ANNUAL SURVEY OF 1960 SUPREME COURT DECISIONS IN

CIVIL LAW

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The stability of the legal order owes its existence to the consistent application of the laws of the land by the Supreme Court. A rational adherence to the rule of *stare decisis* lends much to the predictability of future court action. If the law is what the courts say it is, then it is but just that a man who performs an act should foresee how the judge will dispense with his case should it come up for adjudication. This state of predictability is much to be desired in Civil Law, considering that no other branch of the law is more pervading as far as the civil life of man is concerned. It governs him from the moment of conception, follows through his birth and the myriads of activities he undertakes in his lifetime, and in death provides for funeral arrangements and distribution of his estate. Law must be predictable if it is to be prevented from degenerating into a large-scale gaming enterprise, with parties litigant staking their fortunes upon the outcome of the case.

National laws of decedent applies to testamentary dispositions.—

Art. 16 of the Civil Code subjects real and personal property to the *lex situs*. "However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found."

In *Testate Estate of C. O. Bohanan v. Bohanan*,[1] the decedent, a citizen of Nevada, left a will by which he gave almost all of his property to his grandson, brother and sister, leaving his two children a legacy of ₱6,000 and totally excluding his wife. The will was objected to on the ground that it deprived the wife and children of their legitime conceded by the law of the forum. The will was admitted to probate. On appeal, it is also contended that the lower court erred in recognizing the validity of the Reno divorce secured by the testator from his wife.

Held: Disregarding the question of divorce, the Supreme Court upheld the validity of the will because it had been proved that the laws of Nevada allow a testator to dispose of all his property by will and does not require him to reserve a portion thereof to his wife and chillren. Under Art. 16, this is the proper law applicable. The Court also found that after the divorce, Magdalena, the first wife, married Carl Aaron and this marriage was subsisting at the time of the death of the testator. Since no right to share in the inheritance

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[1] G.R. No. L-12105, January 30, 1960.

in favor of a divorced wife exists in the State of Nevada and since the court had already found that there was no conjugal property between the testator and the widow, the latter cannot claim any share in the estate.

Art. 33. Independent civil action in defamation case.—

Art. 33 of the New Civil Code provides that "In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." Under this provision, the civil liability arising from the crime charged may still be determined in the criminal proceedings if the offended party does not waive to have it adjudged, or does not reserve his right to institute a separate civil action against the defendant.[2]

In *Roa v. De la Cruz* [3] the defendant was found guilty of light oral defamation in a criminal case against her but the court made no award as to damages. The present action was filed a month later to recover moral and exemplary damages and attorney's fees. *Held:* Plaintiff can no longer recover damages. She did not reserve her right to institute an independent civil action but chose to intervene in the criminal proceedings as private prosecutor through her counsel. Such intervention could only be for the purpose of claiming damages and not merely to secure the conviction and punishment of the accused. Hence, a final judgment rendered in a criminal case constitutes a bar to the present civil action for damages based upon the same cause.[4] Under the principle of *res judicata*, a judgment is conclusive as to future proceedings at law not only as to every matter which was offered and received to sustain the claim, but as to any other admissible matter that could have been offered for that purpose.[5]

CITIZENSHIP AND NATURALIZATION

Applicant must have enrolled his minor children of school age.—

(1) In *Tan Hoi v. Republic* [6] the Court held that the requirement that an applicant for naturalization must have enrolled all his minor children of school age in any of the private or public schools recognized by the government is mandatory. The failure of the government to raise the question of non-compliance with such requirement during the hearing of the naturalization case does not deprive the court of the power to entertain the objection at the hearing preparatory to the oath-taking.

Neither can the applicant be exempted if his minor child has been adopted. The rights of the legitimate child given to an adopted child do not include the acquisition of the citizenship of the adopter. The child would still retain the citizenship of his natural father.

(2) An applicant may be exempted from the requirement of giving primary and secondary education to his children if there are valid reasons that render it impossible for him to comply therewith, such as marriage or ill-health of the children. This is the ruling in *Ong Kue v. Republic.*[7]

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[2] Dionisio v. Alvendia, G.R. No. L-10567, November 25, 1957.
[3] G.R. No. L-13134, February 13, 1960; See also Pacheco v. Tumangdag, G.R. No. L-14500, May 25, 1960.
[4] Secs. 4 and 15, Rule 106, RULES OF COURT; Lim Tek Goan v. Yatco, G.R. No. L-6286, December 29, 1953; Tan v. Standard Vacuum, G.R. No. L-4160, July 29, 1952.
[5] Miranda v. Tiangco, G.R. No. L-7044, January 31, 1955; Namaxo v. Judge Macaraeg, 52 O.G. 182.
[6] G.R. No. L-15266, September 30, 1960.
[7] G.R. No. L-14550. July 26, 11960.

(3) The case of *Tan v. Republic*[8] reiterates the rule that the failure of the applicant to bring his children to the Philippines and enroll them in local schools would bar his naturalization even if the omission were sought to be justified by the alleged impossibility of getting the children out of China.[9]

Proper and Irreproachable Conduct.—

(1) The case of *Co v. Republic*[10] holds that the failure of the applicant to register his wife and children with the Bureau of Immigration and to file income tax returns despite the fact that he had a fixed salary of ₱1,140 a year indicates that he has not conducted himself in a proper and irreproachable manner in his relation with the government.

(2) In *Deetuanka v. Republic*[11] the applicant, on the date of the filing of the petition and several years before, had been living maritally with a woman without benefit of marriage. He did not possess good moral character and his subsequent marriage did not cure the defect that existed at the time of the filing of his petition. Furthermore, he made it appear in his income tax returns that he was married so that he could avail himself of the deductions allowed for married men.

(3) Gambling is a ground for disqualification. Criminal conviction is not necessary because the denial of the petition would not proceed on account of conviction for a crime involving moral turpitude but because the petitioner does not possess good moral character. (*Ly Hong v. Republic*)[11a]

Lucrative Employment.—

(1) When the employment of the petitioner is by the father and in the business of the latter, such evidence is not very convincing that the father and father and son would connive and testify to the alleged employment even though the son may only be living under the protection and at the expense of the father. (*Chan v. Republic*)[12]

(2) In *Sancho v. Republic*,[13] the Court held that the contention of the applicant that he had an annual income of more than ₱6,000 and that he and his wife are owners of a commercial building worth ₱5,000 is untenable as no evidence was submitted to support such allegations other than his testimony that he worked as a cook and laborer from 1923 to 1929. No documentary evidence was ever presented.

(3) In *Uy v. Republic*,[14] the petitioner testified that he owns and manages a tailoring shop capitalized at more than ₱3,000. He did not say how he raised this capital considering that prior to the opening of said shop, he was merely earning ₱120 a month. He also declared that he did not know whether his business would be profitable or not as he had just began it. The petition was denied. It is very doubtful if the petitioner can adequately support his family and provide his children with primary and secondary education.

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[8] G.R. No. L-14159, April 18, 1960.

[9] See also Hao Lian Chu v. Republic, 48 O.G. 1780; Lim Lian Hong v. Republic, G.R. No. L-3575, December 26, 1950; Tan Hi v. Republic, G.R. No. L-3354, January 25, 1951; Ang Yee v. Republic, G.R. No. L-3863, December 27, 1951; Bangan v. Republic, G.R. No. L-3683, January 28, 1953. Yap Chin v. Republic, G.R. No. L-4177, May 29, 1953.

[10] G.R. No. L-12150, May 26, 1960.

[11] G.R. No. L-12981, January 29, 1960.

[11a] G.R. No. L-14630, September 30, 1960.

[12] G.R. No. L-1160, June 30, 1960.

[13] G.R. No. L-13429, April 30, 1960.

[14] G.R. No. L-15274, September 30, 1960.

(4) In *Velasco v. Republic* [15] the petitioner was employed at a drugstore partly owned by his mother with a monthly salary of ₱150, barely a month before he filed his application. Petition was denied. The employment was merely a convenient arrangement to comply with the law. Besides, an income of ₱150 a month is neither lucrative nor substantial.

(5) A married man with a wife and three children to support and who earns only ₱200 a month cannot be said to have a lucrative employment. (*Tan v. Republic*) [16]

Language requirement.—

Where a petitioner's knowledge of English is so scanty that he does not even know enough words for purposes of daily life so that he can understand those with whom he speaks and they can understand him in turn, and his ability to write in Tagalog, the only local dialect he claims to know is deficient, he has failed to meet the language requirement of the law. (*Lee Guan v. Republic*) [17]

Petitioner must believe in the principles underlying the Constitution.—

In *Co v. Republic* [18] one of the reasons for the denial of the petition was that the petitioner did not state that he believed in the principles underlying the Philippine Constitution. He merely stated that he believed in the laws of the Philippines. The scope of the word "laws" does not necessarily cover the Constitution.

Failure to produce certificate of entry.—

The failure of the petitioner to produce the certificate showing the date, place and manner of his arrival in the Philippines is a ground for disqualification under Sec. 5 of the Revised Naturalization Law. (*Chan v. Republic*) [19]

Applicant must disclose true name.—

In *Yu Seco v. Republic* [20] it appears that while petitioner repeatedly asserted at the trial that his real name was Celerino S. Yu, his petition was filed in the name of Celerino Yu Seco and accordingly the publication of the notice of the filing of the application carried the latter name. The application was declared fatally defective. Persons who might have derogatory information against Celerino S. Yu may not come forward with it in the belief that Celerino Yu Seco is a different person. Assuming that the petitioner is known by both names, he was duty bound to make a full disclosure.

Amendment of petition and republication thereof.—

In *Khan v. Republic* [21] the petition was opposed on the ground that the requirements of Sec. 5 of the Revised Naturalization Law had not been complied with nor was there any allegation that the petitioner was exempt from such requirements. With leave of Court, he filed an amended petition containing the fact of exemption from the filing of a declaration of intention by reason of his having been born in the Philippines and receiving his elementary and

[15] G.R. No. L-14214, May 25, 1960.
[16] G.R. No. L-13177, August 31. 1960.
[17] G.R. No. L-15226, September 29, 1960.
[18] Supra, note 10
[19] Supra, note 12.
[20] G.R. No. L-13441, June 30, 1960.
[21] G.R. No. L-14866, October 26, 1960.

secondary education in schools recognized by the government. During the hearing, the fiscal objected to the presentation of evidence unless the amended petition be published anew. *Held:* Inasmuch as the original petition was fatally defective, the amended petition is a new one and should be published as required by law.

A qualification to the above rule is given in the case of *Uy Yao v. Republic* [22] where the Solicitor General claimed that the petition should have been dismissed as void, in that the affidavits of the two character witnesses attached to the petition failed to state that the affiants had known the petitioner to be a resident of the Philippines for the period of time required by law. The Court held that it was sufficient that the two witnesses had testified at the hearing that they were townmates of the petitioner and have known him personally for the required period. Aside from this the witnesses also executed affidavits rectifying the omission in the original affidavit. Such an amendment does not require republication for what is contained therein does not alter the form and substance of the notice which was already published.

Under Sec. 15, filiation of children must be proved.—

The case of *Yu Kay Guan v. Republic* [23] holds that since Sec. 15 of the Naturalization Law grants citizenship to the wife and minor children of the applicant who is found qualified under the law, it is necessary that before the petitioner is granted Philippine citizenship, the filiation of his alleged children be first indubitably established.

Declaration of actual citizenship.—

In *Tan v. Republic*,[24] the lower court dismissed the petition of Tan and granted his motion to be declared a citizen of the Philippines. The Supreme Court reversed the order. The courts may make a pronouncement as to the status of the parties to a case only as an incident of the adjudication of their rights in a controversy. The petition for naturalization in the case at bar states that the petitioner is a citizen of Nationalist China and that he wants to become a Filipino citizen. The question as to whether or not the petitioner is a citizen of the Philippines was never put in issue. This case is to be distinguished from the case of *Palanca v. Republic* [25] where Palanca had, through appropriate pleadings, averred that he was a citizen of the Philippines.

Correction of name in naturalization certificate.—

In *Tan Ching Eng v. Republic*,[25] the Court held that if the petitioner was erroneously named in the certificate of naturalization, he should have sought a reconsideration of said order and/or appealed therefrom. He cannot, after the lapse of several years, by means of petition, ask for the correction of the mistake considering that the same is substantial and not merely clerical.

MARRIAGE

Annulment of marriage on ground of impotency.—

Art. 85 of the New Civil Code provides as one of the grounds for the annulment of marriage "that either party was, at the time of the marriage, physically

[22] G.R. No. L-14184, August 31, 1960.
[23] G.R. No. L-12628, July 26, 1960.
[24] Supra, note 8.
[25] 45 O.G. supp. 204.

incapable of entering into the married state, and such incapacity continues and appears to be incurable." Impotence applies to disorders affecting the function of the organ of copulation. Being an abnormal condition, it is never presumed but must be proved satisfactorily.[26]

In *Jimenez v. Cañizares*,[27] the plaintiff brought an action to annul his marriage with defendant alleging that the orifice of her genitals was too small to allow the penetration of the male organ for copulation. Defendant did not answer the summons and refused to submit to a physical examination. A decree of annullment was entered. The city fiscal intervened and filed a motion for reconsideration which was denied. Hence, this appeal. *Held:* the impotence of the wife has not been satisfactorily proved because from the commencement of the action to the entry of the decree, the defendant wife had abstained from taking part therein. Her refusal to submit to physical examination could not give rise to the presumption derived from suppression of evidence because women of this country are by nature coy, bashful and shy and would not submit to physical examination unless compelled by competent authority. The court may order this without violating her right against self-incrimination since she is not charged with an offense nor is she compelled to be a witness against herself.

Concealment of pregnancy by another man.—

Under Art. 85, the marriage may be annulled if the consent of either party was obtained by fraud which under Art. 86 may take the form of "concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband."

In the case of *Fernando v. Delizo* [28] the complaint for annullment alleged that the respondent, at the time of her marriage to the petitioner, concealed from the latter the fact that she was pregnant by another man and that four months after their marriage she gave birth to a child. The lower court, noting that no birth certificate was presented to show that the child was born within 180 days after the marriage, dismissed the complaint. The Court of Appeals affirmed the decision holding that it was not impossible for the parties to have had sexual intercourse during their engagement so that the child could be their own.

Held: The case of *Buccat v. Buccat* [29] is not applicable to the present case. In that case, the plaintiff's claim that he did not even suspect the pregnancy of the defendant was held to be unbelievable because the latter was already in an advanced stage of pregnancy (7th month) at the time of marriage. Here, the wife was alleged to have been only four months pregnant at the time of marriage, so that the pregnancy was not readily apparent especially since she was naturally plump. According to medical authorities, even on the fifth month of pregnancy, the enlargement of the woman's abdomen is still below the umbilicus, so that it is hardly noticeable and may, if noticed, be attributed only to fat formation on the lower part of the abdomen. It is only on the 6th month of pregnancy that the enlargement of the abdomen reaches a height above the umbilicus making it more apparent.

The evidence sought to be introduced at the new trial—the affidavit of Cesar Aquino, the petitioner's own brother, admitting that he is the father of respondent's child and that he and the respondent hid the latter's pregnancy

[26] Menciano v. San Jose, G.R. No. L-1967, May 28, 1951.
[27] G.R. No. L-12790. August 31, 1960.
[28] G.R. No. L-15853, July 27, 1960.
[29] 72 Phil. 18.

at the time of the marriage—would be sufficient to sustain fraud. The case was remanded for new trial.

Independent evidence required in legal separation.—

The legal separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage. Where both spouses are offenders, a legal separation cannot be claimed by any of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.[30] No decree of legal separation shall be promulgated upon a stipulation of facts or by confession of judgment. In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the state in order to take care that the evidence for the plaintiff is not fabricated.[31]

In the case of *De Ocampo v. Florenciano*[32] the plaintiff, in March 1951 found his wife carrying on marital relations with Arcalas and in June 1955, he surprised his wife in the act of having illicit relations with Nelson Orzame. The petition for legal separation was filed on July 5, 1955. The lower court dismissed the petition holding that there was confession of judgment. It appeared that when the wife was questioned by the fiscal, she admitted her sexual relations with Orzame.

Held: Even supposing that the admission of the wife amounted to confession of judgment, inasmuch as there is evidence of the adultery independently of such statement, the decree should be granted. What the law prohibits is a judgment based exclusively or mainly on defendant's confession. If a confession defeats the action *ipso facto*, any defendant who opposes the separation will immediately confess judgment, purposely to prevent it. When the defendant failed to answer, she indicated her willingness to be separated. But the law does not order the dismissal, instead it allows the proceeding to continue and takes precaution against collusion.

Collusion in divorce or legal separation means the agreement between the husband and wife for one of them to commit, or to appear to commit, or to be represented in court as having committed, a matrimonial offense, or to suppress evidence of a valid defense, for the purpose of enabling the other to obtain a divorce. This agreement may be express or implied.[33] But it may not be inferred from the mere fact that the guilty party confesses to the offense and thus enables the other party to procure evidence necessary to prove it.[34] And proof that the defendant desires divorce and makes no defense is not by itself collusion.[35]

In the case at bar, the matrimonial offense had really taken place and this has been proved by independent evidence. The Court of Appeals also erred when it held that there was condonation in the failure of the husband to actively search for his wife. The latter left the conjugal home after having been discovered. Consequently, it was not the duty of the husband to search for her. Hers was the duty to return.

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[30] Art. 100, NEW CIVIL CODE.
[31] Art. 101, NEW CIVIL CODE.
[32] G.R. No. L-13553, February 23, 1960.
[33] Griffiths v. Griffiths, 69 N.J. Eg. 689. 60 Atl. 1099; Sandoz v. Sandoz, 107 Ore. 282.
[34] Williams v. Williams, 40 N.E. 2d, 1017; Rosenweig v. Rosenweig, 246 N.Y. Suppl. 231; Conyera v. Conyera, 224, S.W. 2d. 688.
[35] Pohlman v. Pohlman, 46 Atl. Rep. 658.

Consent to concubinage precludes legal separation:—prescription of action.—

In *Matubis v. Praxedes*,[36] the plaintiff and defendant spouses executed an agreement whereby it was provided that "both of us are free to get any mate to live with as husband and wife without interference by any of us, nor either of us can prosecute the other for adultery or concubinage or any other crime or suit arising from our separation." In January, 1955 the plaintiff came to know of defendant's cohabitation with one Asuncion Rebolado. The action for legal separation was brought only in April 1956. *Held:* Under Art. 102, "an action for legal separation cannot be filed except within one year from and after the date on which the plaintiff became cognizant of the course and within five years from and after the date when such cause occurred." The case at bar was brought beyond the prescriptive period. Aside from this, the action must necessarily fail because the wife has consented to the infidelity of the husband in the document above-mentioned.

It may be observed that the document, while illegal for the purpose for which it was executed, constitutes nevertheless a valid consent to the act of concubinage.[37]

Duty of the husband to support the wife.—

The mere act of marriage creates an obligation on the part of the husband to support his wife. This obligation is founded not so much on the express or implied terms of the contract of marriage as on the natural and legal duty of the husband; an obligation the enforcement of which is of such vital concern to the State itself that the law will not permit him to terminate it by his wrongful acts.[38] Thus it was held in the case of *Canonizado v. Almeda Lopez, et al.*[39] that in connection with the duty of a spouse to support the other, the essential thing to consider is not that the spouse asking for support is actually engaged or may engage in a gainful occupation, but whether or not said spouse is in need of support from the other for his or her subsistence. The petitioner wife was granted support pendente lite inspite of her being gainfully employed because she was still in need of support.[40]

Material injury in Art. 116 construed.—

Under Art. 116, "when one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury to the other, the injured party may apply to the court for relief." In *Perez v. Perez*[40a] it was held that "material injury" does not refer to patrimonial or economic injury but to personal or physical or moral injury since Art. 116 lies in the chapter concerning personal relations between the husband and the wife. Hence, the act of prodigality of the wife cannot be made to fall under this.

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Rule on accession in Art. 158 held inapplicable where property belongs to wife's parents.—

Buildings constructed, at the expense of the partnership, during the marriage on land belonging to one of the spouses, also pertain to the partnership,

[36] G.R. No. L-11766. October 25, 1960.
[37] People v. Schneckenburger, 73 Phil. 413, cited in 1 AQUINO, CIVIL CODE 237.
[38] Goitia v. Campos Rueda, 35 Phil. 252.
[39] G.R. No. L-13805, September 30, 1960.
[40] See also De la Cruz v. Santillana (C.A.) 43 O.G. 496.
[40a] G.R. No. L-14874, September 30. 1960

but the value of the land shall be reimbursed to the spouse who owns the same.[41] This provision is not applicable to a building constructed with conjugal funds on a land owned not by the wife but by her parents although said lot is subsequently donated to the wife and becomes her paraphernal property. In the case of *Caltex Philippines v. Felias* [42] a parcel of land was sold in execution to Caltex to satisfy a money judgment against Samamoto, husband of Felisa Felias. After the execution of the final deed of sale, Felisa filed the present action to declare herself the exclusive owner of the land in question. This lot was levied upon and sold in execution as conjugal property of the spouses on the theory that under Art. 158, it automatically became such when a building was constructed thereon with conjugal funds. It is a fact however, that the land did not belong to the defendant when the building was constructed therein. What properly applies is not Art. 158 but the familiar rule of the accessory following the principal. In other words, when the lot was donated to Felisa by her parents, it became her paraphernal property. The donation transmitted to her the rights of a landowner over a building constructed on it. As such, the sale of the lot was part of the conjugal partnership was improper.

Judicial approval of recognition is for benefit of minor.—

Art. 281 requires that if the acknowledgement of the minor is made in authentic writing (formerly a public document) court approval must be secured, acknowledgement before a notary being considered insufficient.[43] In the case of *Guariña v. Guariña,*[44] the Court held that the lack of judicial approval cannot impede the enforcement of the acknowledgement made.[45] The judicial approval is for the benefit of the minor, to protect him against any acknowledgement made in bad faith or to his prejudice. The lack thereof may be raised only by the minors concerned and not by the recognizing parent. If the minor, upon reaching the age of majority assents expressly or impliedly to the acknowledgement, the law is satisfied. The plaintiffs in the instant case claimed that they are the acknowledged natural children of Mario Guariña, Sr. and sued the widow and legitimate children for the partition of the estate. It appears that Guariña, Sr. had previously entered into a compromise agreement with Eduvigis Huertas in the CFI of Sorsogon whereby he acknowledged as his natural children those born of Eduvigis and promised to make a formal acknowledgement as soon as possible. The plaintiffs also presented a notarial document containing an acknowledgement. *Held:* The compromise agreement should be given effect as it is a form of judicial approval. Even granting that it is not, the absence thereof is not fatal to the cause of action of the plaintiffs.

Acknowledgment in a void donation mortis causa.—

In *Narag v. Cecilio,*[46] Dolores Narag filed a complaint praying that she be declared the acknowledged natural child of the late Cecilio Jose. She presented a public instrument of donation *mortis causa* in which he acknowledged her to be his natural child and donated to her two parcels of land. *Held:* The acknowledgement made in the donation *mortis causa* cannot be given effect because the formalities of a will have not been observed. If the action be treated

[41] Art. 158, NEW CIVIL CODE.
[42] G.R. No. L-14309, June 30, 1960.
[43] 1 AQUINO, CIVIL CODE 482, citing In Re Mori, 46 O.G. 5460; Legare v. Cuerques, 34 Phil. 221; Samson v. Corrales, 48 Phil. 401.
[44] G.R. No. L-1507, October 31, 1960.
[45] Apacible v. Castillo, 74 Phil. 589.
[46] G.R. No. L-13353, August 31, 1960.

as one for acknowledgement, it cannot prosper because Art. 285 requires that it should be brought during the lifetime of the presumed parent.

Art. 289 allows investigation of paternity during lifetime of putative father.—

In the case of *Barles v. Ponce Enrile*,[47] the plaintiffs, all of legal age, filed a petition for recognition, alleging that they are the illegitimate issues of the defendant. The juvenile and Domestic Relations Court dismissed the case on the theory that, the cause of action having accrued from birth, the action, pursuant to Sec. 144 of the Code of Civil Procedure, could only be brought within ten years after the cause of action accrued. *Held:* The lower court erred in dismissing the complaint. The plaintiffs seek to avail themselves of the right granted by Art. 289 to investigate the paternity of the children mentioned under the circumstances specified in Arts. 283 and 284. Though the period for bringing the action is not specified, such action is not different from the action for compulsory recognition. It should be brought, as this case has in fact been brought, during the lifetime of the putative father.

USE OF SURNAMES

A married woman is entitled to exclusive use of husband's surname.—

In *Silva v. Peralta*,[48] Silva, an American citizen, allegedly contracted a 2nd marriage with the defendant, Esther Peralta. When he returned to the U.S., he divorced his first wife and married Elenita Ledesma Silva. Upon his return to the Philippines, Esther demanded support for her child. This is an action filed by Elenita to enjoin defendant from representing herself as Mrs. Esther Silva. *Held:* A valid marriage between Esther and Silva has not been proved. Hence, it is improper for Esther to use the surname of Silva. On the other hand, Art. 370 authorizes the married woman to use the surname of her husband and impliedly excludes others.

ABSENCE

No action for presumption of death.—

There can be no independent action or special proceeding for the declaration of a person as presumptively dead. A judicial pronouncement to that effect, even if and executory, would still remain a prima facie presumption. It is for this reason that it cannot be the subject of a judicial declaration if it is the only question involved in a case or upon which a competent court has to pass.[49] This rule was reiterated in the case of *In Re William Gue v. Republic* [50] wherein Angelina Gue filed a petition to have William Gue declared presumptively dead for having been absent since 1946. The action was properly dismissed.

CIVIL REGISTER

Correction of Entries in birth certificate.—

In Sang v. Republic [51] the petitioners alleged that George Uy was born to them; that due to an honest mistake, it was erroneously entered in the birth certificate of Uy that his parents are the spounses Cua Kee Lin and Helen Tan when in fact they were only his godparents who wished to adopt him.

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[47] G.R. No. L-12894, September 30, 1960.
[48] G.R. No. L-13114, November 25, 1960.
[49] In Re Szatraw, 81 Phil. 461; Lukban v. Republic, G.R. No. L-8492, February 29, 1956.
[50] G.R. No. L-14058, March 24, 1960.
[51] G.R. No. L-15101, September 30, 1960.

The lower court granted the petition. *Held:* Art. 412 of the Civil Code contemplates corrections of mere clerical errors and not those which may affect the status of a child which must be determined in a proper action. The change in the names of the parents changed the status of the child.

PROPERTY

Rights of Builder in Good Faith.—

Art. 448 of the New Civil Code grants the owner of the land on which anything has been built in good faith two options: (1) to appropriate the building as his own after payment of the proper indemnity; or (2) to oblige the one who built to pay the price of the land. But the latter option is not available if the value of the land is considerably more than that of the building, in which case the builder shall only be required to pay a reasonable rent, if the owner does not choose to appropriate. Once an option is made under Art. 448, it becomes a money obligation which may be enforced by execution. If the owner has chosen to sell the land and the builder has no funds, the former may resort to any of the following: (1) have the building demolished;[52] (2) he may require the payment of rentals;[53] (3) have the land sold in execution;[54] or (4) have the building sold in execution.[55]

In the case of *Grana v. Court of Appeals*,[56] the petitioners were found to have built a portion of their house on respondent's land in good faith. The Supreme Court said that the first option should not be exercised as it is impractical and might render the whole building useless. The owner may exercise the second option, unless the value of the land is considerably more than that of the building. If the petitioners are unwilling to buy the land, they must vacate and until they do so, they must pay reasonable rentals. It was also held that the Court of Appeals erred in requiring the petitioners to pay monthly rentals from the date of the filing of the complaint until they vacate the land. A builder in good faith may not be required to pay rentals (with the exception of the circumstance above-mentioned) because he has a right to retain the land until reimbursement.

Accretions belong to the owner of the river banks unaffected by the Land Registration Act; distinguished from avulsion.—

Accretion (or alluvion) is the gradual and imperceptible additions to banks of rivers. Under Art. 457, it consists of the accretions which the banks of rivers gradually receive from the effect of the current of the waters.[57] Avulsion, on the other hand, takes place when the current of a river, creek, or torrent segregates from an estate on its bank, a known portion of land and transfers it to another estate (Art. 459). In alluvion, the deposit of the soil is gradual and the source is unidentifiable. It pertains to the owner of the land on which it is deposited. Avulsion is an abrupt process, the detached portion being identifiable and hence, the owner of the property from which it was detached retains ownership thereof provided he removes the same within two years.[58]

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[52] Ignacio v. Hilario, 76 Phil. 605.
[53] As implied from Art. 448, NEW CIVIL CODE.
[54] Bernardo v. Bataclan, 66 Phil. 598.
[55] Filipinas Colleges v. Blas, G.R. No. L-12813, September 29, 1959.
[56] G.R. No. L-12486, August 31, 1960.
[57] 2 PADILLA, CIVIL CODE 116.
[58] *Ibid*, 117.

In *Hodges v. Garcia*[59] the plaintiff owned a parcel of resgistered land bounded by a river. The defendant owned the lot opposite the river which had increased in area through accretion. An original certificate of title was issued for the additional area. This action was brought to recover said area on the theory that it was separated from the plaintiff's land by avulsion. *Held:* It has been satisfactorily proved that the increase in area was brought about by accretion and not by avulsion. Registration under the Land Registration Act does not protect the riparian owner against the diminution of the area of his land through gradual changes in the course of the adjoining stream.[60]

Art. 457 held inapplicable to deposits caused by action of sea.—

Art. 457 of the Civil Code deals with accessions of lands situated on the banks of rivers but not on the seashore.[61] In *Ignacio v. Director of Lands*[62] Faustino Ignacio filed an application for the registration of a parcel of mangrove land situated in Navotas. This land was formed by the accretion and alluvial deposits caused by the action of the waters of Manila Bay. Ignacio claimed that he had been in continuous, adverse and public possession thereof for 20 years until his possession was disturbed by oppositor Valeriano. The application was dismissed. *Held:* The accretion in this case was caused by the action of Manila Bay, which can be considered as a sea or part of the sea, it being a mere identation of the same; hence, Art. 457 does not apply. Such accretions pertains to the public domain.

Change of course of a river.—

In *Crespo v. Bolandos*[63] it appears that in 1928, the Pampanga river separated the land of Buencamino from the lots of Bolandos, plaintiff (respondent herein.) In 1954, when the complaint was filed in Nueva Ecija, the river was still flowing east to west but no longer in the 1928 bed. It is claimed in behalf of Buencamino that his land extended up to the new bed of the river and he acquired ownership thereof through accretion. *Held:* There has been no gradual erosion. What actually happened was that the river shifted its course during floods occurring 3 or 4 times a year during the period between 1943 to 1945. Art. 372 (now Art. 462) of the Civil Code applies and not the principles of accretion. Said article provides that "whenever a river, changing its course by natural causes, opens a new bed through a private estate, this bed shall become of public dominion." When for the first time the flood moved the river into the lots of Bolandos, the bed thus newly covered by its waters shifted to the public domain. But when the next flood transferred the river bed farther south into Bolandos' land, they ipso facto recovered the bed they first lost. And thus the automatic process of recovering and losing river beds continued until 1945 when the river stopped to settle in its present location, thereby segregating a part of plaintiff's property without affecting their title. Bolandos is entitled to ownership of the bed, situated on his own land, and which bed was abandoned through the last change in the course of the river.

EASEMENTS

Acquisition of negative easements by prescription.—

Continuous and apparent easements may be acquired either by title or by prescription of ten years.[64] The prescriptive period for the acquisition of nega-

[59] G.R. No. L-12730, August 22, 1960.
[60] Payatas Estate v. Tuazon, 53 Phil. 55.
[61] Pascual v. Angeles, 13 Phil. 441.
[62] G.R. No. L-12958, May 30, 1960.
[63] G.R. No. L-13267, July 26, 1960.
[64] Art. 620, NEW CIVIL CODE.

tive continuous and apparent easements shall be counted from the day on which the owner of the dominant estate forbade, by an instrument acknowledged before a notary public, the owner of the servient estate, from executing an act which would be lawful without the easement.[65] Under the Old Code provision, the prohibition must be contained in a "formal act." In *Cid v. Javier*,[66] this was interpreted to mean that which is required in the New Civil Code. In this case, Javier was the owner of a building with windows overlooking the adjacent lot owned by Cid. A verbal prohibition not to obstruct the light and view was alleged to have been made. *Held:* This is not sufficient. The phrase "formal act" would require not merely any writing but one executed in due form and with the proper formalities. This is the intent of the law and this is precisely why the New Civil Code clarified the requirement.

Apparent sign of easement between two estates serves as title.—

Art. 624 provides that "the existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should any of them be alienated, as a title in order that the easement may continue actively and passively." In *Gargantos v. Tan Yanon*[67] it appears that Sanz, the owner of a parcel of land, subdivided the same into three lots and sold them to different persons. Tan Yanon acquired one portion with a house built thereon. The house had windows overlooking the lot acquired by Gargantos. Tan Yanon opposed the application of Gargantos to build a house that would prevent him from receiving light in his own house unless the distance of the proposed construction be not less than 3 meters from the boundary line. Gargantos invoked the ruling of *Cortes v. Yutivo*[68] and contends that no easement of light had been acquired by prescription. *Held:* Tan Yanon does not base his claim on prescription but rather on a title recognized by Art. 624 which applies squarely to this case. It may be observed, however, that the word "continue" is incorrect because the easement actually arises for the first time only upon the alienation of either estate. Before that, there is only one owner and he cannot have an easement on his own property.[69]

NUISANCE

Public nuisance may be summarily abated.—

In *Quinto v. Lacson*[70] the City Mayor of Manila ordered the demolition of houses erected on the Estero de Tutuban. Quinto and others filed a petition for prohibition which was quashed because the very same petitioners had filed a petition for prohibition in 1956 for the same purpose, which petition was finally dismissed. The petitioners allege that their houses could not be considered public nuisances because the authorities had not, for two years since 1956, enforced the previous demolition order. They also allege that the estero was no longer used for drainage since some streets had already been constructed. They invoke Sec. 13 of Rule 39 which provides that the "officer shall not destroy, demolish or remove the improvements made by the defendant on the property except by special order by the court.

Held: The law permits the execution of judgment by motion within five years. The petitioners should be thankful that they were given the time to

[65] Art. 621, NEW CIVIL CODE.
[66] G.R. No. L-14116, June 30, 1960.
[67] G.R. No. L-14652, June 30, 1960.
[68] 2 Phil. 24.
[69] Art. 613, NCC, provides: "An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable *belonging to a different owner.*"
[70] G.R. No. L-14700, May 30, 1960.

look for another place to live in. The change in the use of the estero does not *ipso facto* give the petitioners the right to use the estero. Sec. 13 of Rule 39 applies only to judgments for the delivery of real property. This case involves a public nuisance which may be summarily abated.

DONATIONS

Annullment of donation for non-fulfillment of conditions.—

In *Nagrampa v. Nagrampa*,[71] the plaintiffs, in 1937, executed an "onerous donation inter vivos" in favor of the defendant spouses on the condition that the donees should render the donors financial, physical and all kinds of services which the latter demanded. An action was brought in 1958 to annul the donation on the ground that the donees had failed to comply with their obligation. *Held:* Art. 732 subjects donations inter vivos to the law on contracts. Under Art. 764, actions for revocation of donations by reason of non-compliance with the conditions prescribe after 4 years counted from such non-compliance. In the case at bar, more than 5 years had lapsed after the demand of the donors and the non-compliance of the donees.

WILLS

Requisites for due execution of will.—

Art. 805 requires that "every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another." For the purpose of determining the due execution of the will, it is not necessary that the instrumental witnesses should give an accurate and detailed account of the proceedings, such as the order of signing of the witnesses. It is sufficient that they have seen or at least were so situated at the moment that they could have seen each other sign, had they wanted to do so.[72]

As regards the language used in the will, there is no statutory provision requiring that the body of the will or the attestation clause should contain an expression that the testator knew the language in which the will was written. But considering that Art. 804 requires that the will be executed in a language or dialect known to the testator, evidence should be introduced on this point. However, where the will is in a dialect currently in use in the locality where the testator resides, there is a presumption that he knows this dialect.[73]

The above principles were applied in the recent case of *Testate Estate of Javellana v. Javellana*[74] where the will of Jose Javellana was opposed on probate for failure to comply with the formalities prescribed by law. The Court held that the three witnesses have sufficiently established the due execution of the will even though their testimony may not have been so accurate in details. However, the case was remanded to the trial court to determine whether the will was executed in the language known to the testator who was a Visayan residing at San Juan, Rizal. The will was in Spanish.

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[71] G.R. No. L-15434, October 31, 1960.
[72] Jaboneta v. Gustilo, 5 Phil. 541; Neyra v. Neyra, 42 O.G. 2817. Fernandez v. Tantoco, 49 Phil. 380
[73] Abangan v. Abangan, 40 Phil. 476; Gonzales v. Laurel, 46 Phil. 750.
[74] G.R. No. L-13781, January 30, 1960.

Art. 805 likewise requires that the testator sign the will and each and every page thereof in the presence of the witnesses and that the latter sign the will and each and every page thereof in the presence of the testator and of each other. This requirement is mandatory and failure to comply therewith is fatal to the validity of the will. The courts have no power or discretion to superadd conditions or dispense with those enumerated in the law.[75] In the case of *Testate Estate of Petronila Tampoy v. Alberastine*[76] the probate of the will was denied on the ground that the first page of the will did not bear the thumbmark of the testatrix. Only the second page bore her thumbmark while the three witnesses signed both pages.

The testator's name may be written by some other person in his presence, and by his express direction. The third person may do this by writing the name of the testator and signing his name below it.[77] In *Balonan v. Abellana,*[78] the will of Anacleto Abellana consisting of two pages was signed by Bello in behalf of the testator. The first page contained the signature of Bello and below it the typewritten words "Por la testadora Anacleta Abellana." It also contained the signature of the three instrumental witnesses. The second page was signed in the same manner with the sole difference that the words "Por la testadora Anacleta Abellana" were handwritten. *Held:* It is necessary that the testator's name be written by the person signing in his stead in the place where he would have signed if he knew how or was able to do so. In this case, the name of the testatrix does not appear written under the will by herself or by Bello.

Probate of holographic wills.—

In *Azaola v. Singson*[79] the will was denied by the lower court on the ground that Art. 811 requires three witnesses who could testify to the due execution and signing of the will in case it is contested. *Held:* Art. 810 which authorizes the execution of a holographic will does not require witnesses to the execution thereof. It follows then, that in the probate of the will, no witnesses need be presented. Art. 811 foresees this situation and provides that in the absence of witnesses, expert testimony may be resorted to.

SUCCESSIONAL RIGHTS

Art. 846. Heirs instituted without designation of shares inherit equally.—

In *Belen v. Bank of P.I.*[80] a codicil to the will of Diaz provided: "El resto se distribuirá a las siguientes personas que aún viven o a sus descendientes legitimos: . . . Filomena Diaz—10% . . ." Filomena died leaving two legitimate children—Milagros, who had 7 legitimate children and Onesima, single. A dispute arose as to the scope of the phrase "sus descendientes legitimos. *Held:* Art. 959 which provides that "a distribution made in general terms in favor of the testator's relatives shall be understood as made in favor of those nearest in degree" has no application to the case at bar as it applies to a case where the beneficiaries are relatives of the testator, not those of the legatee. In such case, the law presumes that the testator adopted the rules on intestacy.

[75] Rodriguez v. Alcala, 55 Phil. 150; Uy Coque v. Navas Sioca, 43 Phil. 405; Sano v. Quintana, 48 Phil. 506; Gumban v. Gorecho, 40 Phil. 30; Quinto v. Morata, 54 Phil. 481.
[76] G.R. No. L-14322, February 25, 1960.
[77] Ex Parte Ondevilla, 13 Phil. 470 Ex Parte Arcenas, 4 Phil. 700. Guison v. Concepcion, 5 Phil. 522
[78] G.R. No. L-15153, August 31, 1960.
[79] G.R. No. L-14003, August 5, 1960.
[80] G.R. No. L-14474, October 31, 1960

In this case, the beneficiaries are relatives, not of the testator but of the legatee Filomena Diaz. The testator could not have referred to the rules of intestacy because he made a will and named substitutes for the legatee. In naming "sus descendientes" he could have referred to them only as a group. Therefore, they are entitled to inherit equally. The legacy should be divided into 8 equal shares.

PRESCRIPTION

Prescription against minor represented by guardian.—

In *Wenzel v. Surigao Consolidated Mining Co.*[81] an action was brought to annul a sale of mining claims made by the mother of the plaintiffs to the defendant. At the time of the sale, the vendor had been appointed guardian of the persons and property of her minor children and she made the transfer not only in he own right but also on behalf of her children. The sale was approved by the court. The Court held that the action had prescribed, being brought after 18 years had lapsed. Extinctive prescription runs against minors represented by guardians.

Prescription running before the effectivity of new Code.—

Art. 116 provides that "prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable, even though by the former laws, a longer period might be required." In *Amar v. Odiaman*[82] the plaintiff, on November 24, 1959, filed an action to recover a parcel of land alleged to have been seized in April, 1948 by the defendant through deceit and fraud. *Held:* The case was properly dismissed on the basis of prescription. The plaintiff's cause of action accrued in April, 1948, prior to the effectivity of the New Civil Code on August 30, 1950. The prescriptive period in the New Code has not yet elapsed since its effectivity, in which case the old Code of Civil Procedure shall be applied. Under Sec. 40 of said Code an action for the recovery of title to or possession of, real property or an interest therein can only be brought within ten years after the cause of action accrues. The case at bar was brought beyond the ten-year period.

The same ruling was laid down in the case of *Borromeo v. Zaballero*[83] where the late Buenaventura Zaballero executed in 1935 a promissory note in favor of Borromeo payable on or before May 8, 1957. The claim for said amount was filed against the estate of Zaballero in 1958. The Court held that the action had prescribed. The cause of action accrued before the effectivity of the New Civil Code and hence, is governed by the Old Code of Civil Procedure under which it had already lapsed.

Interruption by judicial summons.—

The filing of an action within the prescriptive period, if the plaintiff desists in its prosecution, or is dismissed does not suspend the running of the statute of limitations under Act 190, Code of Civil Procedure. The parties are left in exactly the same position as though no action had been filed at all.[84]

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[81] G.R. No. L-10843, May 31, 1960.
[82] G.R. No. L-15179, September 30, 1960
[83] G.R. No. L-14357, August 31, 1960.
[84] Amar v. Odiaman, G.R. No. L-15179, September 30, 1960

Oral promise to pay does not interrupt prescriptive period.—

Oral promises and agreements to pay the indebtedness do not renew or interrupt the prescriptive period since Sec. 50 of Act 190 provides that only written acknowledgments could have that effect.[85]

Imprescriptibility of title to registered land may be invoked only by registered owner.—

In *Jocson v. Silos*,[86] it appears that Agustin Jocson and Agueda Torres, while living together without benefit of clergy, acquired in 1931, a parcel of registered land the title to which was issued in the name of Agustin. They subsequently contracted a marriage. After the death of Agueda, Agustin sold the land to the defendant. The plaintiffs herein, children and heirs of Agueda, brought this action to annul the sale in 1957, or 22 years after the sale. *Held:* The action has already prescribed. The rule that title to registered land is imprescriptible would be applied only where it is the registered owner himself who invokes it. In this case, the title was issued in the name of Agustin alone. The children claim under Agueda who was not the registered owner.

Municipal corporation cannot acquire registered land by prescription.

In *Alfonso v. Pasay City*[86a] the City of Pasay expropriated the land of Alfonso in 1925 but never paid for the same. This is an action to recover the land. *Held:* Alfonso, as registered owner, could bring an action to recover possession of registered land the ownership to which is imprescriptible inasmuch as possession is one of the attributes of ownership.

Cause of action based on fraud prescribes in 4 years.—

In *Rapatan v. Chicano*[87] the plaintiffs, upon failing to pay real estate tax, requested Chicano to pay it for them for a consideration consisting of a share in the fruits of the land. Chicano prepared a written agreement which was thumbmarked by the plaintiffs who never were able to read it. The document was executed in 1946 and the action was brought only in 1957. *Held:* The action, being based on fraud, had already prescribed after four years from the discovery thereof in 1950.

Civil action for defamation prescribes in one year; when counted.—

The one year period in Art. 1147 should be counted from the day the action could have been brought (Art. 1150). The case of *Alcantara v. Amoranto*[88] involves a libelous letter sent by the defendant to the office of the President. It was held that the one-year period should be counted, not from October 23, 1955 when the alleged libelous letter was sent to the office of the President but from January 6, 1956, when the contents thereof came to the plaintiff's knowledge. A written defamation becomes actionable upon its publication, i.e., when it is communicated to third persons. It is evident, however, that the libelous matter must first be exhibited to the person libeled before the action could be brought. A person defamed could hardly be expected to institute proceedings for damages when he has no knowledge of the libel.[89]

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[85] G.R. No. L-12998, July 25, 1960.
[86] G.R. No. L-12998, July 25, 1960.
[86a] G.R. No. L-12754, January 30, 1960.
[87] G.R. No. L-13828, February 25, 1960.
[88] G.R. No. L-12493, February 29, 1960.
[89] See also Tejuco v. Squibb & Son Phil. Corp., G.R. No. L-11502, April 30, 1958; Inciong v. Tolentino, G.R. No. L-10923, September 23, 1958; People v. Aquino, 68 Phil. 588.

Action for recovery upon solution indebiti prescribes in 6 years.—

In *Belman Cia. v. Central Bank*[90] it was held that the plaintiff's action for the recovery of payments made for exchange tax had already prescribed. It was a case of *solutio indebiti* under Arts. 2154 and 2155 of the Civil Code, which is a quasi-contract. Art. 1145 provides that actions upon a quasi contract must be commenced within six years.

Effect of Moratorium Law on prescriptive period.—

In *Levy Hermanos Inc. v. Perez*[91] it appears that the decision against the defendant became final on September 23, 1941. Between this date and the filing of the present action, more than 14 years have already elapsed. An action upon a judgment is supposed to be brought within ten years. The issue is whether the period was interrupted. The Moratorium Law, as regards those who did not suffer from the effects of the war, was in force from March 10, 1945 to July 26, 1948, or 3 years, 4 months and 16 days. But inasmuch as the defendant is a war sufferer, the debt moratorium must be deemed to have been in force from March 10, 1935 to May 18, 1953 when it was declared unconstitutional—a period of more than 8 years. Deducting this 8 years from the 14 years, it is plain that the action was brought within the prescriptive period.

Action based on judgment must be brought within 10 years.—

In *Quiambao v. Mora*[92] the driver of the defendant was found guilty of negligent driving in a criminal case and was ordered to indemnify the offended party. This is an action against the employer based on his subsidiary liability. It is argued that the action has lapsed, it being based on a quasi-delict and must have been brought within 4 years. *Held:* The plaintiff's cause of action is based on the judgment of conviction against the driver and his insolvency made his employer liable. It may be brought within 10 years from the date the judgment became final.

OBLIGATIONS

Court may fix period for payment if intended by parties (Art. 1197).—

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

In the case of *Cosmic Lumber Co., Inc. v. Manaois*[93] it appears that on different dates from Nov. 10, 1952 to June 30, 1953, the defendant bought hardware goods, lumber and construction materials from the plaintiff. A balance of ₱4,147.74 remained uncollected for which action was brought. The parties entered into a contract of sale on credit. In the invoices, the words "credit sales" appear and it is stated that—

> "All civil actions on this contract shall be instituted in the courts of the City of Dagupan and it is hereby agreed that all my/our purchases from this Company are payable in the said City of Dagupan. It is agreed that if this bill is not paid within ..... days from date hereof I/we will pay interest at the rate of 10 per centum per annum

[90] G.R. No. L-15044, July 14, 1960.
[91] G.R. No. L-14487, April 29, 1960.
[92] G.R. No. L-12690, May 25, 1960.
[93] G.R. No. L-12692, January 31, 1960.

on all overdue accounts. The buyer hereby agrees to pay any and all attorney's fees and court costs should the seller institute legal action. Goods travel at buyer's risk. No claim of whatsoever nature will be considered after 24 hours from date of delivery."

Held: The parties intended to fix a period for payment of obligation but failed to do so. Under Art. 1197 of the new Civil Code, the Court may fix it. The Court ordered the defendant to pay the plaintiff the amount still owing within 15 days from the date the judgment shall have become final.

The same provision was involved in the case of *Calero v. Carrion.*[94] The facts are that in 1937 plaintiff proposed to Don Enrique Carrion, father of defendants, a business transaction in which they planned to purchase between themselves a real estate for ₱250,000 in cash and the rest in installments. Don Enrique accepted the proposition and then left the country, continuing his obligation in this transaction through his attorney, Don Santiago Carrion. While preparing the instrument of purchase Don Santiago explained to the plaintiff the difficulty of mutual consultation in case of repairs, improvements, etc. and that in order to avoid these difficulties, Don Santiago proposed to buy the lot in the name exclusively of defendants promising to pay the plaintiff 20% of the benefits derived from the sale. Plaintiff accepted the proposition with the understanding that the real estate should be sold at the moment a buyer came around. But since 1937, plaintiff has made various offers to sell for a price offered by the buyers and the plaintiff has a buyer for ₱1,455,900 but the defendant refused to sell the lot for this price. From 1937 up to the filing of the complaint on Dec. 20, 1956 defendants have profited by the rentals of the land without sharing with the plaintiff. Plaintiff suffered damages and has requested the defendant to render an account of the administration of the real estate which was refused. Plaintiff requested the court to order the defendant to render an account and to submit to the plaintiff 20% of the liquidated products of the said account and to order the defendant to sell the land for not less than ₱1,455,900 within the period of three months or to pay the plaintiff ₱241,180 which represents 20% of the benefits obtained. Upon defendant's motion the court dismissed the complaint on the ground of prescription, hence the appeal.

Held: The dismissal was affirmed. Plaintiff's contention that the time for enforcing their right of action to have the period determined did not begin to run until the defendants had been formally demanded and they refused to sell the property is illogical. Before the period is fixed, the defendants' obligation to sell is suspended. But this is not to say that the plaintiff has no cause of action. His cause of action is to have the court fix the period and after the expiration of that period to compel the performance of the principal obligation to sell. This right to have the period fixed is born from the date of the agreement itself which contained the undetermined period. Extra-judicial demand is not essential for the creation of this cause of action to have the period fixed. This is the clear intedment of Art. 1197 of the new Civil Code as well as Art. 1128 of the Spanish Civil Code and the applicable doctrine laid down by the Supreme Court in several cases.[95] And since the agreement was executed on May 28, 1937 and the complaint to have the period fixed was filed on Dec. 21, 1956 or after almost 20 years plaintiffs's cause of action has prescribed.

[94] G.R. No. L-1324, March 30, 1960.
[95] Gonzales v. De Jose, 66 Phil.. Osorio v. Tan, G.R. No. L-8262, November 29, 1955.

KINDS OF OBLIGATIONS

Payment made by one of the solidary debtors extinguishes the obligation (Art. 1217).—

Under Art. 1217 of the new Civil Code, payment made by one of the solidary debtors extinguishes the obligation. This was applied in the case of *Camus v. Court of Appeals and Moya.*[95a] In that case, it appears that on July 13, 1956, respondent Leon Moya sued petitioner Pedro Camus and the Luzon Surety Co. in the CFI of Negros Occidental for payment of a promissory note of ₱2,500 signed by Camus and guaranteed by the surety co. Defendants were condemned to pay jointly and severally said amount. Camus appealed to the Court of Appeals and pending this appeal the Luzon Surety already paid the judgment of the lower court. *Held:* Payment made by one of the solidary debtors extinguished the obligation under Art. 1217 of the New Civil Code, so that the payment by the surety company to Moya extinguished the obligation of the two solidary co-debtors. Whatever controversy remains from here on is solely between the two co-debtors. The dismissal of the appeal is therefore proper.[96]

In obligation with a penal clause, penalty substitutes for interest.—

In *Cabarroguis v. Vicente*[97] the plaintiff sustained physical injuries causing permanent disability to her right forearm when the jeepney she was riding hit another vehicle. To avoid court litigation, defendant-owner of the jeepney entered on July 13, 155 into a compromise agreement with the victim where he promised to pay her ₱2,500 for actual and compensatory damages, exemplary and moral damages. It was also stipulated that if he fail to pay within 60 days, an additional ₱200 as liquidated damages would be given to the victim. After paying ₱1,500 leaving a balance of ₱1,000, defendant failed to pay notwithstanding repeated demands. The lower court ordered the defendant to pay ₱1,200 with interest at the legal rate from the filing of the complaint.

Held. Applying Art. 1226 of the new Civil Code, no interest can be awarded on the principal obligation, the penalty of ₱200 agreed upon having taken the place of payment of such interest. But the plaintiff is entitled to the interest on the amount of the penalty because when a penalty is stipulated for default, both the principal obligation and the penalty can be demanded by the creditor. The Court cited the cases of *Government of the Philippine Islands v. Lim,*[98] and *Luneta Motor Co. v. Moral.*[99]

EXTINGUISHMENT OF OBLIGATIONS

Debt Moratorium Law did not condone debts.—

The Debt Moratorium Law merely suspended the collection or payment of the obligation. It did not condone the debt. Inasmuch as interest is but an accessory to an obligation, the same must be deemed affected in the same manner.[100]

[95a]
[96] Velasco v. Rosenberg, 29 Phil. 212.
[97] G.R. No. L-14304, March 23, 1960.
[98] 61 Phil. 737.
[99] 73 Phil. 80.
[100] Warner Barnes v. Yasay, G.R. No. L-12984, July 26, 1960.

Payment of obligation incurred during the Japanese time.

It is settled that if a loan contracted during the Japanese occupation is payable within a period of time embracing the Japanese occupation and the liberation, the payment may be revalued under the Ballantyne scale. On the other hand, if the loan was payable after liberation only, then it should be paid without revaluation under the Ballantyne scale.[101]

The Ballantyne schedule was applied by the Court in *Mercado v. Mercado.*[102] On Aug. 29, 1944, plaintiff sold his land to defendant for ₱5,000 in Japanese war notes subject to redemption at any time within the period of ten years from the date of sale. In 1954, plaintiff offered to redeem said land for ₱300, Philippine currency. Defendant refused and this action was brought to compel him to resell. The Court of First Instance rendered decision in favor of the defendant. *Held:* The lower court relied on the case of *Gomez v. Tabia*[103] which is different from the case at bar. In that case, the property was not redeemable during the occupation, the parties having stipulated that the seller may repurchase within 30 days after the expiration of one year from June 24, 1944. When this period came about, Japanese war notes were no longer legal tender. In the case at bar, the redemption could have been made as early as August 30, 1944 in Japanese war notes. Hence, the Ballantyne scale should apply.

But in *Romasanta v. Sanchez,*[104] the loan was to be paid in Philippine currency. It appears that on Dec. 29, 1944, the defendant received from the plaintiff the sum of ₱35,000 in Japanese war notes as a loan and that to guarantee its payment the defendant executed a real estate mortgage in favor of the plaintiff wherein one of the conditions stipulated, particularly that which refers to the manner of payment is: "(a). That the said loan of ₱35,000 will not earn interest; that the mortgagor bound himself not to redeem during the war the property mortgaged so that the term of one year to redeem should be counted from the date of the termination of the war and peace is actually restored in the Philippines, and the new civil government is already functioning that the loan should be paid with Philippine currency of the new civil government established in the Philippines." Plaintiff brought this action to recover the sum of ₱35,000 plus ₱3,500 as attorney's fees and in default of payment, to have the mortgage foreclosed. The defendant contends that the plaintiff could not recover more than ₱500 Philippine currency under the Ballantyne schedule considering that in Dec. 1944 when the loan was obtained, the value of the Japanese currency in relation to the Philippine peso was 70 to 1.

Held: The Ballantyne scale is not applicable so that the plaintiff can recover ₱35,000 in Philippine currency. The agreement is clear that the defendant could not redeem or pay the loan during the war but only within the term of one year to be counted from the date of the termination of the war, when peace has actually restored in the Philippines, and after a new government has been established, in which case, the loan shall be paid in the currency to be issued by the new government.

The Ballantyne schedule is not also applicable if the debtor agrees to pay peso for peso, as held in the case of *Fong v. Javier.*[105] The facts are that during the occupation, the defendant received from the plaintiff ₱12,000 and he

[101] De Asis v. Agdamag, G.R. No. L-3709; Rono v. Gomez, 46 O.G. Supp. 11, 339.
[102] G.R. No. L-14461, August 29, 1960.
[103] 47 O.G. 641.
[104] G.R. No. L-15125, April 29, 1960.
[105] G.R. No. L-11059, March 25, 1960.

signed a note promising to pay plaintiff the said amount in legal currency "within six months from and after the formal declaration of peace between Japan and the United States." As defendant paid only ₱5,850, plaintiff filed the present action to collect the balance due on the matured note. Defendant contends that the loan was given in Japanese notes and he should therefore pay only ₱600, the equivalent thereof according to the Ballantyne schedule of values of Japanese money.

The Supreme Court rejected this contention and decided that debts contracted during the Japanese occupation should be paid in Philippine currency peso for peso when the debtors had so expressly promised.

Application of payments. (Art. 1252 N.C.C.)

In *Ligget & Myers Tobacco Corp. v. Ass. Ins. & Surety Co.*[106] Art. 1252 of the New Civil Code was applied. It provides that he who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. It states further that if the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract. In the above-mentioned case, it appears that Ailmal had an obligation to deliver 66 cases of cigarette to the petitioner. The payment of taxes was guaranteed by a bond executed by the defendant surety company. Petitioner had to pay the letter of credit and taxes due upon failure of Ailmal to do so. It demanded reimbursement from Ailmal with notice to his surety. Upon default, this action was brought. Petitioner secured authority to sell the deteriorating cigarettes, the proceeds to be applied to the payment of Ailmal's obligation. The lower court ordered that the proceeds be first applied to the taxes, payment of which was guaranteed by a bond. *Held:* Art. 1252 is applicable. According to Manresa: "First of all, the right to make the application corresponds to the debtor and subsists until he makes the payment, and at that time, if he has not made use of it, it is extinguished and the application becomes subject to legal rules, unless the creditor should determine it and his decision is accepted by the obligor." In this case, Ailmal did not exercise his option. On the contrary, petitioner prayed not only for authority to sell the cigarettes but also to apply the proceeds of the sale to Ailmal's obligation to deliver the cigarettes or pay their value. The debtor and the surety never objected to this. Such application is binding. The respondent contends that the revenue tax is a lien on specific movable property and should first be paid. However, the taxes have been paid by petitioner who himself acquired the preferential right which he has waived. The surety and the debtor are jointly and severally liable for the payment of taxes.

Tender of payment without consignation is not a valid payment.—

In *Capalungan v. Medrano*,[107] Capalungan filed the action against Medrano alleging that he tried to redeem the land from the latter by tendering the sum of ₱1,200 but the defendant refused to accept it and therefore prayed that said defendant be ordered to receive the said amount and to execute the deed of release. Prior to this, the plaintiff conveyed the possession of the land to the defendant by virtue of a contract of equitable mortgage, as finally deter-

[106] G.R. No. L-15643, October 31, 1960.
[107] G.R. No. L-13783, May 18, 1960.

mined by the trial court and not as a sale with right to repurchase, to secure the payment of said sum by defendant to the plaintiff.

Held: One of the modes by which an obligation is extinguished is tender of payment and consignation. The plaintiff personally approached defendant and offered to pay him ₱1,200 but the latter refused to accept the money. In order to be released from responsibility, the plaintiff should have consigned the sum due, but this he failed to do, hence the payment was never effected and the indebtedness was not discharged.

The Court distinguished the case of a mortgage debtor attempting to redeem the mortgaged property from the cases of the legal redemptioner and the vendor *a retro* trying to repurchase the property. In the first case, the mortgage debtor is discharging an obligation. In the latter two cases, the legal redemptioner and the vendor *a retro* are exercising a privilege. So, in order to preserve their right, all they have to do is to tender payment within the prescribed period. Should the repurchase price be refused, they do not have to effectuate consignation. Whereas, with respect to debts, tender of payment without consignation does not constitute valid payment.

Merger of creditor and debtor. (Art. 1276).—

The case of *Kapisanan Ng Mga Manggagawa sa MRR v. Credit Union Kapisanan Ng Mga Manggagawa sa MRR* [108] is about an action filed to recover a sum of money from the defendant. The defendant admits that it had borrowed money from the plaintiff in the total amount of ₱104,000 payable within 10 years in 10 equal annual installments. However, pointing out the stipulation that "from 1950 to 1953, inclusive, when the President of the plaintiff and the Chairman of the defendant credit union, one and the same person, Mr. Vicente Olazo, and the majority members of the Board of the two associations were the same, no payment was made by the defendant to the plaintiff and the amount of ₱26,800 was due and unpaid", defendant insists that said sum should not now be paid since there was a merger of creditor and debtor under Art. 1276 of the new Civil Code. *Held:* There was never any merger of the two juridicial entities. They kept their own identities and activities; the one was duly registered and operated under Com. Act 213 and Rep. Act 875, while the other functioned under the provisions of the National Cooperative Act.[109] In fact, one is now suing the other—a thing that would not happen had there been a fusion. It is to be noted that only a majority, not all, of the members of the board of the two organizations were the same persons.

Requisites of novation.—

Novation is another cause for the extinction of obligations. It may consist in changing the object or principal conditions of an obligation, or in substituting the person of the debtor, or in subrogating a third person in the rights of the creditor.[110] And in order that an obligation be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.[111] The Supreme Court held in the recent case of *Luneta Motor Co. v. Baguio Bus Co.*[112] that there was no novation due to

[108] G.R. No. L-14332, May 20, 1960.
[109] Act 2508, as amended.
[110] Art. 1291, NEW CIVIL CODE
[111] Art. 1292, NEW CIVIL CODE.
[112] G.R. No. L-15157, June 30, 1960.

absence of the necessary requisites. It appears in this case that the defendant bought from the plaintiff on installment basis, 6 trucks, whereby it paid certain sums as down payments. The unpaid balances were covered by promissory notes guaranteed by a mortgage of the trucks to the plaintiff. When the defendant failed to pay the notes, the plaintiff, instead of exacting the fulfillment of defendant's obligation under the purchase agreement by demanding payment of the promissory notes, or foreclosing the chattel mortgages, elected to cancel said purchase agreements and recover the possession of the trucks from the defendant. It was held that the plaintiff, having chosen the latter course, could not legally demand compliance by defendant of its undertaking to pay attorney's fees and costs in case of default under the said promissory notes and chattel mortgages, for the plaintiff has, in effect, waived its rights under said instruments. On the other hand, the defendant contended that the purchase agreements were novated by the promissory notes and by the chattel mortgages and, consequently, plaintiff's action should be based on the latter instruments. The Court brushed aside this contention as untenable, saying that novation is never presumed and in order that an obligation may be extinguished by another which substitutes it, it shall be necessary that it is so declared expressly, or that the old and the new obligations be incompatible in every respect. In the instant case, the parties never agreed to, nor intended, a novation of the purchase agreements. On the contrary, they expressly stipulated that the installment payments shall be "in accordance with the terms of the seller's usual form of chattel mortgage and notes which the purchaser agrees to execute prior to the delivery of the properties purchased."

The question of whether or not there is a novation in a particular case involves a question of fact, and in a case [113] it was held to fall within the jurisdiction of the Court of Appeals.

CONTRACTS

Damages for breach of contract.—

Contracts have the effect or force of law between the parties to be complied with in good faith, and a breach thereof gives rise to an action for damages. Thus, in the case of *Intestate Estate of Clemente del Castillo v. Guerrero*,[114] the plaintiff, an heir of the deceased, filed an action for damages against the defendant for an alleged failure of the latter to subdivide one of the lots which the defendant bound himself to subdivide by virtue of a contract entered into with the plaintiff to that effect. The plaintiff was not however allowed by the court to recover damages because the heirs, including the plaintiff, did not oppose defendants motion for payment and no appeal was taken from the order granting said motion, the said order being determinative of the rights arising from the contract and binding upon the parties, including the plaintiff, Atty. del Castillo.

Relativity of contracts.—

Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.[115] This is known as the principle of relativity of contracts. Though there are

[113] Dizon v. Ocampo, G.R. No. L-14182, June 30, 1960.
[114] G.R. No. L-11994, July 26, 1960.
[115] Art. 1311, NEW CIVIL CODE.

admitted exceptions to this general rule, the Supreme Court did not find the case of *National Labor Union v. International Oil Factory*[116] as falling within the exception. In this case, it appears that the members of the Nation Labor Union (NLU) were granted 15 days vacation leave. To implement the grant, the Industrial Court ordered the reception of evidence on the service of the workers. Thereafter, 25 members resigned from the NLU, and with some non-union members, formed another union, the FFW. The FFW and the company reached an agreement wherein, in consideration of the dropping of the case against the members of the FFW, the company would grant them 8 days vacation leave.

Held: This agreement is not binding on the members of the NLU. From the fact that the court's approval of the agreement did not carry any qualification excluding the NLU from its application, it does not necessarily follow that said approval included the NLU. What the court approved was the agreement "executed by the parties" and enjoined them to strictly comply with it.

Stipulations "pour autrui"; Art. 1311, par. 2; Management Contracts.—

The year 1960 saw several cases holding that management contracts entered into by the Bureau of Customs and Port Services pursuant to Act 3002 as amended by R.A. 140 are examples of stipulations "pour autrui" under Art. 1311 of the new Civil Code and binding on the consignees of goods and other articles imported even though the latter are not signatories to those contracts. The usual issues involved the binding effect on the consignees of the provisions in the management contract limiting the liability of port service agents to the former to only ₱500 per package of articles lost or destroyed, and the limitation of the period for bringing a claim to 15 days only from the date of loss.

The cases of *Bernabe & Co. v. Delgado Bros., Inc.*,[117] *Northern Motors, Inc. v. Prince Line and Delgado Bros.*,[118] and also *Bernabe & Co. v. Delgado Bros.*,[119] involved Paragraph 15 of the Management Contract limiting the arrastre contractor's liability for loss of articles intrusted to their responsibility to ₱500 per package. The plaintiffs-consignees contended that this provision did not bind them for they are not parties to it, so that they could recover the actual value of the things lost or destroyed. Plaintiffs cited Art. 1311 of the new Civil Code and said that although the Management Contract contains provisions benefiting persons not parties thereto for said contracts pertains to serving the public, and that anyone desiring to avail of such services has the right to demand it despite the fact that he was not a party to the Management Contract, nevertheless, the plaintiffs claimed, such third parties can not be bound by stipulations and conditions which are onerous to them.

Held: This contention is untenable and not in accordance with the spirit of the law. When a third person accepts the benefits of a contract, he is also bound to accept the concomitant obligations corresponding thereto.

Explaining why this Management Contract is considered a stipulation "pour autrui", Art. 1311 was cited which provides in part:

> "Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. . . .
>
> "If a contract should contain some stipulation in favor of a third person, he may

[116] G.R. No. L-13845, May 30, 1960.
[117] G.R. No. L-14360, February 29, 1960.
[118] G.R. No. L-13884, February 29, 1960.
[119] G.R. No. L-12058, April 27, 1960.

demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.'

Tested by the above-quoted Article, Paragraph 15 of the Management Contract is in the nature of a stipulation "pour autrui" that is, for the benefit or in favor of a third party, the plaintiffs. There can be no doubt that by provision of the Management contract, the arrastre contractor and the Bureau of Customs deliberately conferred benefit upon the consignees and importers, because it is to the latter that the merchandise was to be delivered in good order and payment made in event of damage or loss while in the arrastre contractor's control and custody.

In the cases of *Ysmael & Co., Inc. v. U.S. Lines* and *Manila Port Service*,[120] *Delgado Bros., Inc. v. Li Yao & Co.*,[121] and *Villanueva v. Manila Port Service & MRR*,[122] the consignees were not allowed to recover damages for loss or destruction of merchandise because the plaintiffs made their provisional claims beyond the 15-day period provided for in the Management contract. Again, the consignees' contention that they were not bound by the contract, they not being signatories, was rejected by the Court following the rule laid down that a Management contract is a stipulation "pour autrui". Even if not signatories, they became parties thereto when through their brokers, they obtained the delivery permit and gatepass in the manner prescribed by law.

In *Sun Bros. & Co. v. Manila Port Service & MRR*,[123] the decision was different and did not follow the pattern enunciated in the case discussed due to the peculiar circumstances of the case. In this case, it appears that the plaintiff purchased one case of Hosiery Knitting Machine Spare parts from the Isiwaki Precision Works Ldt. of Japan. Said article arrived on board the SS Leneverett at the Port of Manila on Aug. 22, 1956. Upon being advised by the Prudential Bank & Trust Co. of receipt of Shipping documents, plaintiff paid the value thereof and then took steps to secure the necessary tax exemption certificate from the Department of Finance necessary in order that the articles may be released by the Bureau of Customs without the payment of taxes, which certificate was issued on Sept. 7, 1956. Plaintiff engaged the services of the City Brokerage Co., Inc. for the release of said article and its delivery to the plaintiff. However, the representative of said Brokerage Co. with the Customs Examiner and another representative of the defendant could not locate the articles in question after a search of about 5 days. In this impasse, said broker for and in behalf of the plaintiff filed with the office of defendant Manila Port Service, a provisional claim on Sept. 15, 1956 for the loss of the cargo; such claim was followed by a formal claim which was denied by the defendants on the ground that it was filed after the expiration of the 15-day period provided in Paragraph 15 of the Management Contract entered into between the Bureau of Customs and defendants. The Court of Frst Instance rendered judgment in favor of the plaintiff and defendant appealed.

Issue: Is the 15-day limit for the presentation of a claim against the Manila Port Service as stipulated in the contract between it and the Bureau of Customs binding upon the plaintiff-consignee?

Held: The defendants cannot invoke the limitation in question as defense to the action of plaintiff, since under the circumstances obtaining in the case

[120] G.R. No. L-14394, April 30, 1960.
[121] G.R. No. L-12872, April 29, 1960.
[122] G.R. No. L-14764, November 23, 1960.
[123] G.R. No. L-13500, April 29, 1960.

at bar, it does not clearly appear that the claim for the cargo actually took place beyond the 15-day period. The consignee-importer cannot be bound by the provision in the Management Contract limiting the liability of a contractor to ₱500, since in the case at bar there was no gate pass as the goods were never withdrawn from the piers because they were lost while in the possession of the defendants. As was held in the case of *Tomas Grocery v. Delgado Bros.*,[124] the notice in the gatepass authorizing the importer to bring the cargo out of the pier binds the owner of the goods because he signed the pass and therefore knew its provisions and is estopped from denying the condition therein.

Public office cannot be the object of a contract.—

Under Art. 1347 of the new Civil Code, things which are outside the commerce of men cannot be the object of a contract. So are services which are contrary to law, morals, good customs, public order or public policy. The foregoing principle was recently applied in the case of *Saura v. Sindico* [125] in which it appeared that Ramon Saura and Estela Sindico were contesting for nomination as the official candidate of the Nacionalista Party in the 4th district of Pangasinan in the 1957 Congressional election. They entered into a written agreement containing a pledge that "Each aspirant shall respect the result of the aforesaid convention, i.e., no one of us shall either run as a rebel or independent candidate after losing in said convention."

In the provincial convention held on Aug. 31, 1957 Saura was elected and proclaimed NP's official candidate. On Sept. 6, 1957 Sindico, in disregard of the covenant, filed her certificate of candidacy for the same office and campaigned openly for her election. Wherefore Saura commenced suit for recovery of damages. The lower court dismissed the complaint on the ground that the agreement sued upon is null and void in that (1) the subject matter of the contract being a public office is not within the commerce of man, and (2) the "pledge" was in curtailment of the free exercise of elective franchise and therefore against public policy. Hence this appeal.

Held: The decision was affirmed. Among those that may not be the subject matter of contracts are certain rights of individuals which the law and public policy deemed wise to exclude from the commerce of man. Among them are the political rights conferred upon citizens including but not limited to one's right to vote, the right to present one's candidacy to the people and to be voted to public office provided that all the qualifications prescribed by law obtains. The Court cited American cases.[126] In common law, certain agreements in consideration of the withdrawal of candidates for office have invariably been condemned by the courts as being against the public policy, be it a withdrawal from the race for election.

When considered oral contract.—

To be a written contract, all its terms must be in writing, so that a contract party in writing and partly oral is, in legal effect, an oral contract.[127]

When terms of contract are clear, literal meaning controls. (Art. 1370)—

In *Lacson v. Court of Appeals and Pacific Commercial Co.*,[128] Art. 1370 of the new Civil Code was applied which provides that if the terms of a contract

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[124] G.R. No. L-11154.
[125] G.R. No. L-13403, March 30, 1960.
[126] Roberts v. Cleveland, 48 N.M. 226; 153 A.L.R. 635.
[127] Manuel v. Rodriguez, G.R. No. L-13535, July 27, 1960; 12 Am. Jur. 550
[128] G.R. No. L-10119, September 30, 1960.

are clear and leave no doubt regarding the intention of the parties, the literal meaning of its stipulation shall control. In this case, the contract executed by the respondent company provides: "That for and in consideration of the sum of ₱4,000, the Pacific Commercial hereby sells, transfers, conveys and quitclaims unto Ramon Lacson, all its rights, title to and interests in the parcels of land described as follows x x x".

Petitioner, however, argues that upon the insertion in the deed of sale of the clause "That on or about Aug. 23, 1939, the Pacific Commercial Co., obtained a judgment in its favor and against Rafael Lacson and that by virtue of the judgment in Civil Case No. 11525 aforesaid writ of execution was issued and the Provincial Sheriff levied upon the parcels of land and on the sugar quota allocated to Hda. Sta. Maria x x x," all that the judgment had decreed in favor of respondent company in said civil case was included in said transfer.

Held: The argument is untenable. The above clause was merely inserted in the deed to trace the source of the rights, title to and interests in the parcels of land described therein and not the judgment as a whole obtained against petitioner.

In contracts, intention prevails over words.—

In *Atienza Bijis v. Legaspi et al.*,[129] it appears that on Aug. 12, 1952 Francisco Legaspi and the heirs of his deceased wife filed suit against Luis Atienza Bijis alleging that they are the owners *pro-indiviso* of a parcel of a parcel of land Lot No. 1155 in Poblacion Rosario, Cavite and improvements thereon consisting of (a) a house of 2 stories, and (b) a storehouse acquired and possessed by them since August 22, 1932; that in May 1947, defendant through fraud and misrepresentations and over the protests of the plaintiff caused the storehouse to be removed and sold for value to the prejudice of the plaintiff. The complaint prayed for the declaration of the act of demolition and removal as quasi-delict and asked ₱4,900 as damages. In his answer, herein petitioner asserted ownership of the lot alleging that he had acquired it by purchase from the Agricultural & Industrial Bank, which bank acquired the same from the San Lazaro Estate Bank. The CFI rendered decision declaring the plaintiff owner of the lot, but on appeal to the C.A. that court reversed the decision declaring respondent owner of the lot, hence this appeal.

Held: C.A. decision is reversed. The Court of Appeals in its decision failed to make findings of fact obtaining in the record supported by documentary evidence and found out by the trial court which clearly indicate that there had been an erroneous exchange in the number of lots belonging to the parties in the different deeds that had been executed. The late Pedro Medina had originally been the registered owner of the lots in question one of which is lot No. 1155 located in the poblacion of Rosario, Cavite and the other at barrio Bagbag of the same municipality. It appears that although the lot mortgaged by Pedro Medina to the San Lazaro Estate was designated as Lot No 1357, the report of approval described it as situated in the poblacion of Rosario, Cavite with improvements consisting of a 2-story house and a camarin which features distinguish Lot. No. 1155 from Lot No. 1357 located in barrio Bagbag. Petitioner, with knowledge of respondent, took possession of Lot No. 1155 and when the parties discovered that there has been a mistake in the designation of the numbers of the lots, they attempted to rectify that error by executing instruments of sales in favor of each other over the two lots in dispute. Although the documents are in the form of sales, the obvious intention of the

[129] G.R. No. L-10705, March 30, 1960.

parties was to exchange the two lots with each other. The foregoing amply support the contention that the petitioner is the owner of Lot No. 1155 and respondents are the owners of Lot No. 1357. The mere mention of Lot No. 1357 in the contract to sell, the final deed of sale and the certificate of title in favor of herein petitioner is not conclusive that the property sold to him is the lot located in Bagbag. The parties meant Lot No. 1155. Art. 1370 of the new Civil Code provides that if the words in a contract appear contrary to the evident intention of the parties, the latter shall prevail.

Invalid provisions do not render whole agreement void if separable.—

In case of divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced.[130] In the case of *Velayo v. Court of Appeals et al.*,[131] it appears that on Jan. 8, 1958, the Juvenile and Domestic Relations Court issued an order requiring respondent to pay petitioner all sums due her and her children for support. Respondent appealed to the Court of Appeals. Subsequently, respondent filed a motion to dismiss the case on the ground that he had entered into an amicable settlement with the petitioner. The appellate court dismissed the case. Petitioner filed the present petition for review.

Petitioner submits that the compromise agreement was void *ab initio* because it contains terms which are contrary to law, morals and public policy.

Held: There are really certain parts of the compromise agreement which are violative of legal precepts and highly repugnant to morals. Sanction cannot be given to petitioner's waiver of any claim against respondent for support now or in the future. The right to receive support cannot be renounced and no compromise upon future support shall be invalid.

There is nothing wrong, however, with the other stipulations in the compromise agreement, like the one giving respondent custody of the children. The invalid provisions do not render the whole agreement void as they are independent of the rest of the terms of the agreement.

NATURAL OBLIGATIONS

Voluntary fulfillment by obligor is necessary element of natural obligation.

In *Ansay et al. v. Board of Directors of the National Development Co.*,[132] it appears that on July 25, 1956 the plaintiffs filed against the defendants in the CFI of Manila a complaint praying for a 20% Christmas bonus for the year 1954 and 1955. The court dismissed the complaint and upon appeal to the Supreme Court, the dismissal was affirmed. The appellants' contention is that there exist a cause of action because their claim rest on moral grounds or what in brief is defined by law as a natural obligation. *Held:* Art. 1423 of the new Civil Code classifies obligations into civil or natural. "Civil obligations give a right of action to compel their performance. 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 payment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof."

It is readily seen that an element of natural obligation before it can be cognizable by the courts is voluntary fulfillment by the obligor. Certainly, re-

[130] Art. 1420, NEW CIVIL CODE.
[131] G.R. No. L-14541, March 30, 1960.
[132] G.R. No. L-13667, April 29, 1960

tention can be ordered but only after there has been volntary performance. But here there was no voluntary perfomance. In fact the court cannot order the performance. From the legal point of view, a bonus is not a demandable and enforceable obligation. It is so when it is made a part of the wage or salary compensation.[133]

While it is true that in the case of *H. E. Heacock v. Nat'l Labor Union et al.*[134] it was stated that: "even if a bonus is not demandable for not forming part of the wage, salary or compensation of an employee, the same may nevertheless be granted on equitable consideration as when it was given in the past, though withheld in succeeding 2 years from low-salaried employees due to salary increases", still the facts in said Heacock case are not the same in the instant case and hence the ruling applied in said case cannot be considered in the present action.

ESTOPPEL

Art. 1434 NCC applied.—

In the cases wherein the Supreme Court held that one who buys from a person who is not the registered owner is not a purchaser in good faith, the buyer never dealt with the registered owner, yet the certificate of title was transferred from the registered owner directly to the buyer. In the case of *Inquimboy v. Paez Vda, de Cruz*,[135] however, while the seller was not the registered owner at the time of the sale, he nevertheless subsequently acquired valid title in his own name, which title passed by operation of law to the buyer, by virtue of Art. 1434 which provides that when a person who is not the owner of a thing sells or alienates and delivers it and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

TRUSTS

Implied trust; purchase of property in the name of another.—

In *Heirs of Candelaria v. Romero et al.*,[136] it appears that in 1917, Emilio Candelaria and his brother Lucas Candelaria bought each a lot in the Sulucan Subdivision on installment basis. Lucas, faced with the inability of meeting the subsequent installments because of sickness, sold his interest therein to his brother Emilio, who then reimbursed him the amount he had already paid, and thereafter continued payment of the remaining installments. Although Lucas had no more interest over the lot, the subsequent payments made by Emilio until fully paid were made in the name of Lucas, with the understanding that the necessary documents of transfer will be made latter, the reason that the transaction being from brother to brother. In 1918, title for said lot was issued in the name of Lucas Candelaria married to Luisa Romero". Lucas held the title merely in trust for Emilio and this fact was acknowledged not only by him but also by the defendants, his heirs, on several occasions. The defendants, still in possession of the property, refused to reconvey it to the heirs of Emilio, the herein plaintiffs, despite repeated demands.

Held: The defendants are duty bound to reconvey the land to the plaintiffs because the former are holding it under an implied trust in favor of the latter. As held in the case of *Martinez v. Graño*,[137] and as provided in Art. 1453 of the

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[133] Phil. Education Co. v. NLU, G.R. No. L-5103, December 24, 1952.
[134] G.R. No. L-5577, July 31, 1954.
[135] G.R. No. L-13953, July 26, 1960.
[136] G.R. No. L-12149, September 30, 1960.
[137] 42 Phil. 35.

new Civil Code, where property is taken by a person under an agreement to hold it for or convey it to another or the grantor, a resulting or implied trust arises in favor of the person for whose benefit the property was intended.

It is also a rule that an implied trust arises where a person purchases land with his own money and takes a conveyance thereof in the name of another. The property is held on a resulting trust in favor of the one furnishing the consideration for the transfer, unless a different intention or understanding appears.

While laches constitutes a bar to actions to enforce the trust, and repudiation is not required, unless there is concealment of the facts giving rise to the trust, however, continuous recognition of a resulting trust precludes any defense of laches in a suit to declare and enforce the trust. The beneficiary of a resulting trust may, without prejudice to his right to enforce the trust, prefer the trust to persist and demand no conveyance from the trustee.

Action not yet prescribed.—

In *Robles v. Manahan*,[138] it appears that in his will dated July 5, 1944, Diaz designated the petitioners legatees of the rentals from the property located at Rosario St., Manila. In the same will, a trust estate was created out of the properties not disposed of and the Bank of P.I. was designated trustee. By a codicil, it was provided that after 10 or 15 years, the properties may be sold upon agreement of all the legatees and the proceeds shall be distributed as indicated therein. On Jan. 13, 1955, the trustee bank petitioned the court, with the consent of the legatee, for authority to sell, 10 years having elapsed. Petition was granted on Jan. 19. After the sale, Robles and her children filed a motion praying that the trustee be ordered to deliver to them the rentals for the period of Jan. 13 to March 18, 1955. The trustee refused on the ground that after the authorization of the sale on Jan. 19, 1955, the trusteeship ceased and the rentals pertained to the mass of the residuary estate to be distributed in accordance with the terms of the codicil. Robles also claimed the rentals from 1946 to 1949 still unpaid. The trustee contends that the action has prescribed, it being a money claim which should have been filed within four years.

Held: The approval of the petition to sell did not automatically terminate the trusteeship, nor did it constitute full accomplishment of the trust. It was only after the actual sale of the properties on March 18, 1955 and the distribution of the proceeds that the trust could be considered terminated. Hence, petitioners are entitled to the rentals claimed.

The defense of prescription is untenable. From the provisions of the will, it is apparent that the testator intended the enjoyment by the legatees of their respective legacies for the entire duration of the trust estate even after the sale of the specified properties since the proceeds therefrom was to be invested in interest bearing mortgages or in the purchase of rental-bearing properties. Hence, the legacies are to be treated as one, whole continuing obligation to be carried out by the trustees. The fact that the rentals are to be paid monthly did not make each payment a separate obligation, otherwise the essence of the legacy will be destroyed. The trust was terminated on March 18, 1955 and the demand made in April 1955 is very much timely. Besides, the claim is based on a specific legacy of a will. It is an obligation based on a judgment admitting probate of will and prescribes in 10 years.

[138] G.R. No. L-10111, August 31, 1960.

SALES

A contract to sell, not a contract of sale.—

In *Manuel v. Rodriguez Sr., supra,*[139] the issue was whether the agreement was a contract of sale or a contract to sell. It was held that it was a mere contract to sell because the absence of a formal deed of conveyance strongly indicates that the parties did not intend immediate transfer of title but only a transfer after full payment of the price. In contract to sell where ownership is retained by the seller and is not to pass until the full payment of the price, such payment is a positive suspensive condition, the failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force. Therefore, the defendant cannot be compelled to execute a deed of conveyance in favor of the plaintiff because there was no sale.

A mere lender, not the buyer.—

In *Collector of Internal Revenue v. Favis,*[140] the respondent Favis was adjudged not liable to pay sales tax since it was proved that one Crisologo was the real buyer of the car in question and not Favis who merely loaned the money to Crisologo, no proof having been adduced that it was only a device to circumvent the collection of the tax. The deed of sale named Crisologo as the vendee. Purchase in one's own name with another's money generally gives title to the purchaser, that is, to him who appears in the deed to have made the purchase in his own name.

Price, when not so unreasonable.—

In *Pingol et al. v. Tigno et al.,*[141] the sale in the foreclosure suit of defendants' land which sale was confirmed by the court was held valid. Aside from their bid of ₱9,365.00, the plaintiffs also bound to assume defendants' obligation to the RFC in the sum of ₱22,019.41, plus interests and charges. In opposing the sale, defendants claim that a real estate broker has placed the market value of the land between ₱60,000 to ₱65,000, although the latter has not sold any real property in the vicinity where the property in question is situated. Assuming that the property actually commands the price claimed by the defendants, the bid of the plaintiffs plus the lien in favor of the RFC that must be assumed, is not so grossly inadequate or disproportionate to its actual market value as to shock the minds of impartial men.

In foreclosure of chattel mortgage on personalty sold by installments, no further action lies to recover unpaid balance.—

In the case of *Luneta Motor Co. v. Salvador, et al. and Dimagiba,*[142] the plaintiff sold a truck, on installment basis, to Maximo Salvador. After making a down payment, Salvador jointly and severally with Angel Dimagiba, executed in favor of the seller a promissory note to cover the balance of the purchase price. The purchaser also executed a chattel mortgage on the property to secure payment of the said balance. Upon failure of the vendee to pay his obligations, the company commenced court action to recover the unpaid balance of the purchase price. By virtue of a writ of seizure, the truck was seized

[139] *Supra,* note 35.
[140] G.R. No. L-11551, May 30, 1960
[141] G.R. No. L-14749, May 31, 1960; see Art. 1470, NEW CIVIL CODE.
[142] G.R. No. L-13373, July 26, 1960.

and turned over to the plaintiff. The company bought it in a sale at public auction. Defendant filed a motion to dismiss the complaint on the ground that the plaintiff has no more case against him, it having already foreclosed the chattel mortgage upon the property, and the court dismissed the complaint.

Held: The dismissal was proper. Paragraph 3 of Article 1484 of the new Civil Code is clear that foreclosure of the chattel mortgage and recovery of the unpaid balance of the price are alternative remedies and may not be pursued conjunctively. By foreclosing the chattel mortgage, the plaintiff renounced whatever claim it may have had under the promissory note, and it has no more right either to the costs and attorney's fees that would go with the suit.

Where there is no delivery in spite execution of instrument.—

In *Sarmiento v. Lesaca,*[143] the plaintiff bought from the defendant two parcels of land. After the sale, plaintiff tried to take actual possession of the land but he was prevented from doing so by one Deloso who claimed to be the owner thereof. Plaintiff wrote defendant asking the latter either to change the lands sold with another of the same kind or to return the purchase price, expenses incurred and interest. Since defendant did not agree to this proposition, the plaintiff filed this action for rescission.

Held: When a contract of sale is executed, the vendor is bound to deliver to the vendee the thing sold by placing the vendee in the control and possession of the thing. However, if the sale is executed by means of a public instrument, the mere execution of the instrument is equivalent to delivery unless the contrary appears or is clearly to be inferred from such instrument.[144] There was no actual delivery of the lands to the vendee because he was never able to take possession of them due to the insistent refusal of Deloso to surrender them. Symbolic delivery through the execution of public instrument only holds true when there is no impediment that may prevent the passing of the property from the hands of the vendor into those of the vendee.

In a contract of purchase and sale the obligation of the parties is reciprocal, and, as provided in Art. 1191 of the new Civil Code, in case one of the parties fails to comply with what is incumbent upon him to do, the person prejudiced may either exact the fulfillment of the obligation or rescind the sale. Plaintiff is entitled to rescission and defendant is bound to return the lands plus interest and expenses incurred by the plaintiff for the execution and registration of the deed of sale.

Actual and constructive delivery—Articles 1477, 1497, and 1496, NCC.—

In *Tan Boon Diok v. Aparri Farmers' Cooperative Marketing Association, Inc.*[145] it appears that the plaintiff was the lessee of a lot on which a building was constructed. The building consists of 8 doors, 4 of which were leased by defendant, and the other 4 by other persons. Defendant agreed to pay ₱120 a month for the 4 doors. On Jan. 8, 1955, the plaintiff and defendant entered into a written contract whereby the former agreed to sell to the latter the whole building for ₱6,000 with a down payment of ₱2,000 and the balance to be paid in lump sum immediately upon the approval and release of the loan applied for by the defendant to the ACCFA. After the lapse of 15 days, plaintiff demanded

[143] G.R. No. L-15385, June 30, 1960.
[144] See Art. 1498, NEW CIVIL CODE.
[145] G.R. No. L-14154, June 30, 1960.

payment of the balance and as the demand was unheeded, he brought action for the rescission of the contract.

Held: The applicable provisions are Arts. 1477, 1479 and 1498 of the new Civil Code. Here, there has been actual delivery because when the contract of sale was entered into, a portion of the building was already occupied by the defendant-vendee as lessee, which possession was converted into that of ownership from the date of the execution of the sale. There was also constructive delivery as the contract was made through a public instrument. The intention was to transfer the ownership of the building immediately. Thus the law provides that the parties may stipulate that the ownership of the thing shall not pass to the purchaser until he has fully paid the stipulated price.[146] No such stipulation appears in the contract. The agreement for the payment of the balance after the approval of the loan does not evince a contrary intention.

Since the ownership was deemed transferred to the defendant from the date of the sale, from that time on defendant was in duty bound to pay the taxes as well as the rentals due on the lot and hence, defendant should reimburse the amounts paid for said taxes and rentals by the plaintiff. But defendant is at the same time entitled to be reimbursed for all the rentals on the portion of the building occupied by other tenants, because they belong to it as new owner of the property.

Sale for future delivery.—

In *Esguerra v. People*,[147] it was held that in a sale for future delivery, the advance payment made by the vendee is subject to the disposal of the vendor. If the transaction fails, the liability arising therefrom is of a civil and not of a criminal nature. The defendant was acquitted from the charge of estafa.

Sale of foreign exchange when consummated.—

In *Marsman & Co., Inc. v. Central Bank*,[148] it was held that the sale of foreign exchange is effected or consummated upon payment or delivery to the creditor (in whose favor the letter of credit was drawn) by the agent or corresponding bank, of the amount in foreign currency authorized by the transmitting bank to be paid or drawn under the letter of credit. The determinative factor for purposes of imposing the 17% excise tax, therefore, is not the date of maturity of the obligation, to pay for the foreign currency involved which is extendible, but the date the foreign currency allowed under the draft is delivered to the drawee or becomes obligated or committed upon acceptance of the draft.

Double sale.—

Art. 1544 of the new Civil Code was involved in the case of *Revilla & Fajardo v. Galindez*.[149] In this case, the plaintiffs brought an action for recovery of possession of a parcel of land formerly registered in the name of Alipio Gasmeña. On May 18, 1938, Alipio Gasmeña donated to Florencio Gasmeña a portion of the lot in question. Said donation was duly annotated on the certificate of title. On May 21, 1938, Florencio mortgaged this to Godofredo Galindez and on Oct. 5, 1938 sold it to the defendant. The mortgage was registered but the sale was not. Several years after Florencio's death in 1941, the portion which he conveyed was segregated and a TCT was issued in the

[146] Art. 1478, NEW CIVIL CODE.
[147] G.R. No. L-14313, July 26, 1960.
[148] G.R. No. L-13946, May 31, 1960.
[149] G.R. No. L-9940, March 30, 1960.

name of the deceased Florencio. The widow and heirs of the deceased executed a deed of extra-judicial partition with sale adjudicating to themselves the lot and sold it to the plaintiffs. The plaintiffs examined Florencio's title and found no encumbrance thereon. The deed of extrajudicial partition and sale was registered and a new certificate was issued to the plaintiffs. The plaintiffs attempted to take possession of the land but the defendants refused to relinquish possession.

Held: The extrajudicial partition and sale is null and void. Where the same immovable is sold to different vendees, the property shall belong to the one who first registered it in the Register of Deeds.[150] The first sale in favor of the defendant was not registered, so that the sale operated only as a contract between him and the vendor and as evidence of authority to the Register of Deeds to make registation.[151] The sale in favor of the plaintiff was registered. The point of inquiry is whether they are purchasers in good faith. The plaintiff did not buy the land from the registered owner but from his heirs. The law protects to a greater degree a purchaser who buys from the registered owner himself and requires a greater degree of prudence from one who buys from a person who is not the registered owner.[152]

Any prospective buyer of the land would have examined the previous transfer certificate of title in the name of Alipio Gasmeña and would have discovered that at no time during his life was Florencio ever the registered owner of said land. The memorandum of conveyance to him in the certificate of title served merely as notice to third parties of the fact that said portion had been transferred to Florencio but did not have the same effect as a certificate of title issued to Florencio himself.

Neither of the vendees having registered their respective sales in good faith, their right to the property must be determined by priority of possession. The defendant therefore is preferred.

One who buys land from a person not the registered owner is not a purchaser for value and in good faith.—

In *Rivera v. Tirona, Lapuz and Kerr*,[153] it appears that Diego Rivera, the plaintiff's predecessor, was the registered owner of real property which he sold to Tirona with a right to repurchase the same within 6 months. Rivera remained in possession as lessee and he tried to repurchase the property within the period agreed upon but Tirona refused so that Rivera filed a complaint in court and consigning the purchase price with said court. A notice of *lis pendens* was duly entered in the Register of Deeds of Manila. These proceedings notwithstanding, Tirona sold the property in litigation to Lapuz and the latter in turn sold it to Kerr. In the meantime, the lower court rendered decision granting Rivera the right to repurchase the property.

Held: One who buys land from a person who is not the registered owner is not considered a subsequent purchaser of registered land who takes the certificate of title for value and in good faith and who is protected against any encumbrance except those noted in the certificate.[154] In buying the property in question, Lapuz relied merely upon the title to the land still in the name of Rivera and upon the deed of sale executed by him in favor of Tirona which,

[150] Art. 1544, NEW CIVIL CODE.
[151] Sec. 50, Act 496; Luzon v. Licauco, 13 P.D. 396. Worcester v. Ocampo, 34 Phil. 644; Fidelity and Surety Co. v. Conejero, 41 Phil. 396.
[152] Veloso v. La Urbana, 58 Phil. 681.
[153] G.R. No. L-12328, September 30, 1960.
[154] Citing Revilla v. Galindez, G.R. No. L-9940, March 30, 1960.

however, had not been annotated in the title. Lapuz was aware that Rivera was in possession of the land. A notice of *lis pendens* was filed and duly entered in the Day Book of the Register of Deeds prior to the sale made by Tirona to Lapuz; Lapuz and Kerr are not, therefore, purchasers in good faith.

A purchaser is charged with knowledge of the condition of sale.—

In *Verzosa v. City of Baguio et al.*,[155] the building in question was built under a temporary permit and was subsequently declared a fire hazard. Plaintiff, who acquired the building by purchase, filed an injunction to stay the demolition. The Supreme Court held that the temporary permit to construct the building issued in favor of the plaintiff's predecessor provides "that applicant will remove all improvements made in said lot within 10 days notice from this office," so that, the applicant is, therefore, charged with knowledge of this condition when he acquired the building from the former owner and cannot now complain that he was deprived of his property without due process of law.

Vendor's warranty of title against eviction.—

In *Andaya et al. v. Manansala*,[156] it appears that one Isidro Penis sold the land in question to Eustaquia Llanes with right to repurchase within 5 years. After the expiration of said period and without repurchasing the same, Penis sold it again to Mario Viloria who again sold it together with another parcel of land with right to repurchase within one year, to defendant Manansala. Upon the expiration of said period, Manansala registered with the Register of Deeds an affidavit consolidating his title on the property. A year later, in 1947, Viloria sold by way of absolute sale the same property to Casiño, Valdez, and the plaintiff spouses Andaya and Cabrito, which deed contained a warranty in favor of the vendees.

Llanes, on Oct. 18, 1947, instituted Civil Case No. 399 to quiet title and recover possession from Casiño. In June 1948, Manansala sold the property to the spouses Casiño and Valdez and plaintiffs which deed contained a warranty of title or against eviction and recorded in the Register of Deeds. On Sept. 28, 1948 Llanes included as co-defendant in said civil case Manansala and on Sept. 21, 1950, F. Valdez, the spouses Andaya and Cabrito. Said defendants claimed title on the property on the basis of the conveyance made in favor of Manansala and from the latter to the other defendants. Judgment in that case was rendered in favor of Llanes and the properties of Valdez was sold at public auction to cover the damages. On March 23, 1956, the plaintiffs instituted this case against Manansala to recover the damages suffered by the latter's breach of warranty.

Held: The defendant is not liable for breach of warranty against eviction. The vendor's liability for warranty against eviction in a contract of sale is waivable and may be renounced by the vendee.[157] The contract of sale between the defendant and the plaintiffs included a stipulation as to the warranty but the lower court found that the parties understood that such stipulation was merely pro forma and that the vendor was not to be bound thereby because the same had been previously bought by the plaintiffs from Viloria and that their only purpose in buying the same again from the defendant was to enable them to register their prior deed of sale and furthermore, that when the sale

[155] G.R. No. L-13546, September 30, 1960.
[156] G.R. No. L-14714, April 30, 1960.
[157] Art. 1548, NEW CIVIL CODE.

between them was made, the property was already the subject of litigation between the plaintiffs and Llanes, and it was by final judgment in that case that the plaintiffs were evicted. Not having appealed from said decision, the plaintiffs are bound by the findings of the court in said civil case, the implication of which is that they not only renounced or waived the warranty against eviction but that they knew of the danger of eviction and assumed the consequences. Art. 1477 of the old Civil Code,[158] which is the law applicable when the contract was made, provides that when the vendee has waived the right to warranty in case of eviction, and eviction shall occur, the vendor shall only pay the price which the thing sold had at the time of the eviction, unless the vendee has made the waiver with knowledge of the danger of eviction and assumed its consequences. The plaintiffs knew of the danger of eviction and assumed its consequences. Therefore, the defendant is not even obliged to restore to them the price of the land at the time of the eviction but is completely exempt from liability.

The Court also held that the defendant cannot be condemned to return the price received on the theory of rescission of the contract of sale because: (1) the remedy of rescission contemplates that the one demanding it is able to return whatever he has received under the contract and when this cannot be done, rescission cannot be carried out.[159] It is for this reason that the law on sales does not make rescission a remedy in case the vendee is totally evicted from the thing sold, as in this case for he can no longer return the thing to the vendor. It is only when the vendee loses a part of the thing sold of importance in relation to the whole that he would not have purchased it without said part, that he may ask for rescission, but he has the obligation to return the thing without other encumbrances other than those which it had when he acquired it.[160] (2) The plaintiffs assumed the risk of eviction which estops them from asking for rescission even if it were possible for them to restore what they had received under the contract.

Suspension in the payment of the price (Art. 1590 NCC).—

In the case of *Bareng v. Court of Appeals, Alegria, & Ruiz*,[161] it appears that on Nov. 29, 1951, the petitioner Bareng purchased from Alegria the cinematographic equipment installed in Pioneer Theater in Laoag, Ilocos Norte for ₱15,000, ₱10,000 of which was paid. Petitioner signed 4 promissory notes for the balance. Shortly before the second note fell due, Ruiz informed the petitioner that he was a co-owner of the equipment in question. Petitioner suspended payment on account of Ruiz' claims. Ruiz filed suit against Alegria and Bareng for his share of the price. Alegria and Ruiz reached a compromise wherein the former recognized the latter as a co-owner, whereupon Alegria sued Bareng for ₱13,500 allegedly representing the unpaid balance of the price of said equipment. Bareng alleged that only ₱3,600 is due. The Court of Appeals ordered Bareng to pay Alegria the sum of ₱3,600 plus legal interest from the filing of the complaint and ordered Alegria to pay Ruiz ⅔ of the total amount he would recover from Bareng. Bareng appealed alleging that he is not liable to pay interest because he was justified in suspending payment for the balance of the price from the time he learned of Ruiz' adverse claims.

Held: Art. 1590 of the new Civil code gives the vendee the right to suspend payment of the price of the thing sold in the face of any danger that he might

[158] Now Art. 1544, NEW CIVIL CODE.
[159] Art. 1385, NEW CIVIL CODE.
[160] Art. 1556, NEW CIVIL CODE.
[161] G.R. No. L-12973, April 23, 1960.

be disturbed in his possession or ownership. Accordingly, petitioner had this right to suspend payment from the time he was informed of Ruiz' claims. Nevertheless, said right of petitioner ended as soon as "the vendor has caused the disturbance or danger to cease." Hence, from the time Alegria and Ruiz reached a compromise, there was no longer any danger or threat to Bareng's ownership. When Alegria sued the petitioner for the unpaid balance of the price, he admitted to Alegria his indebtedness in the amount of ₱3,600, yet he did not tender payment nor deposit the same in court. The petitioner was in default of the unpaid price from the date of the filing of the complaint by Alegria.

Sale with pacto de retro.—

In *Pascual v. Crisostomo*,[162] two documents were executed by the parties at the same time. Under the first, the defendant sold all her rights over a house and lot in favor of the plaintiffs. Under the second, the defendant was given option to purchase the property within three months from the date of the execution of the contract. It was held to be a sale with right to repurchase.

There is no legal compulsion to register, as notice to third persons, transactions, like a pacto de retro sale, over buildings that do not belong to the owners of the lands on which they stand. There is no registry of buildings in this jurisdiction apart from the land.[163]

Period of redemption in a pacto de retro sale.—

In *Laserna v. Cruz et al.*,[164] Cruz et al. sold a parcel of land to Laserna on Sept. 13, 1949 with a right to repurchase within a year. Upon failure to repurchase, Laserna filed a petition for consolidation of his title with the CFI and the latter granted the same. The Court of Appeals set aside the order for lack of notice to the defendant. Meanwhile, Cruz and his spouse brought an action to annul the sale, claiming that it was in reality a mortgage. The CFI decided adversely against them and the Court of Appeals affirmed the ruling. The vendee brought this present action for consolidation. The spouse opposed, invoking Art. 1606 of the new Civil Code.

Held: It is not shown that the vendors have exercised their right to repurchase within 30 days. It is not enough that they have made manifestations of their intention to repurchase. This statement of intention must have been accompanied by an actual and simultaneous tender of payment which constitutes the legal exercise of the right to repurchase.[165] It is only when the vendee has flatly refused that tender of payment is not necessary.[166]

Where the right to repurchase had expired before the effectivity of the new Civil Code, Art. 1606 cannot be applied as it would disturb vested rights.[167] This was the ruling reiterated in the recent case of *Fernandez v. Fernandez*.[168] It appears that in Oct. 1932, Patricio Fernandez sold a parcel of land to Catalino Fernandez with a right to repurchase. The land was never redeemed and the vendee sought to register it in his name in 1953. The application was opposed by the heirs of the vendor who also filed an action to quiet title and have the contract declared as a mere equitable mortgage. The lower court

[162] G.R. No. L-11261, June 30, 1960.
[163] Manalansan v. Manalang, G.R. No. L-13646, July 26, 1960.
[164] G.R. No. L-14611, November 29, 1960.
[165] Citing 10 MANRESA 366; Angon v. Clavano, 17 Phil. 152.
[166] Citing Gonzaga v. Go, 69 Phil. 69.
[167] Siopongco v. Castro, G.R. No. L-12167, April 29, 1959.
De la Cruz v. Muyot, G.R. No. L-9402, October 31, 1957.
[168] G.R. No. L-15178, October 31, 1960.

declared the registration in favor of Catalino. The judgment became final on Sept. 25, 1958 and on Oct. 24, 1958, the heirs of the vendor sought to exercise the right to repurchase under Art. 1606. They were denied such right.

Judicial order for consolidation of title to real property is necessary only for the purpose of registration of such consolidation.—

In *Rosario v. Rosario*,[169] the plaintiff sold a parcel of land on June 8, 1953 with a right to repurchase within one year. The plaintiffs were able to repurchase and they brought this action for reconveyance. The issue is whether the defendant has acquired ownership in the absence of any judicial order for consolidation. It was held that the requirement of a judicial order under Art. 1607 of the new Civil Code is merely for the purpose of registering the consolidation of title which, pursuant to the old Civil Code, could be accomplished by presenting an affidavit to the Register of Deeds. Under the Old and New Civil Code, ownership is consolidated by operation of law.

Art. 1607 has no retroactive effect.—

In the case of *Benito Manalansan v. Manalang et al.*,[170] it appears that on Aug. 14, 1951, the spouses Augusto Manalang and Victoria Dabu executed a deed of chattel mortgage over a two-story building in favor of the plaintiff to secure the payment of the loan. Because of their failure to pay the loan, the mortgage was foreclosed and the building was sold at public auction to the plaintiff. When the latter went to the premises to take possession thereof, he found defendants Sy and Cuba occupying the building as tenants of Luis Manalang. Plaintiff filed this case for the recovery of possession thereof. At the trial, Manalang established that the building in question was sold to him on Sept. 24, 1949 by the spouses Augusto and Victoria Manalang with the right to repurchase; that the vendors failed to redeem; then he obtained a judgment from the municipal court against the spouses, ordering the latter to vacate the building in question; he took possession of it and leased it to Sy and Cuba. Convinced that the defendant Luis Manalang had acquired full ownership of the building before the execution of the chattel mortgage, the lower court dismissed the complaint.

Issue: Whether judicial order was necessary for the consolidation of Luis Manalang's title over the building, pursuant to Art. 1607 of the new Civil Code.

Held: The decision was affirmed. The nature of a sale with right of redemption is such that ownership over the thing sold is transferred to the vendee upon execution of the contract, subject only to the resolutory condition that the vendor exercise his right of repurchase within the period agreed upon. Upon failure of the vendor to redeem, ownership is consolidated in the vendee by operation of law.[171] Although the period of redemption expired after the new Civil Code had already come into effect, the consolidation of the vendee-a-retro's title over the building should not be governed by Art. 1607 of the new Civil Code which requires judicial order in contradistinction to the provisions of the Old Civil Code. The determining period is when the contract of sale with right of redemption was executed. To impose upon the defendant the additional conditions found in Art. 1607 for the consolidation of his title would thus impair and diminish the rights that had already vested

[169] G.R. No. L-13018, December 29, 1960.
[170] G.R. No. L-13646, July 26, 1960.
[171] Art. 1509, Old Civil Code.

in him under the old Civil Code, and this is prohibited by Art. 2255 of the new Civil Code.

Nature of consolidation action.—

In *Teodoro v. Arcenes*,[172] it was held that the petition to consolidate ownership in pacto de retro sale under Art. 1607 is not a mere motion since it is not incident to an action or special proceeding but an ordinary civil action cognizable by the Court of First Instance. The provision of Rule 7 on Summons should be followed. In this case, the defendant was not served any summons. Hence, the order entered by the court consolidating ownership on the plaintiff was void for lack of jurisdiction.

An equitable mortgage, not a pacto de retro sale nor antichresis.—

In *Adrid et al. v. Morga et al.*,[173] the parties executed a deed of sale of land for ₱2,000 with 12% interest per annum with right to repurchase within 2 years from date. The vendee-defendant took possession of the land and benefited himself of the yearly produce of palay. *Held:* Although the contract speaks of a sale with right of repurchase, the payment of interest is characteristic of a loan or equitable mortgage.[174] Therefore, the plaintiffs can still bring the action to recover the land upon payment to defendant of ₱2,000 because not being a pacto de retro sale, the title in the property was not transferred to the defendant even after the lapse of the period agreed upon.

Annulment of judicial sale.—

Where the sale was null and void, the right to annul it is not barred by the failure of the redemptioner to redeem the properties within the redemption period. The redemption sale being null and void, there was no need to redeem the property.[175]

LEASE

Termination of lease. (Art. 1669).—

In *Bulahan v. Tuazon*,[176] the plaintiffs were lessees of land belonging to defendants. Upon the expiration of the lease contract, the lessors offered to renew the lease at an increased rate of rental. The lessees refused the offer but continued in possession and did not pay the new rent. They filed the present action to fix the reasonable rental and the duration of the lease. The CFI dismissed the case and in a supplementary decision ordered the plaintiffs to vacate the lots and to pay the reasonable rentals.

Held: The lessor has the right to terminate the lease at the expiration of the term and to demand a new rate of rent.[177] When plaintiffs refused to pay the new rate or vacate the lots, they became deforciants and may be ousted judicially without the need of demand.[178]

Suspension of ejectment proceedings.—

Rep. Act 1162 which provides for the expropriation of landed estates in Manila and for the suspension of ejectment proceedings against the tenants

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[172] G.R. No. L-15312, November 29, 1960.
[173] G.R. No. L-13299.
[174] Ocampo v. Potenciano, G.R. No. L-2263, May 30, 1951.
[175] Romulo v. Desalla, G.R. No. L-13153, May 30, 1960.
[176] G.R. No. L-12020, August 31, 1960.
[177] Iturralde v. Alfonco, 77 Phil. 576; Iturralde v. Evangelista, 7 Phil. 588; Cortes v. Ramos, 46 Phil., 188.
[178] Art. 1169, NEW CIVIL CODE; Co Tiamco v. Diaz, 75 Phil. 672.

thereof applies only when expropriation has actually been commenced, for otherwise, the mere allegation that the government may someday expropriate the property would prevent the landowner from protecting his interest and place him at the mercy of an unscrupulous tenant.[179] In the case *Bulahan v. Tuazon, supra*,[180] there is no proof that the Government has taken any step to expropriate the property.

In *Prieto v. Judge Enriquez and Licudine*,[181] it was held that if the case were an ordinary ejectment proceeding, unaffected by R.A. 1162 as amended by R.A. 1599, Section 8, Rule 72 of the Rules of Court and pertinent provisions are mandatory and the periods therein provided cannot be extended by the courts. However, in view of Sec. 5 of R.A. 1599, the period can be extended by courts to conform with said Act. The ejectment proceedings may be suspended for a period of two years.

Acceptance by lessor of partial monthly payments is not considered as a renewal of the lease contract.—

In *Uichanco et al. v. Lawrilla*,[182] the plaintiff leased to the defendant the premises. The defendant consistently failed to pay the full rentals. Plaintiff made various demands but the defendant refused to pay and vacate the place. In the action brought against defendant, his defense was that the acceptance by the plaintiff of the partial monthly payments made by defendant was equivalent to a renewal of the lease contract.

Held: The acceptance by the lessor of the partial monthly payments made by the lessee may not be considered as a renewal of the lease contract. While a lessor may tolerate the continued default of his lessee, said lessor could not very well refuse to accept the various amounts tendered just because they did not cover the full monthly rentals. That would be unwise and unbusinesslike.

Burden of proof that rentals are excessive is on the lessee.—

In a contract of lease entered into voluntarily, the lessee is presumed to have conformed to the rentals stipulated therein because the same are just and reasonable. And since he agreed to said rentals, it must have been because he conforms to the limits imposed by law. The party which has the obligation to prove that the rentals are excessive and are not conformable to law is the lessee and not the lessor.[183]

Lessee cannot deny the title of lessor.—

In the case of *Zobel v. Mercado*,[184] the plaintiff and defendant entered into a written contract whereby defendant leased for fishing purposes a portion of the land belonging to the plaintiff. It was held that the plaintiff can eject the defendant. Where the lease contract is valid and binding, the lessee is prevented from denying the title of the lessor over the property leased pursuant to the provisions of Sec. 68 (b), Rule 123, of the Rules of Court.

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[179] Teresa Realty v. State Construction, G.R. No. L-10883, March 25, 1951; San Jose v. Lucero, G.R. No. L-9062, July 31, 1956.
[180] *Supra*, note 176.
[181] G.R. No. L-14310, January 30, 1960.
[182] G.R. No. L-13935, June 30, 1960.
[183] Velasco v. Court of Agrarian Relations.
[184] G.R. No. L-14515, May 25, 1960.

Where the period of lease is not fixed, the rental period becomes the basis in lease of urban lands. (Art. 1687).—

According to the stipulation of facts in the case of *Guitarte v. Sabaco et al.*,[185] the plaintiff is the owner of the land on which the 4 defendants have built their residential houses. The plaintiff entered into oral contracts of lease with the defendants Sabaco since 1943, with Flores since 1939, with Tacorda since 1938, and with another Flores since 1940. The rentals were being paid monthly by the defendants. As the plaintiff needed the land he notified the defendants to vacate and upon their refusal the plaintiff brought 4 separate actions and the trial court ordered the defendants to vacate. They appealed contending that the court below should have applied Art. 1643 instead of Art. 1687 of the new Civil Code in the determination of the lease.

Held: The defendants' contentions are untenable. The term of lease was vague. Art. 1687 fixes in the absence of conventional period the duration of lease according to the time of paying the rental and where the lessees have been occupying the premises for more than one year, the court may fix a longer period. Defendants contended that their counterclaim for the value of their houses should have been sustained because they were builders in good faith entitled to the provisions of Art. 448, NCC. There is no merit in this contention because the lessees cannot be considered builders in good faith for the reason that they were, at the outset, aware of the "precarious nature" of their possession.

In connection with Art. 1687, NCC, the court may fix the term if the rental is payable yearly.—

In *Inco v. Enriquez* [186] it was argued that Art. 1687 of the new Civil Code does not authorize the Court to fix a term where the rental is payable yearly. But the Court held that the mere absence of a provision under Art. 1687 does not divest the court of power to fix periods under the general rule of Art. 1197, since the contract involved in the case was basically a compromise to settle contradictory claims and not an ordinary lease.

WORK AND LABOR

Employer and employee relationship; mesada.—

In the case of *Sanchez et al. v. Northern Luzon Transportation Co., Inc.*,[187] the action was filed by the dismissed employees to recover mesada from their employer. It was held that Art. 302 of the Code of Commerce was expressly repealed by the new Civil Code in Art. 2270, which took effect on August 30, 1950. So that, when the petitioners were separated from their employment in Oct. 1950, Art. 302 of the Code of Commerce was already repealed. It is true that on June 12, 1954, Republic Act 1052 was approved reinstating the employee's right to one month's pay in lieu of such notice; but the Act could not be construed retroactively so as to affect the separations that had taken place before its enactment.[188]

[185] G.R. No. L-13688, March 28, 1960.
[186] G.R. No. L-13367, February 29, 1960.
[187] G.R. No. L-14817, September 30, 1960.
[188] Citing Gutierrez v. Bachrach Motor Co., Inc., G.R. No. L-11586, January 19, 1959.

Commission agents are considered employees.—

In *Juan Ysmael & Co., Inc. v. CIR et al.*,[189] the Court stated that the difference in the form of selection and engagements of commission agents from that of the regular employees of the company, does not prove the absence of employer-employee relationship. Most business enterprises have employees of different classes necessarily requiring different methods of selection and contracts of services, without detracting from the existence of said relationship.

COMMON CARRIERS

Liability of common carriers limited to the amount stated in the bill of lading.—

In *American President Lines v. Klepper*,[190] it appears that Klepper shipped one lift ban containing personal and household effects through the plaintiff company. The lift ban was damaged to the amount of ₱6,729.50 while it was being unloaded by the Delgado Bros. Co. Petitioner was ordered by the lower court to pay the whole amount.

Held: The extraordinary liability of the petitioner lasts from the time the goods are placed in its possession until they are delivered.[191] Nevertheless, its liability is limited to the amount of ₱500 stated in the bill of ladings. By accepting the bill of lading, respondent thereby bound himself in accordance with its terms.

The Carriage of Goods by Sea Act is not applicable to the present case. Art. 1753 of the new Civil Code provides that the law of the country to which the goods are to be transported shall govern the liability of the common carrier in case of loss, destruction or deterioration. This means that the Civil Code of the Philippines will apply. The Carriage of Goods by Sea Act is merely suppletory to the Civil Code.

PARTNERSHIP

The case of *Goquiolay v. Sycip*[192] reiterated several well-established principles in the law of partnership. For instance it was held that the management of the business of the partnership, premised as it is upon trust and confidence, is a mere personal right that terminates upon the manager's demise.

Where the articles of partnership provided for the continuation of the firm notwithstanding the death of one of the partners, the heirs of the deceased partner, by not repudiating or refusing to be bound under the said provision in the articles, became individual partners. Minority of the heirs is not a bar to the application of that clause in the articles of partnership.

And strangers dealing with a partnership have the right to assume, in the absence of restrictive clauses in the partnership agreement, that every general partner has power to bind the partnership, especially those partners acting with ostensible authority. The regular course of business procedure does not require that each time a third person contracts with one of the managing partners, he should inquire as to the latter's authority to do so, or that he should first ascertain whether or not the other partners had given their consent thereto.

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[189] G.R. No. L-14280, May 30, 1960.
[190] G.R. No. L- ....., November 29, 1960.
[191] Art. 1736, NEW CIVIL CODE.
[192] G.R. No. L-1184, July 26, 1960.

Property contributed to the partnership.—

In *Lozana v. Depakakibo*,[193] the plaintiff entered into a contract of partnership with the defendant capitalized at ₱30,000, plaintiff furnishing 60% thereof and defendant 40% for the purpose of maintaining, operating and distributing electric light and power in Dumangas, Iloilo under a franchise issued to Mrs. Buenaflor. This franchise was revoked by the Public Service Commission. Later, a temporary certificate of public convenience was issued in the name of Olimpia Decolongon. Because of the cancellation of the franchise in the name of Mrs. Buenaflor, plaintiff sold a generator, Buda (diesel) to Decolongon. Defendant, on the other hand, sold one Crossly Diesel Engine to the spouses Jimenea and Harder. The plaintiff brought an action against the defendant alleging that he is the owner of the Generator Buda and that he is entitled to the possession thereof, but that defendant has wrongfully detained them as a consequence of which plaintiff suffered damages. Defendant contended that the generator has been contributed by the plaintiff to the partnership and therefore he is not unlawfully detaining it. Defendant also by way of counterclaim alleged that the plaintiff, by selling his contribution to the partnership violated the terms of the agreement, and prayed that the plaintiff be ordered to pay to the defendant damages and that the court order the dissolution of the partnership.

Held: Since it was not stated that there has been a liquidation of the partnership assets when the plaintiff sold the Buda Diesel Engine and since the court below found that plaintiff actually contributed it to the partnership, it follows that said equipment became the property of the partnership. As property of the partnership, the same could not be disposed of by the partner contributing the same without the consent or approval of the partnership or the other partner.[194] The liquidation of the partnership assets prayed for by the defendant is the proper remedy, not for each contributing partner to claim back what he had contributed.

AGENCY

Agency distinguished from partnership.—

In *Biglangawa v. Constantino*,[195] the contract or relationship which was entered into between the parties was one of agency and not that of partnership.

The petitioners, owners of a parcel of land, appointed the respondent their exclusive agent to develop the area into a subdivision and to sell them. As compensation, respondent was to be paid a commission of 20% on the gross sales and a fee of 10% on the collections made by him. Respondent advanced all the expenses. Petitioners later terminated the agency and promised to pay the commissions due. Respondent filed an action to recover his commissions and filed with the Register of Deeds a notice of lis pendens. Petitioners refused to surrender their duplicate certificate for annotation of the lis pendens thereon. But when some of the lots were sold, the Registrar of Deeds, without the knowledge of petitioners, made the annotation. The present action was brought to cancel the notice. The lower court ordered the cancellation.

Held: In opposing the cancellation of his notice of lis pendens, respondent contended that his pending action is not purely a claim for money judgment

[193] G.R. No. L-13680, April 27, 1960.
[194] Citing Clemente v. Galoan, 67 Phil. 565.
[195] G.R. No. L-9965, August 29, 1960.

which does not affect the title to land but was one for the settlement of partnership interest.

There is no provision in the contract nor in the complaint that indicates the existence of a partnership. Respondent categorically referred to himself as an agent; entitled to compensation and participating in the form of a commission, not a share. The advances he made were never considered as contributions to a partnership fund.

Implied revocation of agency.—

The principal may revoke the agency at will, and compel the agent to return the document evidencing the agency. Such revocation may be express or implied.[196] There is implied revocation if the principal directly manages the business entrusted to the agent, dealing directly with third persons.[197] This was illustrated in the case of *New Manila Lumber Co. v. Republic of the Philippines.*[198]

The defendant, through the Director of Schools, entered into a contract with one Alfonso Mendoza to build 2 school houses. Plaintiff furnished the lumber materials in the construction. Prior to the payment by defendant of any amount due the contractor, the latter executed powers of attorney in favor of the plaintiff "constituting it as his sole, true and lawful attorney-in-fact with specific and exclusive authority to collect from the defendant in connection with the construction of school buildings, as may be necessary to pay materials supplied by the plaintiff." The originals of the powers of attorney were received by the defendant through the Director of Public Schools who promised to pay the plaintiff but nevertheless paid the contractor several amounts on different occasions without first making payment to plaintiff. Plaintiff seeks to recover the unpaid balance of the cost of lumber supplied and used in the construction.

Held: There is no juridical tie between the plaintiff supplier and the defendant-owner. No implied contract exists between the parties. Defendant was not a party to the execution of the powers of attorney. The Director of Public Schools had no authority to bind defendant on the payment. Payments of the contract price was not within his exclusive control but subject to approval of his superior officers.

The powers of attorney made plaintiffs the contractor's agent, and since it is alleged that after the execution of the powers of attorney the contractor demanded and collected from the demanded the money, collection of which he entrusted to the plaintiff, the agency had apparently been revoked. Even if they are irrevocable, still their alleged irrevocability cannot affect defendant who is not a party thereto.

LOAN

Absence of stipulation as to payment of interest.—

In a contract of simple loan or mutuum, interest shall be due unless it has been expressly stipulated in writing.[199] It was said that where the payment of interest is not stipulated, the court may not order the payment of the same. *In Tan Boon Diok v. Aparri Farmer's Cooperative Marketing As-*

[196] Art. 1920, NEW CIVIL CODE.
[197] Art. 1924, NEW CIVIL CODE.
[198] G.R. No. L-14248, April 28, 1960.
[199] Art. 1956, NEW CIVIL CODE.

sociation, Inc.,[200] however, since the defendant failed to pay the balance as agreed upon, it was made to pay interest on said balance at the legal rate from the date of the filing of the complaint.

COMPROMISES

Compromise has effect of res adjudicata between the parties.—

Art. 2037, new Civil Code, provides that a compromise has upon the parties the effect and authority of res judicata; but there shall be no execution except in compliance with a judicial compromise. This was followed in *Palarca v. Anzon*,[201] reiterating the ruling laid down in previous cases.[202]

The plaintiff and defendant entered into a compromise agreement whereby the defendant acknowledge his debt of ₱3,000. The court rendered judgment pursuant thereto and urged the parties to comply strictly with it. Upon failure of defendant to pay, the court issued a writ of execution. The validity of the judgment is assailed on the ground that it does not contain findings of fact and law.

Held: In contemplation of law, the court adopted the tenor of the agreement of the parties, and their consent has rendered it unnecessary and improper for the court to make findings of fact and law

ARBITRATIONS

Requisites for arbitration under the Arbitration Law (R.A. 876).—

Republic Act 876 regarding arbitration requires that the parties to an arbitration must enter into a written contract signed by them to submit their case to arbitration and designate the arbitrator. The law contemplates persons, not courts, to act as arbitrators. And the award given by the arbitrator must be confirmed within one month after said award was made by the court having jurisdiction.[203]

GUARANTY

No increase of risk on the surety.—

In *Republic v. Alto Surety & Insurance Co.*,[204] Ted Lewin, in applying for a tax clearance prior to his departure from the Philippines, was required to post a bond to secure the payment of his tax liability. The defendant surety company bound itself jointly and severally with Lewin under the condition that the latter would return to the Philippines within three months from the date of his departure. Lewin left on Sept. 26, 1953 and did not return within three months but before leaving, he secured a permit to reeenter from the Bureau of Immigration. On Dec. 2, 1953, the Department of Foreign Affairs issued a circular that no visa should be issued to him without prior authorization from the department. The surety company denied liability contending that the circular of the Department of Foreign Affairs prevented compliance with the condition of the bond.

Held: The reentry permit provides that possession thereof "relieves the alien to whom it is issued from the necessity of securing a visa from the Phil-

[200] G.R. No. L-14154, June 30, 1960.
[201] G.R. No. L-14780, November 29, 1960.
[202] Rivero v. Rivero, 59 Phil. 15; Enriquez v. Padilla, 77 Phil. 373.
[203] Pagkakaisa Samahang Manggagawa ng San Miguel Brewery v. Enriquez, G.R. No. L-12999, July 26, 1960.
[204] G.R. No. L-13251, November 23, 1960.

ippine consul before returning to the country." The circular did not revoke this permit. It is not shown that it increased the risk originally taken by the surety. Lewin never manifested his intention to return and comply with the conditions of the bond.

MORTGAGE

Actual knowledge of a mortgage is equivalent to registration.—

In *Rehabilitation Finance Corporation v. Javillonar*,[205] a house was mortgaged by Consuelo de Agoncillo in favor of Tubangui. The house was built on a lot which at the time of the mortgage was not owned by the mortgagor but which was later acquired by her. The house was subsequently sold in an execution sale and bought by Tubangui, who later sold it to Javillonar. In the meantime, the lot was mortgaged to the RFC, and later sold at a foreclosure sale to the RFC, which took possession of the house and collected the rentals of the same. The Court of First Instance rendered judgment in favor of Javillonar.

The issue was whether or not the right of the RFC is superior to that of Javillonar and of his predecessor in-interest, Tubangui. *Held:* The right of Javillonar derived from his predecessor in-interest was superior to that of the RFC, for the reason that the latter was aware of the mortgage of the house by Agoncillo in favor of Tubangui.

The amount of ₱11,000 earmarked by the parties for payment to Tubangui and representing the expenses incurred by Agoncillo in the construction of the building is the same amount alleged in Civil Case No. 338 to have been advanced by Tubangui for which Agoncillo had mortgaged the house to secure its repayment. The RFC was appraised of this credit before the execution of the mortgage agreement. Previous knowledge of the RFC was equivalent to registration making Tubangui's lien superior to the mortgage lien of the said RFC over the house.[206]

Cancellation of annotation upon putting up a bond.—

A Court of First Instance, acting as a land registration court, cannot order the cancellation of a mortgage annotated on a certificate of title provided a bond be put up in lieu thereof, without the consent of the mortgagee. To order the substitution of the mortgage for a surety bond would in effect novate the contract entered into between the parties which cannot be without their consent.[207]

ANTICHRESIS

Mortgage distinguished from antichresis.—

Art. 2132 new Civil Code, provides that by the contract of antichresis the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit. In *Diego v. Fernando*,[208] Fernando executed a deed of mortgage in favor of Diego to secure a loan of ₱2,000 without interest. Possession of the mortgaged property was given to the mort-

[205] G.R. No. L-14224, April 25, 1960.
[206] Parsons Hardware C. v. Villahermosa, 40 O.G. No. 10, 111.
[207] Magdalena Estate v. Yuchangco, G.R. No. L-12963, May 30, 1960.
[208] G.R. No. L-15128, August 25, 1960.

gagee. The mortgage was foreclosed upon default and lower court ordered Fernando to pay the debt with legal interest from the filing of the action until full payment. It was contended that inasmuch as the loan was without interest and the possession of the mortgaged property was with the mortgagee, the contract is one of antichresis.

Held: It is not an essential requisite of the contract of mortgage that possession of the property be retained by the mortgagor.[209] To constitute antichresis, there must be an express agreement that the fruits of the property be applied to the payment of the interest and thereafter to the principal.[210]

However, inasmuch as the parties have agreed that the loan would be without interest and the mortgagor had not waived his right to the fruits of the property, the mortgagee must account for the value of the fruits received by him and deduct it from the loan. This is the same rule applied to the antichretic creditor.

Not an antichresis.—

In *Adrid v. Morga*[211] it was held that the mere fact that the supposed vendee took possession of the land and benefited himself from the yearly produce of palay, did not convert the contract into one of antichresis. What characterizes a contract of antichresis is that the creditor acquires the right to receive the fruits of the property of his debtor with the obligation to apply them to the payment of interest, if any is due, and then to the principal of his credit.

CHATTEL MORTGAGE

The "reasonable description rule".—

In *Saldana v. Philippine Guaranty Co., Hospital de San Juan de Dios, and Sheriff,*[212] it appears that on May 8 ,1953, to secure an indebtedness of ₱15,000, Eleazar executed in favor of Saldana a chattel mortgage on a building used for restaurant business, with specified personal properties, "and all other furnitures, fixtures or equipment found in the said premises."

After the execution of the mortgage, the defendant Hospital obtained in a civil case a judgment against Eleazar. The writ of execution was issued and the sheriff levied upon the same properties subject of chattel mortgage. To proceed with the execution of sale, the Hospital and Philippine Guaranty executed an indemnity bond to answer for damages. Properties were sold to Hospital as highest bidder. The plaintiff claims that the phrase in the chattel mortgage "and all other furnitures, fixtures or equipment found in the said premises" sufficiently covered within its terms the personal properties disposed of in the auction sale, as to warrant an action for damages by the plaintiff mortgagee.

Held: There is merit in plaintiff's contention. Section 7 of the Chattel Mortgage Law does not demand a minute description of every chattel mortgaged but only requires that the description of the properties be such "as to enable the parties in the mortgage, or any other person, after reasonable inquiry and investigation to identify the same." Gauged from this standard of "reasonable edscription rule," general descriptions have been held valid in past cases.[214]

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[209] Legaspi v. Celestial, 66 Phil. 372.
[210] Art. 2132, NEW CIVIL CODE. Barreto v. Barreto, 37 Phil. 234; Diaz v. de Mendezona, 48 Phil. 666.
[211] G.R. No. L-13299, July 25, 1960.
[212] G.R. No. L-13194, January 29, 1960
[213] Act No. 1508.
[214] See Strochecker v. Ramirez, 44 Phil. 993; De Jesus v. Guan Bee Co., 72 Phil. 464.

It should be noted that the limitation found in the last paragraph of Section 7 of the Chattel Mortgage Law on "like or substituted properties" makes reference to those "*thereafter* acquired by the mortgagor and placed in the same depositary as the property originally mortgaged."

QUASI-CONTRACTS

Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.[215] One example of a quasi-contract is *solutio indebiti* such that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.[216] And payment by reason of a mistake in the construction or application of a doubtful or difficult question of law may come within the scope of the above-cited article.[217] Thus, in *Belman Compania Incorporada v. Central Bank of the Philippines*,[218] it was held that there was *solutio indebiti* since the payment of exchange tax was made by reason of a mistake in the interpretation of Republic Act 601. But the plaintiff's action for refund had already prescribed, six years having elapsed from the time of erroneous payment.

Solutio indebiti is expressly classified as a quasi-contract under Sec. 2, Chapter 1 of Title XVII of the new Civil Code and Art. 1145 paragraph 2 of the same Code provides that an action upon a quasi-contract must be commenced within 6 years.

QUASI-DELICT

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict.[219] The obligation imposed by the cited article is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. For example, the father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.[220] The said Article 2180 of the new Civil Code was applied in *Salen & Salbanera v. Balce*[221] even for the criminal act of a minor living in his parents' company.

In this case, the plaintiffs are the parents of Carlos Salen who died from wounds caused by Gumersindo Balce, the son of defendant. Gumersindo was single, a minor below 18 years old and was living with the defendant. Gumersindo was convicted of homicide and sentenced to imprisonment and to pay the heirs of the deceased. Gumersindo being insolvent, plaintiffs demanded from the defendant, father of Gumersindo, the payment of the indemnity.

Held: The defendant can be held liable subsidiarily to pay the indemnity of ₱2,000 which his son was sentenced to pay in the criminal case. While the Court agreed that the civil liability arising from a crime shall be governed by the provisions of the Revised Penal Code, it disagreed with the contention that the subsidiary liability of persons for acts of those under their custody

[215] Art 2142, NEW CIVIL CODE.
[216] Art. 2154, NEW CIVIL CODE.
[217] Art. 2155, NEW CIVIL CODE.
[218] G.R. No. L-15044, July 14, 1960.
[219] Art. 2176, NEW CIVIL CODE.
[220] Art. 2180, NEW CIVIL CODE.
[221] G.R. No. L-13048, February 27, 1960.

should likewise be governed by the same Code even in the absence of any provision governing the case, for that would leave the transgression of certain rights without any punishment or sanction in law. The pertinent law that governs the case is Art. 2180 of the new Civil Code. To hold that this does not apply to the present case because it only covers obligations which arise from quasi-delicts and not obligations which arise from a criminal offense would result in the absurdity that while for an act where negligence intervenes, the father or the mother may stand subsidiarily liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent.

Employer's liability for quasi-delict.—

In *Standard-Vacuum Oil Co. v & Court of Appeals*, on May 3, 1949, Sto. Domingo and Rico, employees of the petitioner Standard Vacuum Oil Co. (STANVAC) were delivering gasoline from a tank truck trailer to Rural Transit Garage in Manila. While gasoline was being discharged, the discharge hose suddenly caught fire and spread to rear part of truck. Sto. Domingo drove it to the street and abandoned it without setting its parking brake so that the vehicle continued moving to the opposite side of the street causing three houses on that side one of them belonging to Anita Tan, to be burned and destroyed.

Sto. Domingo and Rico were subsequently charged with arson through reckless imprudence but were acquitted because their negligence was not proven.

Tan filed a complaint against STANVAC, Sto. Domingo and Rico to recover ₱12,000 as damages resulting from the act. The STANVAC was ordered to pay to Tan.

Held: The judgment was affirmed. It was contended that since employees Sto. Domingo and Rico had previously been found by the court not to be negligent, the STANVAC cannot be held liable for damages. The contention cannot be sustained because Tan sought to hold STANVAC liable under Arts. 1902 and 1905 of the old Civil Code, the law in force at the time the fire occurred.[222] Under those articles, the liability of the employer is primary and direct, based upon its own negligence and not on that of his employees or servants.[223] The Court of Appeals ordered STANVAC to pay the damages not precisely because of the negligent acts of its two employees but because of acts of its own which might have contributed to the fire which destroyed house of plaintiff. This company through its employees failed to take the necessary precautions to insure safety and avoid harm to persons and damage property and observe that degree of care which the circumstances justly demanded.

Liability of teachers for damages caused by their pupils, not applicable to academic institutions.—

The 1957 case of *Exconde v. Capuno* [224] was reiterated in the recent case of *Mercado v. Court of Appeals et al.*[225]

Augusto Mercado, son of petitioner, wounded his classmate Manuel Quisumbing Jr. as a result of a quarrel during recess time in the Lourdes Catholic School where they were enrolled. The issue was whether the school where

[222] See Arts. 2178 and 2180, NEW CIVIL CODE.
[223] Cangco v. M.R.R., 38 Phil. 768.
[224] G.R. No. L-10134, June 29, 1957.
[225] G.R. No. L-14342, May 30, 1960.

petitioner's son was studying could be held liable for damages in favor of the injured boy and his father.

It was held that the last paragraph of Art. 2180, new Civil Code, does not apply. It provides that "teachers or heads of establishments of arts and trades shall be held liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody." This provision only applies to an institution of arts and trades and not to any academic educational institution. The clause "so long as they remain in their custody," contemplates a situation where the pupil lives and boards with the teacher, and such that control, direction and influence on the pupil supersedes those of the parents; and so would the responsibility for the torts of the pupil. Such a situation does not appear in the case at bar, so that the educational institution was exonerated from liability.

DAMAGES

Attorney's fees.—

(1) The plaintiff was allowed to recover attorney's fees in *Luneta Motor Co. v. Baguio Bus Co.*[226] under Art. 2208, par. 2, new Civil Code, inasmuch as defendant's default had caused it to litigate and incur expenses to protect its interests.

(2) Art. 2208, par. 4 which authorizes the recovery of attorney's fees "in case of a clearly unfounded civil action or proceeding against the plaintiff," applies equally to a defendant under a counterclaim for attorney's fees.[227]

Interest.—

In *Cabarroguis & Cabarroguis v. Vicente*,[228] the defendant- owner of the AC jeepney entered into a compromise with the injured passenger where he promised to pay her ₱2,500 for actual and compensatory damages, exemplary and moral damages, and that if he fail to pay within 60 days, an additional ₱200 as liquidated damages would be given to the victim. After paying ₱1,500 leaving a balance of ₱1,000, the defendant failed to pay notwithstanding repeated demands. The Court held that applying Art. 1226, no interest can be awarded on the principal obligation, the penalty of ₱200 agreed upon having taken the place of payment of such interest. But the plaintiff was entitled to the interest on the amount of the penalty since when a penalty is stipulated for default, both principal obligation and the penalty can be demanded by the creditor.[229] Art. 2210 of the new Civil Code provides that in the discretion of the court, interest may be allowed upon damages for breach of contract.

Actual and compensatory damages.—

(1) Whether the claim for damages has been challenged or not, the claimant which includes a defendant who alleges it in his counterclaim, must still prove them. In the absence of definite and satisfactory proof of the amount of damages suffered, no damages may be awarded.[230]

(2) Compensatory or actual damages are generally recoverable in tort cases as long as there is satisfactory proof thereof. In a case,[231] the Court said that

[226] G.R. No. L-15157, June 30, 1960.
[227] Malonzo v. Galang, G.R. No. L-13851, July 27, 1960.
[228] G.R. No. L-14304, March 23, 1960.
[229] Government v. Lim, 61 Phil. 737.
[230] Tanjangco v. Jovellanos, G.R. No. L-12332, June 30, 1960.
[231] Malonzo v. Galang, *supra*, note 227.

assuming that they are recoverable under the theory that petitioner's having filed a clearly unfounded suit against the respondents constitutes a tort against the latter that makes the former "liable for all damages which are the natural and probable consequences of the act or omission complained of,[232] these damages are not however presumed but must be duly proved.

(3) In *Kairuz v. Pacio et al.*,[233] the judgment against the defendant was to return the motor engine or to pay its value plus damages. It was held that the most practical basis for assessing damages would be the payment of legal interest on the value of the engine.

(4) In *Cariaga v. LTB Co.*,[234] the plaintiff, a fourth year medical student of UST was seriously injured when the LTB Co. bus in which he was riding collided against a train due to the negligence of the driver who died instantly. The accident rendered Cariaga invalid. The action was brought to recover for him and for his parents, among others, actual and compensatory damages. *Held:* Under Art. 2201, the obligor who is guilty of breach of contract in good faith is liable for the natural and probable consequences of the breach and which the parties have foreseen or could have reasonably foreseen. The actual damages consist of medical expenses and the income which Cariaga coud have earned if he were able to graduate in due time. In this case about ₱300 monthly or a total of ₱25,000 as compensatory damages. But the parents were not entitled to actual and compensatory damages because the contract was only between Cariaga and the LTB Co.

Moral damages.—

The case of *Silva et al. v. Peralta*[235] is significant and interesting. It appears that Silva, an American citizen and married to Priscilla Isabel of Australia, allegedly contracted a second marriage with the defendant Esther Peralta with whom he lived maritally and had one child. When he returned to the United States he divorced Isabel and married plaintiff Elenita Ledesma Silva. When he returned to the Philippines, Esther demanded support for their child and brought an action therefor. This is an action by the plaintiff spouses to enjoin the defendant from representing herself to be the wife of Silva and to recover moral damages.

Held: The plaintiff's distress upon learning that her husband had a child with defendant and was being sued for its support does not entitle her to claim moral damages in the absence of proof that the suit was reckless and malicious. It is true that Art. 2216 of the new Civil Code provides that "no proof of pecuniary loss is necessary in order that moral, nominal, or exemplary damages may be adjudicated. "Nevertheless, there must be proof of facts giving rise to such damages. Defendant acted in good faith in bringing the suit since she and Silva were previously reputed to be man and wife.

With respect to the counterclaim for damages, Esther is entitled to moral damages. Silva concealed from her his previous marriage with Isabel, thus enabling him to cohabit with her. She suffered moral damages due to the harassment caused by Silva.

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[232] See Art. 2202, NEW CIVIL CODE.
[233] G.R. No. L-14503, July 26, 1960.
[234] G.R. No. L-11037, December 29, 1960.
[235] G.R. No. L-13114, November 25, 1960.

No moral damages recoverable for physical injuries arising from breach of contract of carriage.—

With respect to the claim for moral damages arising from breach of contract of transportation resulting only in physical injuries but not death to the passenger, the rulings laid down in the previous cases of *Cachero v. Manila Yellow Taxi Cab*,[236] *Necesito v. Paras*,[237] and *Fores v. Miranda*[238] were again reiterated in the cases of *Rex Taxi Cab, Inc. v. Bautista*,[239] *Verzosa v. Baytan et al.*[240] and Cariaga v. LTB, *supra* wherein it was held that no moral damages can be recovered for breach of contract of carriage resulting in physical injuries only. This doctrine is based on the provisions of Arts. 2219, and 2220 of the new Civil Code. Art. 2219 mentions only, among others, as grounds for recovery, a criminal offense or a quasi-delict, but not breach of contract, causing or resulting in physical injuries. Art. 2220 provides that moral damages can be recovered in breaches of contract when the defendant acted fraudulently or in bad faith. So that, it was ruled in the *Fores* case that the general rule that moral damages are not recoverable in damage actions predicated on a breach of contract of transportation, has two exceptions namely: (1) where the mishap results in the death of a passenger,[241] and (2) where it is proved that the carrier was guilty of fraud or bad faith, even if death does not result.[242]

In the *Rex Taxi Cab case*, the plaintiff only sustained fractures of several bones and several wounds and bruises in other parts of her body.

And in the *Verzosa case*, the plaintiffs were passengers of the defendant's bus which collided with a freight truck, similarly suffered physical injuries. In the *Cariaga case*, the plaintiff became invalid.

In all these cases, the plaintiffs did not show that the common carrier was guilty of fraud or bad faith.

The plaintiff in *Mercado v. Court of Appeals, supra*, sought to recover moral damages for the wound caused to his son by the defendant's son. The Court denied the claim holding that while moral damages include physical suffering, which must have been caused to the wounded boy, the decision of the lower court did not declare that any of the cases specified in Art. 2219, new Civil Code, in which moral damages may be recovered, has attended the physical injury. Furthermore, no criminal action for physical injuries was ever presented. There was no quasi-delict committed by defendant's son it being apparent that the proximate cause of the injury caused to the plaintiff's son was his own fault for having interfered with defendant's son while trying to get the "pitogo" from another boy.

Moral damages arising from seduction.—

Art. 2219, new Civil Code, provides that seduction is one of the grounds for recovering moral damages. The plaintiff predicated her claim on this provision in the case of *Hermosisima v. Court of Appeals et al.*[243] It appears that the petitioner Francisco Hermosisima and Soledad Cagigas had some amorous relationship with each other, and as a result a child was born. Hermosisima married another woman and hence Soledad filed an action for acknowl-

[236] G.R. No. L-8721, May 23, 1957.
[237] Necesito v. Paras, G.R. No. L-10605, June 30, 1958.
[238] G.R. No. L-12163, March 4, 1959.
[239] —
[240] —
[241] See Art. 2206 in connection with Art. 1764, NEW CIVIL CODE.
[242] Art. 2220, NEW CIVIL CODE.
[243] G.R. No. L-14628. September 30, 1960.

edgment and support of the child and for the recovery of moral damages against the petitioner for alleged breach of promise to marry.

Held: The Civil Code of Spain permitted the recovery of damages for breach of promise to marry.[244] But inasmuch as these articles were never in force in the Philippines, it was ruled in *De Jesus v. Syquia*,[245] that "action for breach of promise to marry has no standing in civil law, apart from the right to recover money or property advanced upon the faith of such promise. There can also be no recovery of moral damages on the ground of seduction under Art. 2219 par. 3, new Civil Code because the seduction contemplated in said article is the crime punished as such in Arts. 337 and 338 of the Revised Penal Code which does not exist in this case. Petitioner can not be held morally guilty of seduction, not only because he is 10 years younger than the complainant but also because *the complainant surrendered herself to the petitioner* in order to bind him even before they are married.

Moral damages not recoverable in clearly unfounded civil action.—

A clearly unfounded civil action is not one of those analogous cases wherein moral damages may be recovered. Art. 2219 specifically mentions "quasi-delicts causing physical injuries" as an instance when moral damages may be allowed, thereby implying that all other quasi-delicts not resulting in physical injuries are excluded,[246] excepting of course, the special torts referred to in Art. 309,[247] and in Arts. 21, 26, 27, 28, 29, 30, 32, 34, and 35 on the chapter on human relations.[248]

Exemplary damages.—

The Civil Code provides that the amount of the exemplary damages need not be proved but the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[249] This provision was applied in the case of *Erlinda Estopa v. Loreto Piansay Jr.*[250]

Plaintiff fell in love and submitted herself completely to the defendant. Defendant backed out from his promise of marriage and the plaintiff demanded defendant's compliance with his promise in order to vindicate her honor. All her efforts being in vain, she filed the present complaint, not to compel defendant to marry her because anyway the defendant is not interested in her anymore, but to demand from him a compensation for the damages that she sustained.

Held: The plaintiff is not entitled to any damage at all. Under the new Civil Code, the mere breach of a promise to marry is not actionable,[251] so that, the defendant may not be compelled to pay moral damages. As the plaintiff has no right to moral damages, she may not demand exemplary damages.

The rule is that exemplary damages are imposed primarily upon the wrongdoer as a deterrent in the commission of similar acts in the future. Such punitive damages cannot be applied to his master or employer except only to the

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[244] Art 43 and 44, SPANISH CIVIL CODE.
[245] 58 Phil. 866.
[246] Strebel v. Figueras, G.R. No. L-4722, December 29, 1954.
[247] See Art. 2219, par. 9, NEW CIVIL CODE.
[248] Malonzo v. Galang, *supra* note 227; see Art. 2219, par. 10, NEW CIVIL CODE.
[249] Art. 2234, NEW CIVIL CODE.
[250] G.R. No. L-14733, September 30, 1960.
[251] Hermosisima v. Court of Appeals, *supra*.

extent of his participation or ratification of the act because they are penal in character.[252]

In this jurisdiction, exemplary damages may only be imposed when the crime is committed with one or more aggravating circumstances.

TRANSITIONAL PROVISIONS

Art. 2266, new Civil Code.—

In *Barles v. Enrile* [253] it was held that Arts. 283, 284, and 289 of the new Civil Code, concerning proof of illegitimate filiation, whether of natural or spurious children, are expressly given retroactive effect under par. 3, Art. 2266 of the same Code.

Art. 2255 applied.—

In *Manalansan v. Manalang, supra*, Art. 1607 of the new Civil Code which requires judicial consolidation of title in the vendee-a-retro of real property, was not given retroactive effect because Art. 2255 of the new Civil Code provides that "the former laws shall regulate acts and contracts with a condition or period, which are executed before the effectivity of this Code, even though the condition or period may still be pending at the time this body of laws goes into effect." The contract in question was a sale with right of repurchase executed on Sept. 24, 1949, before the effectivity of the new Civil Code. The fact that the period for the repurchase was to expire during the effectivity of the Code, is immaterial since the right of the vendee-a-retro in being exempt from the requirement of judicial consolidation had already vested at the time of the execution of the contract.

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[252] Rotea v. Halili, G.R. No. L-12030, September 30, 1960.
[253] G.R. No. L-12894, September 30, 1960.