) That a breach of contract can not be considered included in the descriptive term "analogous cases" used in Article 2219; not only because Article 2220 specifically provides for the damages that are caused by contractual breach, but because the definition of *quasi-delict* in Article 2176 of the Code expressly excludes the cases where there is a "preexisting contractual relation between the parties,"[273] . . .
>
> "The exception to the basic rule of damages now under consideration is a mishap resulting in the death of a passenger, in which case Article 1764 makes the common carrier expressly subject to the rule of Article 2206, that entitles the spouse, descendants and ascendants of the deceased passenger to demand moral damages for mental anguish by reason of the death of the deceased. (Necesito v. Paras, G.R. No. L-10605, September 11, 1958). But the exceptional rule of Article 1764 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that the carrier was guilty of malice or bad faith. We think it is clear that the mere carelessness of the carrier's driver does not *per se* constitute or justify an inference of malice or bad faith on the part of the carrier...
>
> "The advantageous position of a party suing a carrier for breach of the contract of transportation explains, to some extent, the limitations imposed by the new Code on the amount of the recovery. The action for breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier, or of his employees, and the burden is placed on the carrier to prove that it was due to an unforeseen event or to *force majeure* (Cangco v. Manila Railroad Co., 38 Phil. 768, 777). Moreover, the carrier, unlike in suits for quasi-delict, may not escape liability by proving that it has exercised due diligence in the selection and supervision of its employees (Art. 1759, New Civil Code; Cangco v. Manila Railroad Co., *supra;* Prado v. Manila Electric Co., 51 Phil. 900)...
>
> "It is also suggested that a carrier's violation of its engagement to safely transport the passenger involves a breach of the passenger's confidence, and therefore should be regarded as a breach of contract in bad faith, justifying recovery of moral damages under Art. 2220. This theory is untenable, for under it the carrier would always be deemed in bad faith, in every case its obligation to the passenger is infringed, and it would be never accountable for simple negligence; while under the law (Art. 1756), the presumption is that common carriers acted *negligently* (and not maliciously), and Art. 1762 speaks of *negligence* of the common carrier...
>
> "The distinction between fraud, bad faith or malice (in the sense of deliberate or wanton wrongdoing) and negligence (as mere carelessness) is too fundamental in our law to be ignored (Arts. 1170-1172); their consequence being clearly differentiated by the Code.[274]

---

273 Contra: GATILAO & SALUDO, **Recovery For Moral Damages in Breaches of Contracts and the Cachero Case**, 33 PHIL. L. J. No. 5, 672 (1958); See also, AQUINO **Civil Law Survey for 1958**, 33 PHIL. L. J. No. 2, 261 (1958).

274 See Article 2201, NEW CIVIL CODE.

> "...It is true that negligence may be occasionally so gross as to amount to malice; but that fact must be shown in evidence, and a carrier's bad faith is not to be lightly inferred from a mere finding that the contract was breached through negligence of the carrier's employees."

It must be noted that the rule in the aforecited case of *Fores* admits of the possibility of awarding moral damages in breaches of contract of carriage in two instances (1) Under Article 1764 in relation to Article 2206, which entitles the spouse, descendants and ascendants of the deceased passenger to demand moral damages for mental anguish by reason of the death of the deceased, and (2) Under Article 2220, where the injured passenger does not die, provided malice or bad faith on the part of the carrier is proved.

The later case of *Tamayo v. Aquino*,[275] while holding that moral damages cannot be awarded to the heirs of the deceased passenger because fraud or bad faith on the part of the carrier was not shown in evidence, failed to apply Articles 1764 and 2206 which entitle the spouse and the descendants and ascendants of the deceased passenger to demand moral damages for mental anguish. In this case, it appeared that the truck of the common carrier in which Aquino's wife was riding, bumped against the culvert on the side of the rider, as a consequence of which, the passenger was thrown away from the vehicle and two pieces of wood embedded in her skull. The wife instantly died. Moreover, the impact of the truck against the culvert was so violent that the roof of the vehicle was ripped off from its body, one fender was smashed and the engine damaged beyond repair.

The apparent inadvertence in the *Tamayo* ruling, which duplicates that formulated in the *Necessito v. Paras*[276] case two years ago, must not be taken to mean that the Supreme Court is inclined to abandon the wiser and sounder rule it has laid down in the leading case of *Fores v. Miranda*.[277]

When are goods deemed "shipped."—

The date of the shipment is the date when the goods for dispatch are loaded on board the vessel, and not necessarily when the ship puts to sea.[278] The issuance of the bill of lading, furthermore, presupposes or carries the presumption that the goods were delivered to the carrier for immediate shipment.[279] In the case of *Cebu United Enterprises v. Gallofin*[280] where one of the issues was the date of shipment of the goods in controversy, it did not appear that the bill of lading specified any designated day on which the vessel were to lift anchor, nor was it shown that plaintiff had any knowledge that the vessels were not to depart soon after he placed his cargo on board and the corresponding bill of lading issued to him. From this latter time, the Supreme Court said, the goods, in contemplation of law, are deemed already in transit. Articles 1531 and 1736 of the new Civil Code were cited.[281]

---

275 G.R. No. L-12634, May 29, 1929.
276 G.R. No. L-10605, June 30, 1959.
277 Supra, notes 270, 273, 274.
278 U.S. Tobacco Corp. v. Luna, G.R. No. L-2875, July 6, 1950.
279 13 C.J.S. section 123 (2) 235.
280 G.R. No. L-12859, November 18, 1959.
281 Article 1736, NEW CIVIL CODE, provides:
"The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportion until the same are delivered, actually or constructively, by the carrier to the consignee or to the person who has a right to receive them, without preudice to the provisions of Article 1738." See also, article 1531, New Civil Code.

PARTNERSHIP

Partnership distinguished from sub-lease.[282]

By a contract of partnership, two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[283] The salient characteristic of a partnership is the common interest possessed by the partners over partnership property, management and profits. To determine the existence of a partnership, due regard must be given to the intention of the parties and their conduct during and after the alleged formation, as illustrated in the case of *Yulo v. Yang*.[284]

Yang proposed to Yulo, a lessee of a parce' of land situated at Plaza. Sta. Cruz, the formation of a partnership between them for the operation of a theater on the leased premises, and assured the latter a monthly participation of ₱3,000. The term of the partnership was fixed at 2 years and 6 months, with the condition that it shall terminate when the owner of the land should terminate the lease. The capital was set at ₱100,000, ₱80,000 of which was to be furnished by Yang and the balance by Yulo. All gains and profits were to be distributed among the partners in proportion to their capital contribution and the liability of Yulo was limited to her contribution.

The lease was subsequently terminated and Yulo demanded her share of the profits from Yang who refused, alleging that no partnership was ever formed. *Held*: The purported formation of the partnership was only resorted to as a means to evade the prohibition imposed on Yulo to sub-lease the property. The real intention of the parties was to enter into a contract of sublease and the monthly participation of Yulo was to be considered as rentals. Yulo never furnished her supposed capital contribution. She did not intervene in the management of the business and never demanded an accounting from Yang. The elements of a partnership are not present under the circumstances of the case.

Partner who redeems partnership property with personal funds merely acts as trustee.—

In *Catalan v. Gatchalian*,[285] the plaintiff and defendant, partners in a cinema business, mortgaged two lots belonging to the partnership to secure an indebtedness. Upon failure to pay, the mortgage was foreclosed and before the expiration of the redemption period, Catalan redeemed the property from the buyer at the auction sale with his own funds. He contends that he became the absolute owner of the property since he was subrogated to the rights of the purchaser at the foreclosure sale.

Held: Under the general principles of law, a partner is an agent of the partnership for the purpose of its business.[286] Under Art. 1807, New Civil Code, "every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct,

282 Also discussed under the topic on **Lease.**
283 Art. 1767, New Civil Code.
284 G.R No. L-12541, August 28, 1959.
285 G.R. No. L-11648, April 22, 1959.
286 Art. 1818, NEW CIVIL CODE.

or liquidation of the partnership or from any use by him of its property." Consequently, when Catalan redeemed the properties in question, he became a trustee and he may only demand from the other partner his share in the redemption price. He never became the absolute owner of the land by subrogation inasmuch as the person from whom he redeemed said land was not an absolute owner himself but only possessed a provisional certificate of sale. The redemption made by Catalan served to remove the lien of mortgage and restored the land to its original status as partnership property.

AGENCY

Agent who acts in his own name is personally liable.—

Art. 1883, New Civil Code, provides that "if an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal. In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal." Hence, where the principal is undisclosed, the obligations and rights shall arise exclusively from the contract entered into by the agent with the third person as a consequence of their own independent will.[287]

The above-mentioned rule found application in *Umali v. Miclat*[288] where the defendant Umali, President and General Manager of the Maharlika Pictures, Inc., contracted with plaintiff for the preparation of posters and other forms of advertisement for the exhibition of a film. Upon being sued for the price, he alleged that he was merely acting as agent for the corporation.

Held: It appears that Umali entered into the contract in his personal capacity. The phrase "President and General Manager of the Maharlika Pictures, Inc." affixed to his name in the contract was merely descriptive of his position and did not serve to indicate that he was acting for and in behalf of the corporation. It was never mentioned that Umali had the authority to perform the acts for which he is sought to be made liable. For not having disclosed his principal, defendant is liable in his personal capacity.

Art. 1883 does not apply if third person is aware of the agency.—

In *Ortega v. Bauang FACOMA*,[289] the defendant association was sued by the plaintiff for the purchase price of tobacco delivered to it. Defendant contended that the tobacco was bought for and in behalf of the ACCFA, although at the time of the sale such fact was not revealed to the plaintiff. The Court held that the ACCFA was the real party to the contract. Even if the principal was not disclosed, the agent would not be personally liable if the third person with whom he contracts in fact knew of the agency. It is a well-known fact that the FACOMA is not engaged in business for profit. Its purpose is the sale and marketing of agricultural products and for such purpose, it acts as agent for ACCFA.

287 11 Manresa, 494-495; Lim v. Ruiz Rementeria, 15 Phil. 367; Smith, Bell & Co. v. Sotelo Matti, 44 Phil. 874.
288 G R. No. L-9262, July 10, 1959.
289 G R No. L-13547, December 29, 1959.

Authority to mortgage does not include authority to contract obligation.—

In *De Villa v. Fabricante*,[290] Maria de Fabricante executed a power of attorney in favor of her husband Cesario, authorizing him to mortgage a parcel of land registered in her name. Pursuant to this, Cesario obtained a loan from the plaintiff and secured it with a mortgage on his wife's property. An action was brought to foreclose the mortgage on two parcels of land. The trial court ordered Cesario Fabricante to pay the mortgage debt within 90 days, and in case of failure to do so, to have the first parcel of land sold for the satisfaction of the judgment.

On appeal, De Villa contends that the lower court erred in holding that only Cesario Fabricante was liable to pay the mortgage debt. *Held*: By the power of attorney, only the authority to execute a mortgage was conferred. It did not include the authority to contract an obligation which is an entirely different transaction. Hence, only Cesario is liable for the payment of the mortgage debt.

Acts of agent executed without knowledge of the death of the principal are valid.—

Under Art. 1931, New Civil Code, "anything done by the agent without the knowledge of the death of the principal or of any other cause which extinguishes the agency, is valid and shall be fully effective with respect to third persons who may have contracted with him in good faith." In *Buasan v. Panuyas*,[291] Dayao authorized Bayugan to sell a parcel of land belonging to him. It was only after the death of the principal that the agent was able to sell the land. The Court upheld the validity of the sale since Bayugan did not know of the death of Dayao at the time he entered into the contract with the purchaser who had also acted in good faith.

DEPOSIT

Irregular deposit.—

In *Cruz v. Auditor General*,[292] the Rural Progress Administration instituted an action for the expropriation of a tract of land, a portion of which was occupied by Cruz as a *bona fide* tenant. The latter expressed his desire to purchase said lot and in accordance with the practice of the RPA, he was required to deposit whatever amount he could, the same to be credited as partial advance payment. During the Japanese occupation, Cruz delivered the aggregate sum of ₱1,160 in apanese military notes. After liberation, he paid the whole purchase price to expedite the conveyance of the land to him and subsequently brought an action to recover the payments he made during the occupation. The Auditor General refused to refund the amount, citing Executive Order No. 49 which provided that "all deposits made with banking institutions during enemy occupation and all deposit liabilities incurred by banking institutions during the same period are declared null and void..."

Held: The executive order applies only to deposits made with banking institutions and not with any other persons. The selective application is justified by the fact that banks are bound to accept any and all deposits made

290 G R. No. L-13063, April 30, 1959.
291 G R. No. L-11815, May 25, 1959. Also cited under Sales.
292 G R. No. L-11233, May 30, 1959.

in conformity with the pertinent laws and regulations. Obviously, during the Japanese occupation, they could not have refused to accept deposits in war notes. This situation does not obtain in deposits with other persons who may either accept or reject any deposit.

It is further contended that the loss should be borne by the depositor who has retained ownership over the money. But it appears that the transaction involved is not one of deposit inasmuch as its main purpose was not for the safekeeping of the thing. It was expressly provided that the money was to be applied to the purchase price. Therefore, Cruz may recover the amount in its equivalent under the Ballantyne scale.

GUARANTY

Surety may secure release for violation of conditions of the contract.—

In *Associated Insurance & Surety Co., Inc. v. Bacolod-Murcia Milling Co. Inc.*,[293] the bond in question was executed by the plaintiff to secure two crop loans made in favor of Ruiz. It was subject to the several conditions which, it is claimed, were violated. Plaintiff brought the present action to obtain a release. The lower court dismissed the complaint stating that plaintiff had no cause of action because it had not voluntarily paid the obligation nor had it been made to pay the same and the alleged breach of conditions could only be employed as a defense.

Held: It is unnecessary to allege in the complaint that the plaintiff has paid or has been required to pay its obligations under the bond. Violation of conditions of the bond is a sufficient cause of action.

In a later case between the same parties,[293a] it appeared that the defendant not only violated said condition but permittted one Tiongson to utilize loans for purposes other than for planting, clearing, cultivation and harvesting. Accordingly, in an action by the surety company for a release from its liability under the bond which was appealed to the Supreme Court, the latter held that such violation of the condition entitled the surety company to a release. Even if the surety company had not yet paid any amount under the indemnity agreement, a right of action accrrued in its favor since a demand for the payment had already been made upon it.

Unconditional surety—

In *Atkins Kroll & Co. v. Reyes*,[294] the defendant put up a surety bond through the Alto Surety & Insurance Co. to secure the payment of the balance in the purchase price of canned goods delivered by plaintiff. Upon being sued, the surety alleged that the bond was executed with the understanding that Reyes would be given time to pay the obligation, which time has not yet expired. *Held*: There is nothing in the terms of the bond to indicate that such an important condition had been agreed upon by the parties. The liability of the surety can be no other than unconditional.

Excussion under the Old Civil Code—

In the Case of *De Leon v. Ching Leng*,[295] the plaintiff brought an action against Chung Kiat Kang as principal debtor and Jai Alai Corp. as guaran-

293 G R. Noo. L-12333, February 28, 1959.
293a Associated Insurance Co v. Bacolod Murcia Milling Co., G R. No. L-12334, May 22, 1959.
294 G R. No. L-11936, April 30, 1959
295 G.R. No. L-7122, January 29, 1959.

tor for the collection of a certain amount of money evidenced by a promissory note. It is contended by the guarantor that it should not be included as defendant since the properties of the principal debtors have not yet been exhausted. *Held*: Under Art. 1834 of the Old Civil Code, which is applicable to this case, "the creditor may sue the guarantor jointly with the principal debtor, but shall always be required to have the property of the principal first exhausted, even if judgment is rendered against both of them."

Delay in demanding payment does not release guarantor—

Art. 2079, New Civil Code, provides that "the mere failure on the part of the creditor to demand payment after the debt has become due does not of itself constitute any extension of time" as to release the guarantor. This rule has been appplied in several cases[296] and was recently reiterated in the case of *Lavides v. Eleazar*.[297] During the Japanese occupation, the Coconut Central Co., Inc. as principal debtor and Lavides as guarantor executed in favor of Bernardo and Eleazar a promissory note payable with the period of time between 90 days after the ratification of the treaty of peace ending the war and one year after said ratification. It was only in 1953 that the creditors demanded payment from the principal debtor. When he failed to pay, they sued the guarantor who now contends that he was released from liability for failure of the creditors to demand payment from the debtor on time. *Held*: It is a settled rule that mere delay in bringing an action against the debtor does not release the guarantor.

MORTGAGE

Judgment debtor in possession of property sold is entitled to rents and profits during redemption period.

Where the judgment debtor is in possession of the property sold, he is entitled to remain in possession and to collect rents and profits of the same during the period of redemption.[298]

This rule was followed in the case of *Gorospe & Sebastian v. Gochangco*.[299] It appeared that plaintiffs-appellees obtained a loan of ₱15,000. from the defendant-appellant and as security for the same the former mortgaged to the latter two parcels of land. Four days after the loan had become due and demandable, they obtained additional loans, at the same time extending the period for six months. When the obligation fell due, the defendant-appellant gave them another six months extension with the condition that the interest of ₱1,020. for six months would be added to ₱17,000. so that the mortgage debt amounted to ₱18,020. Upon failure of plaintiffs-appellees to pay their mortgage obligation on the date due, the mortgaged properties were extrajudicially sold at public auction to the mortgagee for ₱22,978.98, under the provisions of Act 3135. Claiming that the selling price of the mortgaged properties was more than the obligation incurred, plaintiff-appellees filed a complaint to recover the excess amount. Defendant-appellant claimed that

296 Hongkong-Shanghai Bank v. Aldecoa & Co., 30 Phil. 255; Bank of P.I. v. Albaladelo y Cia., 53 Phil. 141; Sons of de la Rama v. Benedicto, 5 Phil. 512; Shannon and Shannon v. v. Philippine Lumber and Trans. Co., 61 Phil. 872; La Yebama v. Valenzuela, 67 Phil. 382.

297 G R. No. L-11007, November 28, 1959.

298 Riosa y Verzosa, 26 Phil. 86 (1913); Velasco v. Rosenberg's Inc. 32 Phil. 72 (1941); Powell v. P.N.B., 54 Phil. 54 (1929).

299 G R. No. L-12735, October 29, 1959.

the rents collected by plaintiffs-appellees from the tenants during the period of redemption totalling ₱1,168. should be deducted from the recoverable sum that may be due to the appellees. *Held*: Defendant's claim is untenable. The governing rule is found in Sections 29 and 30, Rule 39 of the Rules of Court. Construing said sections in a number of cases, this Court has held that where the judgment debtor is in possession of the property sold, he is entitled to remain in possession and to collect rents and profits of the same during the period of redemption.[300] The Supreme Court noted that the appellant himself admitted in his counterclaim that the plaintiffs-mortgagors remained in the material and actual possession of the said properties during the period of one year redemption from March 8, 1954 up to March 9, 1955 and until June 10, 1955, when the plaintiffs were actually ejected therefrom, "and during said period rendered and collected the rents on the house which were rented by said plaintiffs . . . " In view of such admission, the Supreme Court upheld the right of the appellees over the civil and natural fruits of the property during the time that they were in possession within the redemption period.

Mortgagor may redeem land within one year when the mortgagee prefers the ordinary writ of execution to satisfy his credit.—

The rule has been repeatedly laid down that in judicial foreclosures, the rights of the mortgagee and persons holding under him are cut off by the sale, when duly confirmed, and with them, the equity of redemption. The reason for that holding is that the right of redemption being purely statutory, and there being no statute conferring it, it does not exist.[301] Of course, lands mortgaged to banking or credit institutions are subject to one-year redemption from foreclosure sale, as provided by the General Banking Act.[302]

And where, as it appeared in the recent case of *Catabona v. Dionisio*,[303] the defendant mortgagee waived his right to the execution of the mortgage and preferred to have the benefit of an ordinary writ of execution to enable him to obtain complete satisfaction of his credit, the Supreme Court held that the mortgagor was entitled to exercise his right of redemption within one year from the sale as provided by law.[304]

In this connection, it must be noted that foreclosures of mortgages made *extra-judicially* are subject to redemption within one year from the date of the sale as provided for in Act No. 3135, as amended by Act No. 4148. This is to be distinguished from *judicial foreclosures* of mortgage under Rule 70 of the Rules of Court, where there can be no right of redemption after the judicial sale is confirmed as above indicated. There is only the equity of redemption in favor of the mortgagors consisting in the right to redeem the mortgaged property within the ninety day period from the order of foreclosure[305] or even thereafter but before the confirmation of the sale.[306]

---

300 Supra, note 298.

301 Benedicto v. Yulo, 26 Phil. 160 (1913); Compania General v. Ganzon, 10 O.G. 1043; Raymundo v. Sunico, 2 Phil. 365 (1913).

302 Republic Act No. 377, Section 76. See Gonzales v. National Bank & Lopez, 48 Phil. 824 (1926).

303 G.R. No. L-1273, January 27, 1959.

304 Act No. 3135, as amended by Act. No. 4148.

305 Rule 70, Section 2, RULES OF COURT IN THE PHILS. (1940). Sun Life Assurance Co. v. Gonzales, 52 Phil. 271 (1928).

306 Villar v. Javier, 51 O G. 5162; Raymundo v. Sunico, 25 Phil. 365 (1913); Benedicto v. Yulo, 26 Phil. 160 (1913).

No right of redemption after judicial approval of auction sale.—

The foregoing rule in the case of *Villar v. Javier*[307] was reiterated in the recent case of *Clemente v. H.E. Heacock & Co.*[308] In the Clemente case, the plaintiff mortgaged three parcels of land to H.E. Heacock & Co. in 1949. For his failure to pay, the mortgage was foreclosed in April, 1958. Said lots were sold by the sheriff to the mortgagees. Prior to the confirmation of the sale, H.E. Heacock & Co. sold the same to one Guzman. The validity of this latter sale was attacked on the ground that it was fictitious and premature inasmuch as the order of confirmation of sale was still being considered. The Supreme Court, however, held that the plaintiff may complain about the sale only if the confirmation of the auction sale is revoked. This is so, because, after the approval of the auction sale, he had no right of redemption, and had no business attacking the transfer whether fictitious or void or illegal in any manner. Before confirmation by the Court, the purchaser at auction sale can convey rights to another.

Purchaser of foreclosed land subject to redemption holds the same in trust for mortgagor-redemptioner.—

In the case of *Geronimo & Isidro v. Nava & Aquino*[309] the defendants mortgaged four parcels of land to La Urbana to secure the payment of a loan. Upon their failure to comply with the terms of the mortgage, the lands were foreclosed and sold to La Urbana in 1938. La Urbana assigned all its rights and interests to the plaintiff subject to the right of redemption of mortgagors. The plaintiffs took possession of the property. The mortgagors tried to redeem the property within the one year redemption period, but because the plaintiff could not be found, they deposited the amount of the redemption price in the name of the plaintiff at the Philippine National Bank. Both the trial court and the Court of Appeals held that Nava had substantially complied with the provisions regarding redemption. On appeal, the Supreme Court noted that the plaintiff not only allowed but even directed the tenant of the house on the property to pay his rentals to the mortgagors instead of to herself, and when she allowed the mortgagors to occupy the house when the tenant disoccupied it, and to take possession of the whole property, her acts should be construed as a recognition that the property though still in his name, was to be held in trust for the mortgagors to be conveyed to them on payment of the repurchase price. Such trust was an express one, not subject to prescription. And when the trial court declared that the mortgagors had a right to redeem the property and ordered the plaintiff to make the resale, there was created what may be called a constructive trust in the sense that although plaintiff had the naked title by reason of the certificates of title issued in her name, she, nevertheless, was to hold the property in trust for the mortgagors to redeem as was stipulated in the contract of sale between her and the mortgagee.

Mortgage constituted within 5 years from issuance of homestead patent void.—

In *Bunayog v. Tunas*,[310] it appeared that before the expiration of 5 years from the issuance of the homestead patent to defendant, the latter executed in favor of the plaintiff a real mortgage over the said property covered by the patent. In an action by the plaintiff to foreclose the mortgage, the trial court

307 Ibid, at 51 O.G. 562.
308 G R. No. L-12786, October 29, 1959.
309 G R. No. L-12111, January 31, 1959.
310 G.R. No. L-12707, December 23, 1959.

dismissed the same. In this appeal, the Supreme Court held that the deed of mortgage in question was null and void, it having been executed within the period of five years from the issuance of patent. The Supreme Court, however, held as erroneous the trial court's action in dismissing the complaint on the ground of lack of jurisdiction because the amount sought to be recovered was less than ₱2,000. The Court emphasized that the issue regarding the validity of the mortgage does not come within the original jurisdiction of the justice of the peace. It being an issue which is not capable of pecuniary estimation, the same can only be determined by the court of first instance.

Mortgage stipulation construed.—

Where the expenses stipulated in the contract merely referred to any suit or judicial proceeding that may affect the title or ownership of the mortgaged property, it was held that the expense in securing the reconstitution of title covering said property is not included therein.[311]

Chattel mortgage; mortgagee in good faith given full protection.—

In *Liwanag v. Luneta Motor Co.*,[312] it appeared that on April 1, 1953, Leslie sold for ₱6,000 a Ford Sedan to Roque who in turn sold the same on April 6 to Lorenzo for ₱8,050. The car was registered on the same date in the name of Lorenzo. As he needed additional cash with which to pay the car, Lorenzo mortgaged it with the Luneta Motor Co. for ₱5,125. The Deed of Chattel Mortgage was registered on April 13 in the Register of Deeds. For failure to satisfy his account, he was, together with Liwanag, plaintiff herein, sued before the Court of First Instance of Manila. Liwanag claimed that the real owner of the Ford Sedan was the Victoria Auto Exchange, Inc., not Lorenzo, and that it was the former which sold the car to him. He further claimed that at the time of the perfection of said sale, the chattel mortgage relied upon by the plaintiff had not yet been registered. The Supreme Court noted that it was a case of "double transaction on a motor vehicle and that the question for determination was who had a better right over the Ford." *Held*: The Luneta Motor Co. was a mortgagee in good faith and should be given full protection because when Lorenzo applied for a loan from said company, his papers on the car were in order. The Victoria Auto Exchange, Inc. from which Liwanag claimed to have bought the car was not the registered owner of the same. Furthermore, the bill of sale to him was supposedly made by Lorenzo, and not by the company. Had Liwanag made the necessary inquiries, he would have found out that Lorenzo was merely employed as incharge of washing the cars of his employer.

Mortgagee who obtains personal judgment against mortgagor waives the right to enforce the mortgage.—

The rule is now settled that a mortgage creditor may elect to waive his security and bring, instead, an ordinary action to recover the indebtedness with the right to execute a judgment thereon on all the properties of the debtor, including the subject matter of the mortgage, subject to the qualification that if he fails in the remedy by him elected, he cannot pursue further the remedy he was waived.[313]

311 De Villa v. Fabricante, G.R. No. L-13063, April 30, 1959.
312 G.R. No. L-12360, May 20, 1959.
313 Manila Trading & Supply Co. v. Co Kim, 71 Phil. 448 (1941); Bachrach v. Icarangal, 68 Phil. 287 (1939).

The above rule was applied in the case of *Movido v. R.F.C.*[314] On July 1, 1946 the Vet Bros. & Co. mortgaged to Movido its rights, titles, and interest in a sawmill to secure the payment of a loan of ₱15,000. The chattel mortgage was registered. On February 28, 1948, Movido brought an action against the Vet Bros. & Co. to recover the amount of its loan, but a compromise was later effected by which they renounced their respective claims. The compromise was approved by the court. On March 3, 1949, Vet Bros. & Co. mortgaged the real estate and chattels enumerated in the deed in favor of R.F.C. to secure a loan of ₱46,000. This was also registered. On April 14, 1953, upon petition of the R.F.C., the sheriff foreclosed the mortgage and the chattels were sold at public auction despite a third party claim filed by Movido who alleged that he had a prior and superior right in them because his chattel mortgage was recorded before that of the R.F.C. The R.F.C. contended that by filing a complaint against the Vet Bros. & Co. to recover the sum due from it, the plaintiff waived his right to foreclose the mortgage and for that reason abandoned his mortyage lien on the chattels. *Held*: A mortgagee who sues and obtains a personal judgment against a mortgagor upon his credit waives thereby his right to enforce the mortgage securing it. By instituting the civil action against the Vet Bros. & Co., and by securing a judgment in his favor upon the compromise agreement entered into by and between him and defendant Vet Bros. Co., appellant abandoned his mortgage lien on the chattels in question. When in 1949, Vet Bros. & Co. mortgaged the chattels and other properties to the R.F.C., the appellant had no longer any lien thereon.

The rule in *Tizon v. Valdez*,[315] and *Matienzo v. Jose*[316] had been abandoned in the *Bachrach Motor Co.* case [317] according to the Supreme Court in the *Movido* case.

EXTRA-CONTRACTUAL OBLIGATIONS

QUASI-CONTRACTS

When Article 2142 is not applicable.—

The right to recover under the principle of undue enrichment is justifiable under Article 1887 of the Spanish Civil Code. Its counterpart in the New Civil Code of the Philippines is Article 2142 which reads:

> "Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contracts to the end that no one shall be unjustly enriched or benefited at the expense of another."

The former (Article 1887) is part of Title XVI, Book IV of the Spanish Civil Code, entitled, "obligations incurred without contract," whereas the latter is included in Title XVII, Book IV of the New Civil Code of the Philippines, regulating "extra-contractual obligations" or obligation beyond, outside of, or outside the scope of, a contract.

With the above premises considered, the Supreme Court in the case of *Lao Chit v. Security Bank & Trust Co.*[318] observed that construction of improvements on leased premises by the lessee was not a "purely voluntary act"

314 G.R No. L-11990, May 29, 1959.
315 48 Phil. 910 (1926).
316 G R No. L-39510, June 16, 1934.
317 Supra, note 313.
318 G.R. L-11028, April 17, 1959.

or "unilateral act" of lessee's agent. The evidence showed that he introduced them in compliance with a *bilateral obligation* he undertook under his contract with lessee. The right of the lessee to enter into such contract, in turn, sprang from his lease contract with the lessor. As a privy to lessee's rights under his contract, insofar as said improvements are concerned, agent's (of lessee) title thereto, as against the lessor, is governed by such contract of lease, not by any quasi-contract or by principles of equity, as distinguished from law. contracts, or quasi-contracts.

QUASI-DELICTS

Actions ex-contractu *and actions* quasi ex-delicto, *differentiated.*—

In the case of *Fores v. Miranda*[319] it appeared that the respondent suffered serious phyiscal injuries because the petitioner's vehicle of which he was a passenger hit a bridge wall while descending the Sta. Mesa bridge at an excessive speed. The Court of Appeals, on appeal from an action based on breach of contract of carriage, awarded among other things, moral damages to the injured passenger. In holding that moral damages are not recoverable in actions predicated on a breach of contract, the Supreme Court said:

The carrier, unlike in suits for quasi-delict, may not escape liability by proving that it has exercised due diligence in the selection of its employees. The difference in conditions, defense and proof, as well as codal concept of suasi-delict, as essentially extra-contractual negligence, compel us to differentiate between actions *ex contractu* and *actions quasi ex-delicto*, and prevent us from viewing the action for breach of contract as simultaneously embodying an action in tort. Neither can an action for breach of contract be taken as one to enforce on employer's liability under Article 103 of the Revised Penal Code, since the responsibility is not alleged to be subsidiary, nor is there on record any averment or proof that the driver of the appellant was insolvent.

In actions for breach of contract, the carrier is not liable for tort or a quasi-delict.—

In the case of *Tamayo v. Aquino*,[320] the decision of the Court of Appeals was attacked insofar as it held that inasmuch as the third-party defendant had used the truck on a route not covered by the registered owner's franchise, both the registered owner and actual owner and operator should be considered as joint tortfeasor and should be made liable in accordance with Article 2194 of the Civil Code which provides:

> "Art. 2194. The responsibility of two or more persons who are liable for a quasi-delict is solidary."

But the Supreme Court observed that the action in the case at bar was one for breach of contract, for failure of the defendant to carry safely the deceased to her destination. Therefore, the liability for which he was made responsible, i.e., for the death of the passenger, may not be considered as arising from a quasi-delict. As the registered owner Tamayo and his transferee Rayos may not be held guilty of tort or a quasi-delict, their responsibility was not solidary.

---

319 G R. No. L-12163, March 4, 1959.
320 G.R. No. L-12634, May 29, 1959.

DAMAGES

Stipulated attorney's fees cannot be enforced if injurious or oppressive.—

One of the principal issues raised in the case of *Gorospe & Sebastian v. Gochangco*[321] was whether the trial court had authority to fix the amount of attorney's fees which the mortgagee could charge the mortgagors, notwithstanding the stipulation made by the parties in the mortgage contract which provided that ". . . the attorney's fees are hereby fixed in an amount equivalent to 20% of the amount claimed by the mortgagee but in no case shall it be less than ₱200., Philippine Currency . . ."

Held: A stipulation fixing the attorney's fees does not necessarily imply that it must be literally enforced no matter how injurious or oppressive it may be. From *Bachrach v. Golingco*[322] to *Sison v. Suntay*[323] this Court has repeatedly fixed counsel fees on a *quantum meruit* basis whenever the fees stipulated appear excessive, unconscionable, or unreasonable, because a lawyer is primarily a court officer charged with the duty of assisting the court in administering impartial justice between the parties, and hence, his fees should be subject to judicial control. Nor should it be ignored that sound public policy demands that courts disregard stipulations for counsel fees whenever they appear to be a source of speculative profit at the expense of the debtor or mortgagor. The claim that appellees are estopped to assail the legality of the attorney's fees on the ground of untimely protest was not entertained by the Court. The records showed that before the expiration of the period for redemption, appellees wrote the appellant protesting against the amount of attorney's fees. Besides, as between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or against public policy.[324]

The Supreme Court pointed out, also, that in fixing the counsel fees, the trial court erred in considering solely the lawyer's external acts of sending letters of demand, requesting the sheriff to proceed with the sale, and receiving the corresponding certification, without taking into account the study made of the case, simple as it was. It then concluded that a fair allowance should entitle the creditor to collect ₱500. for counsel fees.

Attorney's fees cannot be considered as damages that may be recovered in ejectment suit.—

In a long line of cases decided by the Supreme Court, the rule was enunciated that in an action for forcible entry and detainer, the only damages that may be recovered consist in a reasonable compensation for the wrongful use and occupation of the premises, the legal measure of damages being the fair rental value of the property.[325]

The same rule was followed in the recent case of *Castueras v. Bayona*.[326] The Supreme Court in this case emphasized that such damages cannot refer

321 G R. No. L-12735, October 30, 1959.
322 39 Phil. 138 (1918).
323 G R. No. L-10,000, December 28, 1957.
324 Eugenio v. Perdido, G R No. L-7083, May 19, 1955.
325 Section 8 Rule 72 RULES OF COURT; Veloso v. Ang Seng Teng, 2 Phil. 622; Sparrevohn v. Fisher, 2 Phil. 676; De Castro v. Justice of the Peace, 33 Phil. 595. See also, Igama & Reyes v. Soria and Nepomuceno, 42 Phil. 11; Santos v. Santiago, 38 Phil. 575; Moran, RULES OF COURT 301 (1957).
326 G.R. No. L-13657, October 16, 1959.

to any other kind of damages which are foreign to the enjoyment or material possession of the property. Consequently, the attorney's fees in question cannot be considered as damages more so when we consider that when the present Rules of Court was approved on July 1, 1940, attorney's fees could not yet be recovered as damages but only as costs[327]

Attorney's fees are now included in the concept of actual damages.—

The right to collect attorney's fees as damages was recognized only when the New Civil Code became effective on August 30, 1950.[328] And, as was held in another recent case,[329] attorney's fees are included in the concept of actual damages under the New Civil Code and may be awarded whenever the court deems it just and equitable under the circumstances.

Recovery of attorney's fees when the other party is compelled to litigate.—

The recovery of attorney's fees are allowed where the contractor fails to complete the job thereby forcing the other party to bring an action and engage the services of a lawyer.[330] This is sanctioned by Article 2208 of the New Civil Code which provides that attorney's fees can be recovered "(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur the expenses to protect his interest."

Moral damages are not recoverable in breaches of contract of transportation.—

The rule is now settled that moral damages are not recoverable in damage actions predicated on a breach of the contract of transportation[331] in view of Articles 2219 and 2220 of the New Civil Code which provide as follows:

> "Art. 2219. Moral damages may be recovered in the following and analogous cases:
>
> "(1) A criminal offense resulting in physical injuries;
>
> "(2) Quasi-delicts causing physical injuries;
>
> "Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith."

By contrasting the provisions of these two articles, the Supreme Court in the recent case of *Fores v. Miranda*[331a] observed that:

(1) In cases of breach of contract (including one of transportation) proof of bad faith or fraud (*dolus*), *i.e.*, wanton or deliberately injurious conduct, is essential to justify an award of moral damages; and

(2) That a breach of contract can not be considered included in the descriptive term "analogous cases" used in Article 2219; not only because Article 2220 specifically provides for the damages that are caused by contractual breach, but because the definition of quasi-delict in Article 2176 of the Code expressly excludes the cases where there is a "preexisting contractual relation between the parties."

---

327 Section 6, Rule 131, RULES OF COURT; Jesswani v. Dialdes, G.R. No. L-4671, May 12, 1952; Tan Ti v. Alvear, 26 Phil. 566 (1914).

328 Casueras v. Bayona, supra, note 326.

329 Fores v. Miranda, G.R. No. L-12163, March 4, 1959.

330 Baluyot v. Court of Appeals, G.R. No. L-13273, December 29, 1959.

331 Cachero v. Manila Yellow Taxicab Co., G.R. No. L-8721, May 23, 1957; Necesito v. Paras, G.R. No. L-10605—10606, June 30, 1958.

331a G.R. No. L-12163 March 4, 1959.

The exception to the basic rule of damages now under consideration is a mishap resulting in the death of a passenger, in which case Article 1764 makes the common carrier expressly subject to the rule of Article 2206, that entitles the spouse, descendants and ascendants of the deceased passenger to "demand moral damages for mental anguish by reason of the death of the deceased." But the exceptional rule of Article 1764 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that the carrier was guilty of malice or bad faith. And mere carelessness of the carrier's driver does not *per se* constitute or justify an inference of malice or bad faith on the part of the carrier. The distinction between fraud, bad faith or malice (in the sense of deliberate or wanton wrongdoing) and negligence (as mere carelessness) is too fundamental in our law to be ignored;[332] their consequences being clearly differentiated by the Code.[333]

In the *Fores* case, the passenger suffered physical injuries when the vehicle in which he was riding hit a bridge wall while descending the Sta. Mesa bridge at an excessive speed. There was no evidence of malice on the part of the carrier to support the award of moral damages by the Court of Appeals. Consequently the latter's decision was modified by eliminating the award of moral damages.

But in the case of *Tamayo v. Aquino*[334] it appeared that Aquino brought an action against the common carrier for the recovery of actual and moral damages in view of the death of his wife while riding aboard common carrier's truck. The Supreme Court reversed the ruling of both the Court of Appeals and the Court of First Instance insofar as it awarded moral damages. The Supreme Court said that Article 2220 of the Civil Code expressly provides that the award of moral damages can be made in a suit for breach of contract only when the defendant acted fraudulently or in bad faith. Since in this case, there was no evidence to show that either the registered owner of the vehicle or his transferee or agent was guilty of fraud or bad faith, the Court concluded that moral damages cannot be awarded.

One thing is to be desired in the *Tamayo* ruling, in that it failed to award moral damages under Article 1764 which makes the common carrier expressly subject to the rule of Article 2206 of the New Civil Code, that entitles the spouse, descendants and ascendants of the *deceased* passenger to demand moral damages for mental anquish by reason of the death of the deceased. It should have followed this exceptional rule which was pointed out in the *Fores* case, *supra*.

In the more recent case of *Baluyot v. Court of Appeals*,[335] the Supreme Court again emphasized that the recovery of moral and exemplary damages is not proper where there is no bad faith or one has not acted in any wanton, fraudulent, reckless, oppressive or malevolent manner.

---

332 Articles 1170-1172, NEW CIVIL CODE

333 Article 2201, NEW CIVIL CODE, provides:

"In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

"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 non-performance of the obligation."

334 G.R. No. L-12634, May 29, 1959.

335 G.R. No. L-13273, December 29, 1959.

When liquidated damages may be eliminated.—

In *Sto. Domingo v. Chua Man*,[336] *supra*, the Court found that the payment of liquidated damages of ₱2,000. was onerous. It said that the failure of the plan to operate the cabaret appeared to be a common error both on the part of the lessor-plaintiff and lessee-defendant. It was onerous to require the payment of liquidated damages when both parties had committed the same error as to the possibility of a business being established. Accordingly, the liquidated damages assessed by the trial court was eliminated.

CONCURRENCE AND PREFERENCE OF CREDITS

Builder in good faith's lien under Article 2242.—

While it is the invariable practice that where the successful bidder is the execution creditor himself, he need not pay down the amount of the bid if it does not exceed the amount of his judgment, nevertheless, when there is a claim by a third party to the proceeds of the sale superior to his judgment credit, the execution creditor as a successful bidder, must pay in cash the amount of his bid as a condition precedent to the issuance to him of the certificate of sale.[337]

The foregoing rule was cited in the case of *Filipinas Colleges Inc. v. Timbang*[338] to support the order of the lower court directing the sucessful bidders to pay in cash the amount of their bids to the builder in good faith.

In this case, the Court of Appeals adjudicated the rights of the litigants as follows: (1) Filipinas Colleges acquired the rights of the spouses Timbang to the lot in question and was ordered to pay; (3) Blas was a builder in good faith of the school building constructed on the lot in question; (3) In case Filipinas Colleges failed to deposit the value of the land within 90 days, it would lose all its rights to the land and the spouses Timbang could become owners thereof. In that eventuality, the Timbangs could make known their option under Article 448 of the New Civil Code whether they would appropriate the building in question or would compel the Filipinas Colleges to acquire the land and pay the price. In view of Filipinas Colleges' failure to deposit the amount in question, the Timbangs made known to the court their decision to compel the Filipinas Colleges to acquire the land and pay the price. Levy having been made on the house in virtue of a writ of execution, the sheriff sold the building at a public auction in favor of the Timbangs as highest bidders. Subsequently, Blas filed a motion praying that Timbang be ordered to pay to her the proceeds of the auction sale of the building. The Timbangs contended that upon failure of the builder to pay the value of the land, when such is demanded by the landowner, the latter becomes automatically the owner of the improvements. They further claimed that because they were the highest bidders at the auction sale, they acquired title to the building without necessity of paying in cash the amount of their bid. *Held*: There is nothing in the language of Articles 448 and 546 which justify Timbangs' claim. Upon the other hand, the rule is settled that when there is a claim by a third party to the proceeds of the sale superior to the judgement credit of the execution creditor, the latter as successful bidder, must pay in cash the amount of his bid. In the instant case, the Court of Appeals had already adjudged that appellee Blas was

336 G R No. L-9998, February 28, 1959.
337 Matias v. Provincial Sheriff, 74 Phil. 326 (1943).
338 G R. No. L-12813, September 29, 1959.

entitled to the payment of the unpaid balance of the purchase price of the school building. Blas' claim was, therefore, not a mere preferred credit, but was actually a lien on the school building as specifically provided in Article 2242 of the New Civil Code. As such, it was superior to the claim of Timbang insofar the proceeds of said school building were concerned.

TRANSITIONAL PROVISIONS

Article 2253 applied.—

In *Siopangco v. Castro*[338a] the Court refused to apply Article 1602 on equitable mortgage, because it establishes a new rule of law and under Article 2253, on transitional provisions, it cannot prejudice or impair vested or acquired rights.

Rights to inheritance of a person who died before the effectivity of the New Civil Code.—

Article 2263 of the New Civil Code provides that "rights to the inheritance of a person who died with or without a will before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws and by the Rules of Court . . . "

In the case of *Gamis v. Court of Appeals*,[339] Articles 807 and 834 of the old Civil Code which entitle the surviving spouse to a share in usufruct in the estate of the deceased spouse equal to the legitime corresponding to each of the legitimate children, were applied. This is the law applicable because the deceased spouse whose inheritance was in controversy died on January 17, 1909. Of course, under Article 892 of the New Civil Code, the legitime of the surviving spouse has been changed from usufruct to full ownership.[340]

REPEAL

Article 302 of the Code of Commerce, which was repealed by the new Civil Code, has been revived.—

While article 302 of the Code of Commerce which provides that "In cases in which the contract does not have a fixed period, any of the parties may terminate it, advising the other thereof one month in advance. The factor or shop clerk shall have a right, in this case, to the salary corresponding in said month." has been repealed by the new Civil Code which took effect on August 30, 1950[341] yet such did not deprive the defendant of the right to dismiss the plaintiff, who was holding the primarily confidential position of branch manager, for a valid and justifiable cause such as loss of confidence in him, inefficiency and incompetence on his part and retrenchment by the company due to drastic cuts in its import allocations and losses incurred. Rep. Act No. 1052, approved on June 12, 1945, has, however revived the repealed provisions of Art. 302 of the Code of Commerce.[342]

338a G R. No. -12167, April 29, 1959. See note 231.

339 G R No. -10732, May 23, 1959.

340 See supra, note 141.

341 Lara v. Del Rosario, 50 O G. 1975, 1979. (1954).

342 Altomonte v. Phil-American Drug Co., G.R Nos. L-11872, and L-114922, August 31, 1959. Section 1 of Republic Act No. 1052 provides: "In cases of employment without a definite period, in a commercial, industrial or agricultural establishment or enterprise, neither the employer or the employee shall terminate the employment without serving notice on the other at least one month in advance.

"The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of termination of his employment." R A. No. 1052 was further amended by R.A No. 1787 (June 21, 1957). See GUEVARA, Commercial Laws 241 (1959).