CIVIL LAW

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The 1961 decisions of the Supreme Court on civil law reveal a number of precedent-setting cases. For the first time, the Supreme Court came out with a definition of "future inheritance." For the first time also, it declared void as against public policy a contract (commonly entered into in diploma mills) which requires the recipient of a scholarship to reimburse the grantor-University of the scholarship cash should the recipient transfer to another school. Several cases on paternity and filiation, support, obligations and contracts, chattel mortgage, and concurrence and preference of credits—are definitely enriching to Philippine jurisprudence as they embody rulings of our highest tribunal on novel questions of law. Most of the decisions, however, reiterate and clarify settled doctrines.

The survey that follows presents the various decisions according to subject matter in the order in which they appear in the Civil Code.

EFFECT AND APPLICATION OF LAWS

Prospective effect of laws.—

Article 4 of the new Civil Code lays down the rule that laws shall have no retroactive effect, unless the contrary is provided. Applying this rule, it was held in *Buyco v. Philippine National Bank* [1] that Republic Act 1576 divesting the Philippine National Bank of the authority to accept backpay certificates in payment of loans, does not apply where the offer of payment was made before the effectivity of said Act.

Meaning of "amount of successional rights".—

The phrase "amount of successional rights" found in article 16 of the new Civil Code properly refers to the extent or amount of property that each heir is legally entitled to inherit from the estate available for distribution.[2]

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[1] G.R. No. L-14406, June 30, 1961.
[2] Collector of Internal Revenue v. Fisher, *et al.*, G.R. Nos. L-11622 and L-11668, Jan. 28, 1961.

HUMAN RELATIONS

Acquittal based on reasonable doubt.—

The case of *Mendoza v. Alcala*[3] applies the rule in article 29 of the new Civil Code that in the absence of any declaration that the judgment of acquittal is based upon reasonable doubt, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

In the *Mendoza* case, it appears that the defendant was acquitted of estafa. Nowhere in the decision rendered in said criminal case is found an express declaration that the fact from which the civil action might arise did not exist. Said decision likewise contains no express declaration that the acquittal of the defendant was based upon reasonable doubt. However, the decision states: "Any obligation which the defendant may have incurred in favor of Gaudencio T. Mendoza is purely civil in character, and not criminal." This, the Supreme Court held to be equivalent to a declaration that the acquittal was based on reasonable doubt. The Court added that the aforequoted statement also amounts to a reservation of the civil action in favor of the offended party.

Independent civil action in estafa case.—

Article 33 of the new Civil Code provides that in cases of fraud a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. This provision was invoked in the *Mendoza* case, *supra,* in support of the right of the offended party to file a suit to enforce the civil liability arising from the same transaction which was the subject matter of the criminal action for estafa.

CIVIL PERSONALITY

Foetus must be born later to have juridical capacity.—

In *Geluz v. Court of Appeals, et al.,*[4] it was held that the provisional personality of a conceived child under article 40 of the new Civil Code cannot be invoked where the child was dead when separated from its mother's womb.

DIGEST OF RULINGS ON NATURALIZATION

Strict construction.—

1. The requirements of the law regarding the qualifications of a petitioner are stringent. To dispense with some such require-

[3] G.R. No. L-14305, Aug. 29, 1961.
[4] G.R. No. L-16439, July 20, 1961.

ments on the shallow excuse that petitioner's counsel was responsible for the omission, would blaze the trail for dangerous precedents. Doubts concerning the grant of citizenship should be resolved in favor of the government and against the claimant.[5]

2. The burden of proof is on the applicant to prove that he has all the qualifications and none of the disqualifications provided by law.[6]

Irreproachable character.—

1. The applicant cannot claim irreproachable character when he made false statements in his application for marriage license and in his marriage contract wherein he declared himself to be a Filipino citizen.[7]

2. An applicant who had been delinquent in the payment of tax on liquor (although compromised) and had violated the Minimum Wage Law (although amicably settled) has not conducted himself in a proper and irreproachable manner.[8]

3. The act of the petitioner in purchasing land through his mother-in-law (a Filipino citizen) in circumvention of the constitutional provision prohibiting aliens from acquiring private agricultural land in the Philippines, except by hereditary succession, does not speak of an irreproachable character.[9]

4. Wilful violation of section 6 of the Alien Registration Act of 1950, by not registering himself as an alien, does not show proper and irreproachable manner in his conduct with the constituted government.[10]

5. Petitioner's act in using an alias name at the time the use thereof was already prohibited by law indicates that his conduct is not irreproachable in character.[11]

6. Openly cohabiting with a woman without benefit of marriage and maintaining with her illicit relations can hardly be regarded as proper and irreprochable.[12]

7. Where the petitioner has been decreed to use his real name and his authorized alias name, but in some of his business transactions he interchangeably used either name, his conduct is not irreproachable.[13]

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[5] Tan Chu Keng v. Republic, G.R. No. L-13139, May 24, 1961.
[6] Ngo Bun Ho v. Republic, G.R. No. L-15518, Nov. 29, 1961.
[7] *Id.*
[8] *Id.*
[9] Fong v. Republic, G.R. No. L-15991, May 30, 1961.
[10] Cu v. Republic, G.R. No. L-16073, March 27, 1961.
[11] Lim Bun v. Republic, G.R. No. L-12822, April 26, 1961.
[12] Tan v. Republic, G.R. No. L-14861, March 17, 1961; Lao v. Republic, G.R. No. L-17055, Oct. 27, 1961.
[13] Ng Liam Keng v. Republic, G.R. No. L-14146, April 29, 1961.

8. By omitting from the petition his former places of residence, the petitioner, in effect, falsified the truth, indicating lack of good moral character on his part.[14]

Lucrative trade.—

1. A petitioner earning less than ₱250 a month is not considered as possessing the necessary lucrative trade or profession in view of the high cost of living.[15]

2. An annual income of ₱900 is not a lucrative trade.[16]

3. An annual income of ₱8,687.50 cannot be considered lucrative, especially if we take into account the fact that the applicant has a wife and 5 children (all of school age and actually attending school) to support, it appearing that he owns no real estate and has no other source of livelihood.[17]

4. The fact that the petitioner is a merchant with an annual income of ₱3,000 can hardly be deemed lucrative under the law considering that the petitioner has seven children, all of school age, aside from himself, to support.[18]

Language requirement.—

1. The applicant cannot be presumed to know Cebuano—a Visayan dialect—for the simple reason that he was born in Leyte. The qualifications of the law must be established by clear evidence.[19]

2. When asked to write: "Good morning Sir, how are you?" petitioner wrote: "Good morning sir, who ras you?"—petitioner does not possess sufficient working knowledge of the English language which disqualifies him from acquiring Philippine citizenship.[20]

Educational requirement of children.—

1. The fact that applicant's minor children were born and have lived since infancy in China does not excuse him from complying with the educational requirements. The unsettled conditions in China and the strictness of Philippine immigration laws do not constitute valid excuses for non-compliance.[21]

2. While the Anglo-Chinese School is recognized by the Office of Private Education, petitioner has failed to establish that it is one where Philippine history, government and civics are taught. Hence,

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[14] Keng Giok v. Republic, G.R. No. L-13347, Aug. 31, 1961.
[15] Ong v. Republic, G.R. No. L-15764, May 19, 1961; Jew Chong v. Republic, G.R. No. L-14343, May 23, 1961.
[16] *Supra*, note 10.
[17] *Supra*, note 14.
[18] *Supra*, note 6.
[19] *Supra*, note 12; Lo Chicomping v. Republic, G.R. No. L-13347, Aug. 31, 1961.
[20] *Supra*, note 11.
[21] Republic v. Go Bun Lee, G.R. No. L-11499, April 29, 1961.

he should be deemed to have failed to comply with the educational requirement.[22]

3. Where the petitioner resides in a place where there is no school for deaf and mute children, his failure to enroll his deaf-mute daughter in any school may be considered justified.[23]

Requirement of having mingled socially with Filipinos.—

The act of the applicant of enrolling his children in an exclusive Chinese school, in spite of the injunction in the original decision that he should enroll his children in a school duly recognized by the Government, evinces a tendency or desire on his part to segregate his children from Filipino school children, and, hence, he has not proved his intention to have himself and his children associate with or be assimilated into the Philippine citizenry.[24]

Proof of foreign law.—

It is not necessary for petitioner to show that the laws of China allow Filipinos to be citizens of that country, it being sufficient that he submits proof that he is a citizen of Nationalist China.[25] The reason is that in a number of decisions, it has been found that Filipinos may be naturalized in the Republic of China and consequently it is not necessary to prove that fact in subsequent cases.[26]

Declaration of intention.—

1. The requirement as to the filing of declaration of intention to become a citizen of the Philippines, referred to in section 5 of the Revised Naturalization Law, is mandatory and an absolute prerequisite to naturalization, and failure to file the same, unless exempted under section 6 of the said law, is fatal to the application for naturalization.[27]

Petition for citizenship.—

1. The law expressly provides that petitions for naturalization must be filed after one year from the filing of the declaration of intention. The filing of the petition before, although the hearing was held more than one year after the filing of said declaration of intention, is not sufficient compliance with the law.[28]

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[22] Garchitorena v. Republic, G.R. No. L-15102, April 20, 1961.
[23] *Id*
[24] Ong Chung Guan v. Republic, G.R. No. L-15691, March 27, 1961.
[25] *Supra*, note 18
[26] Cu v. Republic, 51 O.G. 5625.
[27] Yap v. Republic, G.R. No. L-12938, July 31, 1961.
[28] *Supra*, note 21.

2. If the petitioner be a father of children, it is mandatory that he should state in his petition the name, age, birthplace and residence of each of the children regardless of whether said children are already of age at the time of filing the petition, notwithstanding that under section 15 of the Revised Naturalization Law only minor children are affected by the naturalization of the father.[29]

3. Petitioner's argument that it was needless for him to state his former places of residence in his petition because they were all in Manila, anyway, cannot stand in the face of the express requirement of section 7 of the Revised Naturalization Law that petitioner must state in his petition his present as well as former places of residence, if any. This is to facilitate checking up on the different activities of the petitioner bearing upon his petition for naturalization (especially as to his qualifications and moral character) either by private individuals or government agencies by indicating to them the location or places in which to make appropriate inquiries or investigations thereon.[30]

4. Where the petitioner failed to state in his petition his former places of residence, the approximate date of his debarkation, his petition must be denied even though he was able to present evidence proving these matters without objection on the part of the representative of the government.[31]

5. Failure to aver in the petition that the petitioner has complied with the requirement of filing a declaration of intention to become a Filipino citizen one year prior to the filing of the petition for naturalization, is a jurisdictional defect.[32]

6. Where the petition for naturalization was amended to include "and I have completed my elementary and secondary education in schools recognized by the Philippine Government", and said amended petition was not published in accordance with law and section 1 of Republic Act 530 which provides that no petition for naturalization should be heard until after six months from the date of the last publication, the lower court did not have jurisdiction to hear the amended petition and grant the same.[33]

7. An applicant is not entitled to be admitted to Filipino citizenship where his petition does not contain allegations to prove his belief in the underlying principles of the Philippine Constitution and his continuous residence in the Philippines. The fact that applicant stated his belief at the hearing did not cure the omission.[34]

[29] *Supra*, note 5.
[30] *Supra*, note 14.
[31] Lo v. Republic, G.R. No. L-15919, May 19, 1961.
[32] Sy Ang Hoc v. Republic, G.R. No. L-12400, March 29, 1961.
[33] Tan v. Republic, G.R. No. L-14860, May 30, 1961.
[34] Que Choc Cui v. Republic, G.R. No. L-16184, Sept. 30, 1961.

Character witnesses.—

1. Witnesses who are under the moral and economic influence of the petitioner and have never lived in the place of residence of the petitioner are not competent as character witnesses.[35]

2. A vouching witness is in a way an insurer of the character of the petitioner because in his testimony the court is of necessity compelled to rely in deciding the merits of the petition. It is therefore imperative that he be competent and reliable. And he is only competent to testify on his conduct, character and moral fitness if he has had the opportunity to observe him personally, if not intimately, during the period he has allegedly known him.[36]

3. Where the witnesses failed to state categorically that the applicant was normally irreproachable and the specific fact from whence it can be inferred, testifying merely that the applicant was "very good" and "a law-abiding citizen", the application for citizenship must be denied.[37]

4. Where the witnesses did not testify that the petitioner believed in the principles underlying the constitution, or has evinced a sincere desire to embrace the customs, traditions and ideals of the Filipinos, the petition must be denied.[38]

Act contrary to Government announced policy.—

In *Tan Tiam v. Republic*,[39] after the promulgation of the decision declaring him a naturalized citizen of the Philippines but before the expiration of the two-year probationary period, Tan Tiam entered into a contract to sell with the Sta. Mesa Realty, Inc., placing his citizenship as "Filipino". *Held:* Such conduct is contrary to the government announced policy of prohibiting aliens from acquiring private agricultural lands in the country. While it may be true that under the contract ownership is transferred to the petitioner only after ten years, during which he expects to have already the status of a naturalized Filipino with all the privileges implicit in said citizenship, he has nevertheless no right to presume that he would be admitted to Philippine citizenship upon the expiration of the two-year intervening time prescribed by law. Republic Act 530 postpones for two years the execution of a decision granting an application for Philippine citizenship only if he proves to the satisfaction of the court the facts required in said law. Strict compliance

[35] *Supra*, note 31.
[36] Lim Cheng Tian v. Republic, G.R. No. L-12001, Feb. 28, 1961.
[37] Chua Pun v. Republic, G.R. No. L-16825, Dec. 22, 1961.
[38] Abing v. Amistad, G.R. No. L-16254, Oct. 26, 1961.
[39] Tan Tiam v. Republic, G.R. No. L-14802, May 30, 1961.

with all the conditions is essential. Relaxation of these requirements to meet one's eagerness might lead to abuse and confusion and would sanction falsehood.

Oath-taking is deferred for two years.—

A decision granting naturalization which directs the Clerk of Court to forward "as soon as possible" copies of the decision and all pertinent papers in connection with the case to the Solicitor General, the National Bureau of Investigation, the Philippine Constabulary, the Commissioner of Immigration and the Local Civil Registrar, gives the impression that the petitioner can take his oath without waiting for the expiration of the two-year period provided for in section 1 of Republic Act 530, and is apparently objectionable on this score.[40]

If the case is appealed, the two-year period should be counted from the date the Supreme Court promulgates its decision.[41]

Cancellation of naturalization certificate.—

A naturalization proceeding not being a judicial adversary proceeding, the decision rendered therein is not *res judicata* as to any of the reasons or matters which would support a judgment cancelling the certificate of naturalization for illegal or fraudulent procurement. A certificate of naturalization may be cancelled upon grounds subsequent to the granting of the certificate. The Government is not estopped to question petitioner's status as a citizen upon any ground which could have been raised before or during the hearing of the petition after the granting of the certificate of naturalization.[42]

PROPERTY RELATIONS BETWEEN SPOUSES

National law of spouses both foreigners governs their property relations.—

Where both spouses are foreigners the law determinative of their property relations is their national law even if their marriage was celebrated in the Philippines.[43]

Donation propter nuptials of land must be in a public document.—

Donations by reason of marriage are governed by the rules on ordinary donations except as to their form which shall be regulated

[40] *Supra*, Note 33.
[41] Chiong v. Republic, G.R. No. L-15313, March 25, 1961
[42] *Supra*, note 21.
[43] Collector of Internal Revenue v. Fisher, *et al.*, G.R. Nos. L-11622 and L-11668, Jan. 28, 1961, citing 9 MANRESA AL CODIGO CIVIL 202

by the Statute of Frauds.[44] However, the requirement that the donation of an immovable to be valid must be made in a public document is not merely formal. It goes into the intrinsic validity of the donation itself. Thus, in *Pacio, et al. v. Billon, et al.*,[45] decided under article 633 of the old Civil Code now article 749 of the new Civil Code, a donation propter nuptias of a parcel of land made in a private instrument was declared null and void.

PATERNITY AND FILIATION

Recognition of natural children.—

Under the old Civil Code, the right of natural children to be supported by their father depended exclusively on the recognition by the father of his paternity. Therefore, the failure of the child's action for support did not adjudge that he was not the defendant's child but that defendant never recognized him as such. It is without prejudice to the filing of an action for compulsory recognition under paragraphs 3 and 4 of article 283 of the new Civil Code.[46]

Right of natural child to bear surname of father.—

A recognized natural child has the right to bear the surname of the parent recognizing him.[47] When the recognition of a minor does not take place in a record of birth or in a will, judicial approval shall be necessary.[48] In *Garcia v. Republic*,[49] petitioner based her petition for change of name on the fact that her natural father recognized her. The petition was opposed on the ground that the remedy is not change of name but judicial approval of such recognition. *Held*: The appropriate remedy is an action for recognition since the petitioner has established the fact of recognition. Once this is accomplished, she can avail of the right granted by law—the right to bear the surname of the father.

Time for filing action for investigation of paternity of spurious children.—

Article 289 of the new Civil Code authorizes the investigation of the paternity or maternity of illegitimate children, not natural nor natural by legal fiction, but is silent as to the period within which the action for investigation may be brought. In view of this, it was contended in *Barles, et al. v. Ponce Enrile, et al.*[50] that the action

[44] Article 127, new Civil Code.
[45] G.R. No. L-15088, Jan. 31, 1961.
[46] Silva, *et al.* v. Peralta, G.R. No. L-13114, Aug. 29, 1961.
[47] Article 282, new Civil Code.
[48] Article 281, par. 2, new Civil Code.
[49] G.R. No. L-16085, Nov. 29, 1961.
[50] G.R. No. L-12894, Jan. 28, 1961.

to investigate spurious paternity should be brought within five years from the time the right of action accrues pursuant to article 1149 of the new Civil Code.[51]

Held: The action for the declaration or investigation of the paternity of illegitimate (spurious) children authorized under article 289 under the circumstances therein mentioned, is similar to the action for the recognition of natural children under article 285 of the new Civil Code, which provides that such action may be brought during the lifetime of the presumed parent unless the case falls within the exceptions therein specified allowing the filing of the action even after the death of the alleged parent. Owing to this similarity, the same time limitation should apply to both actions, in the absence of express legal provision to the contrary. Public policy is involved in this kind of action and it is apparently for this reason that a special period of prescription has been provided for. The rule that the time limitation established by article 285 applies as well to spurious children, does not confer upon the latter better rights than natural children contrary to the codal classification of children into legitimate, natural and spurious and the gradation of their rights in that order.[52]

SUPPORT

Income tax deduction is no basis in determining amount of support.—

The case of *Silva, et al. v. Peralta,*[53] is authority for the rule that income tax deductions do not constitute a reasonable basis for an award of damages against the father on account of amounts the mother was compelled to spend for the maintenance of their child, since said deductions are fixed for an entirely different purpose—to arrive at the net taxable income and merely represent the amount that the state is willing to exempt from taxation. Under article 290 of the new Civil Code, support is everything that is indispensable for the sustenance, dwelling, clothing and medical attendance, according to the social position of the family, as well as the education of the person entitled to be supported until he completes his education or training for some profession, trade or vocation even beyond the age of majority.

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[51] Article 1149 provides: "All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues."

[52] This holding is in consonance with the opinion of Justice J.B.L. Reyes in Zuzuarregui v. Zuzuarregui, G.R. No. L-10010, Oct. 31, 1957, that "Article 285 limits not only the so-called action for recognition by natural children but also actions for investigation of paternity by illegitimate children."

[53] G.R. No. L-13114, Aug. 29, 1961.

PARENTAL AUTHORITY

The mother cannot compromise her child's right to indemnity.—

While under article 320 of the new Civil Code the mother, in the absence of the father, is the legal administratrix of the property pertaining to the children under parental authority, said article gives her no authority to compromise their claims for indemnity arising from their father's death "for a compromise has always been deemed equivalent to an alienation and is an act of strict ownership that goes beyond mere administration." [54] For this reason, the court's approval is necessary in compromises entered into by guardians and parents.[55]

USE OF SURNAMES

An unacknowledged natural child cannot use surname of putative father.—

Where it does not appear that the alleged natural father has recognized a natural child, the latter is not allowed to use the surname of the former, pursuant to article 366 of the new Civil Code. The case of *Manuel, et al. v. Republic* [56] applies this rule.

The *Manuel* case was distinguished by the Supreme Court from the case of *Valencia v. Rodriguez* [57] as follows: Firstly, the *Valencia* case was decided before the effectivity of the new Civil Code when there was no specific legal provision regulating the use of surnames, whereas, under the prevailing law, a natural child may only use the father's surname if he is acknowledged by both parents. Otherwise, he shall employ only the surname of the recognizing parent. There is nothing in the record to show that petitioner Juan Manuel was acknowledged by both his natural father and mother. Secondly, unlike in the *Valencia* case where the father was found to have acquiesced to the use of his surname by the illegitimate children, there is no evidence in the *Manuel* case that petitioner has previously used the surname Eaton, with the consent or acquiescence of the putative father. On the contrary, his petition for change of name specifically alleged that he had always been using the name "Juan Manuel," and signified the intention to adopt his alleged natural father's surname only in 1958 when he filed the petition, and after the demise of the latter.

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[54] People v. Verano, G.R. No. L-15805, Feb. 28, 1961.
[55] Article 2032, new Civil Code.
[56] G.R. No. L-15811, June 30, 1961.
[57] 47 O.G. 180.

ABSENCE

Presumption of death.—

Paragraph 1 of article 391 of the new Civil Code establishes a presumption of death on the part of a person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane. This provision was invoked in the case of *Caltex (Philippines) Inc. v. Villanueva.*[58]

In the *Caltex* case, it appears that the claimant's husband was an employee of Caltex and while on board the vessel MV "Caltex Mindanao" in the open sea disappeared and could not be found dead or alive despite diligent search. On the basis of this finding, the Workmen's Compensation Commission awarded death compensation to the widow under the Workmen's Compensation Act. On appeal, one of petitioner's contention was that a person found missing on board a vessel in the course of a sea voyage cannot be declared presumptively dead and his wife a widow before the lapse of four years provided for by article 391 of the new Civil Code.

Held: The presumptions of death in article 391 may be availed of only for the purpose of settling the estate of a missing person.[59] They do not apply to claims under the Workmen's Compensation Act where no settlement of the estate is involved. Moreover, the presumption established in paragraph 1 of article 391 applies where the vessel is lost during a sea voyage and a person on board it is unheard of for four years since the loss of the vessel. In the case at bar the vessel was not lost during a sea voyage. The petitioner has not established the fact that the missing employee is alive. On the other hand, the reasonable inference that may be drawn from the fact that he disappeared while on board the vessel in the open sea and could not be found dead or alive despite diligent search is that he accidentally had fallen into the sea and was drowned. Death having arisen out of and in the course of employment, the widow and her minor child by him are entitled to compensation from the petitioner.

CIVIL REGISTER

Civil status, citizenship, name are substantial matters to be threshed out in a proper proceeding.—

Following the doctrine in the 1958 cases of *Ansaldo v. Republic* [60] and *Black v. Republic,*[61] the Supreme Court denied the petitions for

[58] G.R. No. L-15658, Aug. 21, 1961.

[59] This statement is misleading for it overlooks the plain and express opening statement of said article 391 which reads: "The following shall be presumed dead *for all purposes*, including the division of the estate among the heirs . . ." (Italics supplied.)

[60] G.R. No. L-10226, Feb. 14, 1958.

the correction of entries of citizenship in the civil register in a proceeding brought under article 412 of the new Civil Code in *Bantoto Coo, et al. v. Republic*[62] and *Balete v. Republic*.[63] In addition, it laid down in the *Bantoto Coo* case the rule that civil status is likewise a controversial issue that must be threshed out in a proper action, and not in a proceeding under article 412 which is summary in nature (a condition which was not changed by the fact that the hearing of the petition was published and notice thereof was served on the State), and merely embraces corrections of mistakes that are clerical in character.

In the *Bantoto Coo* case, it appears that the petition alleged that Lily, William, Sober, Manuel, Mercy Alven, Eve and Joy, all surnamed Bantoto Coo, are minor children of Coo Ak, a Chinese citizen, single, and Bernardina Bantoto, a Filipina, single; that they were all born out of the union, without benefit of marriage between Coo Ak and Bernardina Bantoto who were both single and without any impediment to marry at the time of the formers' conceptions and births; and that notwithstanding these facts in the respective entries of their births there have been committed errors as regards, among others, the civil status and citizenship of their natural parents, which should be corrected. The lower court granted the petition but, on appeal by the Government, the Supreme Court ruled otherwise.

In the *Balete* case, the correction prayed for in the petition was the change of citizenship from Chinese to Filipino, recorded in the birth certificate.

In *Barillo v. Republic*,[64] it appears that petitioner has been known by the nickname "Etang". Consequently, her friends mistook her name to be Vicenta. In the birth certificate of her children and in her marriage contract with Ngan Hu, the name Vicenta appeared thereon. Petitioner now invoked article 412 in order to change her name from Vicenta to Anacleta, the latter being her real name. *Held:* The correction is substantial in nature and should be prosecuted in the appropriate proceeding.

CLASSIFICATION OF PROPERTY

Improvements and crops as immovable property.—

Article 415 (2) of the new Civil Code classifies as immovable property trees, plants, and growing fruits, while they are attached

[62] G.R. No. L-10869, Nov. 28, 1958.
[63] G.R. No. L-14978, May 23, 1961.
[63] G.R. No. L-17332, Nov. 29, 1961.
[64] G.R. No. L-14823, Dec. 28, 1961.

to the land or form an integral part of an immovable. This provision was applied in *Tolentino v. Baltazar, et al.*[65] in connection with section 118 of the Public Land Act.

In the *Tolentino* case, it appears that after the approval of his homestead application, Angel Baltazar mortgaged the present and future improvements on the land to Pastor Tolentino. After Angel died, his widow and children conveyed to his son Basilio their rights in the homestead. Basilio applied for and obtained a homestead patent on the land and an Original Certificate of Title therefore in his name. As the mortgage was not annotated on the said title, Tolentino instituted the present action for the cancellation of the said title on the ground that Basilio had secured it by fraud. Both the trial court and the Court of Appeals rendered judgment in favor of Basilio on the ground, among others, that the deed executed by Angel to Tolentino seems to partake of the nature of a chattel mortgage, and that as such it is defective and cannot be registered owing to its failure to describe properly the improvements sought to be encumbered thereby; and that the debt secured by the mortgage having been contracted within the five-year prohibitory period for the encumbrance of homesteads, the mortgage cannot be annotated on Basilio's title. On appeal, the Supreme Court reversed the judgment and ordered Basilio to surrender his certificate of title to the Register of Deeds for the annotation thereon of the mortgage.

Held: Section 118 of the Public Land Act explicitly permits the encumbrance, by mortgage or pledge, of the *improvements and crops on the land* without any limitation in point of time. Although the parties to a contract may treat certain improvements and crops as chattels, insofar as they are concerned, it is now settled in this jurisdiction that, in general, and insofar as the public are concerned, such improvements, if falling under the provisions of article 415 of the new Civil Code, are immovable property.[66] As a consequence, a mortgage constituted on said *improvements* must be susceptible of registration as a *real estate* mortgage and of annotation on the certificate of title to the land of which they form part, although the land itself may not be subject to said encumbrance, if the debt guaranteed thereby was contracted within the period stated in said section 118 of Commonwealth Act No. 141. Otherwise, the provision authorizing the mortgage of the improvements would be defeated.

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[65] G.R. No. L-14597, March 27, 1961.

[66] Citing: Evangelista v. Alto Surety & Insurance Co., Inc., G.R. No. L-11139, April 23, 1958; Manarag v. Ofilada, 52 O.G. 3954; Republic v. Ceniza, *et al.*, G.R. No. L-1469, Dec. 17, 1951; Leung Yee v. Strong Machinery Co., 37 Phil. 644.

POSSESSION

Possessor in bad faith.—

Where the tenant is aware of a flaw in his title, he is deemed a possessor in bad faith.[67]

Possessor in bad faith cannot recover useful expenses.—

The case of *Santos v. De Guzman*[68] reiterates the rule that a tenant who possessed the land in bad faith is not entitled to reimbursement of useful expenses incurred on said land. However, he has the right to take away such improvements were it possible to do so without injury or damage to the property rented or leased.

In the *Santos* case, it appears that the tenant, being aware of the precariousness of his possession, spent for the levelling of a portion of the land cultivated and for the construction of dikes and paddies to make the landholding fit for cultivation. The Supreme Court held these to be useful and not necessary since the latter kind of expenses are mainly for the preservation of the property.

REGISTRY OF PROPERTY

Registration may be denied if applicant has no valid adverse claim.—

In *Rivera v. Peña, et al.*[69] it appears that Timoteo Peña mortgaged two parcels of land in favor of the Rehabilitation Finance Corporation. One of the conditions of the mortgage is that the lots shall not be encumbered in any manner whatsoever without the written consent of the mortgagee. Thereafter, Peña executed in favor of Teotimo Rivera a contract of lease over the same lots without the consent of the mortgagee. Rivera now insists that his lease rights be registered.

Held: Rivera has no valid adverse claims which may be registered. His rights were derived from Peña and he is bound by the latter's commitments in favor of the Rehabilitation Finance Corporation.

DONATION

Donation of an immovable made in private instrument is void.—

Article 633 of the old Civil Code, which is preserved in article 749 of the new Civil Code, provides that in order that a donation of real property be valid it must be made by public instrument in which the property donated must be specifically described and the amount

[67] Quemuel, *et al.* v. Olaes, *et al.*, G.R. No. L-11084, April 29, 1961.
[68] G.R. No. L-11406, April 26, 1961.
[69] G.R. No. L-11781, March 24, 1961.

of the encumbrances to be assumed by the donee expressed. The case of *Pacio, et al. v. Billon, et al.*[70] illustrates the application of this provision.

SUCCESSION

Interpretation of a will.—

The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be gathered, and that other can be ascertained.[71] Thus, a provision in a will which states: "Dapat din naman malaman ng dalawa kong tagapagmana na sila ay may dapat tungkulin o gampanan gaya ng mga sumusunod: Pahintulutan nila na si Delfin Yambao ang makapagtrabajo ng bukid habang panahon x x x", can convey no other meaning than to impose a duty upon the heirs to allow Yambao to cultivate the farm. To hold that said provision merely amounts to a suggestion which the heirs may or may not follow, would be to devoid the wish of the testator of its real and true meaning.[72]

No reserva troncal where the properties were inherited by a descendant from an ascendant.—

In *Lacerna, et al. v. De Corcino* [73] it appears that the lands in question belonged originally to Bonifacia Lacerna. Upon her death, they passed, by succession, to her only son, Juan Marbebe who subsequently died intestate, single and without issue. Bonifacia had two brothers, Catalino and Marcelo, and a sister, defendant herein. Both brothers had died and were survived by plaintiffs herein. On the other hand, intervenor Jacoba Marbebe is the half-sister of the deceased Juan Marbebe. The lower court awarded the lands in question to Jacoba Marbebe. On appeal, it was contended that under article 891 of the new Civil Code establishing *reserva troncal,* the lands should pass to the heirs of the deceased within the third degree, who belong to the line from which the properties came, and that since the same were inherited by Juan Marbebe from his mother, they should go to his nearest relative within the third degree on the maternal line, to which plaintiffs belong, not to Jacoba Marbebe, despite the greater proximity of her relationship to the deceased for she belongs to the paternal line.

Held: The main flaw in plaintiffs' theory is that it assumes that said properties are subject to a *reserva troncal,* which is not a

[70] *Supra,* note 45.
[71] Article 790, new Civil Code.
[72] Yambao v. Gonzales, *et al.,* G.R. No. L-10763, April 29, 1961.
[73] G.R. No. L-14603, April 29, 1961.

fact, for article 891 of the new Civil Code applies only to properties inherited, under the conditions therein set forth, *by an ascendant from a descendant*, and this is not the case at bar, for the lands in dispute were inherited by a descendant from an ascendant. The transmission of the lands by inheritance, was therefore, properly determined by the lower court in accordance with the order prescribed for intestate succession, pursuant to which a sister, even if only a half-sister, in the absence of other sisters or brothers, or of children of brothers or sisters, excludes all other collateral relatives, regardless of whether or not the latter belong to the line from which the property of the deceased came.

Alienation of reservable property.—

In *reserva troncal,* the ascendant obliged to reserve (*reservista*) has dominion and legal title to the property. As such he may alienate said property but the title which the transferee acquires is subject to a resolutory condition, namely: the survival, at the time of the death of the *reservista,* of relatives within the third degree belonging to the line from which the property came (*reservatarios*).[74]

Ascendants do not exclude widow.—

Article 935 of the old Civil Code which provides that in default of legitimate children and descendants of the deceased, his ascendants shall inherit from him, to the exclusion of collaterals, should be read in relation to article 836 of the same Code, which provides that if the testator leaves no descendant, but does leave ascendants, the surviving spouse shall be entitled to a third of the estate in usufruct. Thus, it was held in *Soliman v. Icdang, et al.*[75] that defendants as parents of the deceased, inherit the land share and share alike, but one-third of the share of each shall be subject to the usufruct of the plaintiff widow.

Order of intestate succession.—

Article 1009 of the new Civil Code which provides that should there be neither brothers nor sisters, nor children of brothers or sisters, the other collateral relatives shall succeed to the estate, does not make a distinction as to whether the brothers or sisters must be of the full or half blood. Hence, a sister, even if only a half-sister, excludes all other collateral relatives, in the absence of other sisters or brothers, or of children of brothers or sisters.[76]

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[74] Sienes, *et al.* v. Esparcia, *et al.*, G.R. No. L-12957, March 24, 1961.
[75] G.R. No. L-15924, May 31, 1961.
[76] *Supra*, note 78.

PRESCRIPTION

Prescription does not run between spouses.—

The case of *Pacio, et al. v. Billon, et al.*[77] applies article 1109 of the new Civil Code which says: Prescription does not run between husband and wife, even though there be a separation of property agreed upon in the marriage settlements or by judicial decree.

In the *Pacio* case, it appears that in 1901, Flaviano Pacio executed a donation *propter nuptias* in a private instrument over a parcel of land in favor of his bride. The donee died in 1930, leaving the defendants herein who are her children by Flaviano. Thereafter, Flaviano married the plaintiff who bore him the other four plaintiffs. After the death of Flaviano, the plaintiffs filed an action to recover the lot in question allegedly retained by defendants without any right thereto. The donation having been declared void, the defendants contended that their mother acquired ownership over the land by prescription. *Held:* Prescription by adverse possession cannot exist between husband and wife.

Registered land cannot be acquired by prescription.—

Article 1126 of the new Civil Code provides that as to lands registered under the Land Registration Act the provisions of that special law shall govern. Applying this provision, it was held in *De los Reyes v. Pastorfide* [78] that the land in dispute having been brought under the operation of the Torrens system the same cannot be acquired by prescription or adverse possession pursuant to section 46 of the Land Registration Act.

Contractual limitation prevails over the statute of limitations.—

The case of *Ang, et al. v. Fulton Fire Insurance Company, et al.*[79] reiterates the ruling in *E. Macias & Company v. China Fire Insurance Company* [80] that the contractual limitation in an insurance policy prevails over the statutory limitation, as well as over the exceptions to the statutory limitations. The period stipulated must, however, be reasonable to be valid.[81]

Action based on solutio indebiti prescribes in 6 years.—

The case of *C. G. Nazario & Sons, Inc. v. Central Bank of the Philippines, et al.*[82] applies the rule in article 1145 of the new Civil

[77] *Supra*, note 45
[78] G.R. No. L-14516. June 30, 1961.
[79] G.R. No. L-15862, July 31, 1961
[80] 46 Phil. 345 (1924).
[81] Pao Chuan Wei v. Nomorosa, G.R. No. L-10292, Feb. 28, 1958.
[82] G.R. No. L-15225. April 29, 1961.

Code, that actions based upon a quasi-contract must be commenced within six years from the time the cause of action accrues.

In the *Nazario* case, it appears that in 1951, plaintiff paid to the Central Bank ₱17,287.53 representing the 17% special tax on foreign exchange sold to plaintiff by the Philippine National Bank. Said taxes were collected by reason of a mistake of the Monetary Board in construing section 1 of Republic Act 601. The action for the refund of the amount so paid was filed only on December 8, 1958. *Held:* This is a case of solutio indebiti under articles 2154 and 2155 of the new Civil Code, which is a quasi-contract.[83] Hence, the action is clearly barred.

Interruption in the functions of the Court interrupts running of prescriptive period.—

Article 1144 of the new Civil Code provides that an action upon a judgment must be brought within ten years from the time the right of action accrues. The Supreme Court recognized an exception to this rule in *Quiambao v. Manila Motors.*[84]

In the *Quiambao* case, it appears that judgment was entered on December 4, 1940 ordering the plaintiff to pay his indebtedness otherwise the car mortgaged to the company will be sold at public auction. The writ of execution was issued on July 14, 1941. On May 19, 1954, the company sought to enforce the judgment, after 13 years had elapsed from the time of the entry of the judgment. The plaintiff claims that the pre-war judgment has prescribed.

Held: The judgment has not prescribed. Deducting the period during which Executive Order No. 32 was in force, which is 3 years, 4 months and 6 days, there is still left 10 years and 29 days. However, the court may take judicial notice of the fact that regular courts in Luzon were closed for months during the Japanese occupation until they were reconstituted on January 30, 1942. This interruption in the functions of the court has been held to interrupt the running of the prescriptive period. Even the minimum term from December 8, 1941, the outbreak of the war, to January 30, 1942, is already a term of one month and 23 days.

Action must be filed against the proper party to interrupt prescription.—

Under article 1155 of the new Civil Code the prescription of actions is interrupted, among others, when they are filed before the

[83] Belman Compania Incorporada v. Central Bank of the Philippines, G.R. No. L-15044, July 14, 1960
[84] G.R. No. L-17384, Oct. 31, 1961.

court. This provision has been interrupted in *Ang, et al. v. Fulton Fire Insurance Company, et al., supra,* to mean that the action must be brought against the proper party in interest.

In the *Ang* case, it appears that the fire insurance policy states that if the claim is made and rejected but no action is commenced within 12 months after such rejection, all benefits under the policy would be forfeited. Plaintiffs' claim was denied and plaintiffs received the notice of denial on April 18, 1956. They brought the action only on May 15, 1958. Plaintiffs contested the dismissal of the action because of prescription on the ground that the filing of the first action against the agent of the insurer interrupted the running of the prescriptive period.

Held: The bringing of the action against the agent cannot have any legal effect except that of notifying the agent of the claim. Beyond such notification, the filing of the action can serve no other purpose. There is law giving any effect to such action upon the principal. Besides there is no condition in the policy that the action must be filed against the agent and the court cannot by interpretation extend the clear scope of the agreement beyond what is agreed upon by the parties.

OBLIGATIONS

Debtor cannot delay payment to suit his convenience.—

The rule in article 1169 of the new Civil Code, that those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation, was applied *Apelario v. Chavez.*[85]

It appears in the *Apelario* case, that plaintiff was the creditor of the defendant. Because of the refusal of the defendant to pay upon maturity, plaintiff filed this action. Defendant during the trial admitted his indebtedness to the plaintiff but requested the plaintiff to wait because many of their accounts receivable have not been collected. *Held:* The excuse of the defendant that they had not yet collected their accounts receivable is no defense. The debtor cannot delay payment to suit his convenience.

Conditional obligation distinguished from an obligation with a period.—

According to the case of *Gaite v. Fonacier, et al.*[86], what characterizes a conditional obligation is the fact that its efficacy or ob-

[85] G.R. No. L-17721, Oct. 16, 1961.
[86] G.R. No. L-11827, July 31, 1961.

ligatory force (as distinguished from its demandability) is subordinated to the happening of a future and uncertain event; so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. Thus, where there is no uncertainty that the payment will have to be made sooner or later and what is undetermined is merely the exact date at which it will be made, the obligation is one with a period.

In the *Gaite* case, the parties Fernando Gaite and Isabelo Fonacier entered into an agreement whereby Gaite transferred to Fonacier all his rights and interests over the 24,000 metric tons of iron ore, more or less, which he had already extracted from the mineral claims held by Fonacier, in consideration of ₱75,000, ₱10,000 of which was paid upon the signing of the agreement and the balance of ₱65,000 to be paid "from and out of the first shipment of iron ores and/or the first amount derived from the local sale of iron ore made by the Larap Mines and Smelting Company, Inc." To secure the payment of said balance, Fonacier delivered to Gaite a surety bond with himself as principal and the Larap Mines and Smelting Company, Inc. and its stockholders as sureties. A second bond was also executed by the same parties to the first bond with the Far Eastern Surety and Insurance Company as additional surety. The second bond expired without the sale of the iron ore being made nor the ₱65,000 balance been paid to Gaite. In the lower court, judgment was rendered for Gaite so that this appeal was brought by Fonacier and his sureties, contending that the lower court erred in holding that the obligation is one with a period and not with a suspensive condition.

Held: From the words of the contract as well as the act of Fonacier in furnishing the bonds insisted upon by Gaite, it is clear that there is no contingency as to the obligation of Fonacier to pay the balance of the agreed price. The previous sale or shipment of the ore was intended merely to fix the future date of the payment. The obligation therefore is one with a period.

Condition precedents to be complied with before liability attaches.—

In *Rodriguez, et al. v. Belgica, et al.*,[87] it appears that defendants were indebted to plaintiffs for ₱35,000. The parties entered into a compromise agreement whereby plaintiffs would authorize Porfirio Belgica to sell or mortgage in 70 days a lot owned in common by them to raise money to pay defendants' obligation. On the 90th day, Belgica filed a motion praying that plaintiffs be ordered to grant the authority stipulated. The lower court ruled that the 70-day

[87] G.R. No. L-10801, Feb. 28, 1961.

period had elapsed and declared the defendants' obligation demandable. Defendants appealed.

Held: The giving of the authority to sell or mortgage precedes the obligation of the defendants to pay the ₱35,000. Until this authority is granted, the 70-day period does not commence to run. Without said authority, the obligation of the defendants cannot be considered as having matured.

Similarly, it was held in *Ang, et al. v Fulton Fire Insurance Company, et al., supra,* that the stipulation in an insurance policy that claims must be filed in court within one year after rejection by the insurance company, is in the nature of a condition precedent to the liability of the insurer, or in other terms, a resolutory clause, the purpose of which is to terminate all liabilities in case the action is not filed by the insured within the period stipulated. The condition is essential to a prompt settlement of claims against insurance companies, as it demands that insurance suits be brought by the insured while the evidence as to the origin and cause of destruction have not yet disappeared.

Court may fix the period of an obligation.—

Article 1197 of the new Civil Code provides that if the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof. This authority is illustrated and explained in *Deudor, et al. v. J. M. Tuason & Company, Inc., et al.*[88]

In the *Deudor* case, it appears that several cases were pending between the Deudors and the J. M. Tuason & Company over the ownership of 50 *quiñones* of land in Quezon City. In a compromise agreement between the parties, which the trial court approved in its decision of April 10, 1953, the Deudors recognized the fee simple title of the company and bound themselves to deliver the clear and complete possession of the land to the company in consideration of a sum of money which the latter undertook to pay to the former after delivery of said possession. As no complete delivery had been made for nearly 4 years since the decision of April 10, 1953 became final, the trial court, acting upon the motion of the company, issued an order on February 28, 1957 fixing a period of four months within which the Deudors may comply with their obligation under the compromise agreement. On appeal the Deudors contended that the lower court had no authority to fix the period because this amounted to an amendment of the compromise agreement.

[88] G.R. No. L-13768, May 30, 1961.

Held: The contention is without merit. When the authority granted by article 1197 is exercised by courts the same does not amend or modify the obligation concerned. Article 1197 is *part and parcel* of all obligations contemplated therein. Hence, whenever a period is fixed pursuant to said article, the court merely *enforces or carries out* an *implied* stipulation in the contract in question. In fact, insofar as contracts not fixing a period are concerned, said legal provision applies only if, from the nature and circumstances surrounding the contract involved, "it can be inferred that a period was *intended" by the parties* thereto. For this reason, the last paragraph of article 1197 ordains that "in every case," the courts shall determine such period as may under the circumstances have been probably *contemplated by the parties.* In other words, in fixing said period, the court merely *ascertains* the *will of the parties* and *gives effect* thereto.

When the right to make use of a period is lost.—

In case the debtor fails to renew, or furnish an equivalent security to a second bond upon the latter's expiration of the latter before the obligation secured thereby shall have been paid, he forfeits the right to compel the creditor to wait for the period fixed for the performance of the obligation.[89] The fact that the creditor accepted the second bond knowing that it would automatically expire within a year, is no waiver of its renewal after the expiration date where no such waiver was intended.[90]

Obligation with a penal clause.—

Article 1226 of the new Civil Code provides that "In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation." This provision seems to have been overlooked in *Land Settlement and Development Corporation v. Munsayac.*[91]

In the *Land Settlement* case, it appears that plaintiff sold to defendant on installment basis, certain machineries with the stipulation that amounts due and not paid on the maturity of each installment shall bear interest at 4% *per annum.* In an action to recover the purchase price, plaintiff proved that defendant acted in gross

[89] Gaite v. Fonacier, *et al., supra,* note 86.
[90] *Id.*
[91] G.R. No. L-14960, May 31, 1961.

and evident bad faith in refusing to satisfy plaintiff's plainly valid and just claim. The lower court rendered judgment ordering defendant to pay plaintiff the amount of the debt with 4% *per annum* interest thereon from the date of default until the filing of the complaint, and thereafter, at the legal rate of 6% *per annum* until the whole amount is paid to the plaintiff, plus attorney's fees. On appeal, the defendant contested the validity of that part of the judgment ordering him to pay interest at the rate of 6% *per annum* from June 4, 1957 (date of filing the complaint) notwithstanding the fact that the stipulated rate is 4% *per annum* on unpaid amounts. In other words, he claims that the rate of interest for which he should be liable is only 4% *per annum* on unpaid accounts from the date the installments were due until they were fully paid.

Held: The appellant is in error. The 4% interest stipulated by him and the appellee is penalty for failure to pay on time the installments due while the 6% interest imposed by the trial court from June 4, 1957 is *penalty for failure to satisfy the plaintiff's valid and demandable claim after* extrajudicial demand. In the absence of stipulation for the latter eventuality, the lawful [legal] rate of 6% should be imposed. This the trial court correctly did.

Apparently, both the trial court and the Supreme Court based their award of 6% damages on paragraph 5 of article 2208 of the new Civil Code which provides for the recovery of attorney's fees and expenses of litigation "where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim." We submit that paragraph 5 of article 2208 cannot be the basis for the recovery of damages apart from attorney's fees and expenses of litigation. Whatever damages may be assessed due to defendant's failure to pay the debt upon maturity must be based on article 2209, which provides that "If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent *per annum.*" In the case at bar, the obligation contains a penal clause whereby it is stipulated that amounts due and not paid on the maturity of each installment shall bear interest at 4% *per annum.* This stipulation takes the case out of article 2209 and brings it within the purview of article 1226. Under article 1226, the penalty shall substitute the indemnity for damages, except in three instances, namely: (1) if there is a stipulation to the contrary, (2) if the obligor refuses to pay the penalty, or (3) is guilty of fraud in the fulfillment of the obligation. Inasmuch as the instant case does not

fall within any of these exceptions, the conclusion is inevitable that defendant can only be subjected to the damages provided for in the penal clause of their agreement.

Penalty may be reduced when the principal obligation has been partly performed.—

In *Santiago v. Dimayuga*,[92] plaintiff loaned to defendant several sums of money evidenced by promissory notes. The agreement included a stipulation that the defendant will pay a sum equivalent to 33½% of the amount of indebtedness as attorney's fees. Defendant having defaulted, plaintiff filed the present action. The lawer court ordered the defendant to pay 20% of the indebtedness as attorney's fees. On appeal, the defendant contended that the award for attorney's fees was unreasonable.

Held: Attorney's fees are covered in actual damages whether evidenced in writing, pursuant to article 1226 of the new Civil Code, or not, pursuant to article 2208. Nevertheless, the judge shall equitably reduce the penalty when the principal obligation has been partly performed.

Acceptance of backpay certificates in payment of debts discretionary on Government owned or controlled corporations.—

The case of *Manalili v. Government Service Insurance System* [93] reiterates the rule laid down in *Diokno v. Rehabilitation Finance Corporation* [94] that acceptance or discount of backpay certificates in payment of outstanding obligations to a government owned or controlled corporation is merely discretionary upon the latter.

It appears in this case that petitioner was granted a real estate loan by the GSIS. When the debt fell due and demandable, he offered to pay the same with his backpay certificate. As respondent refused to accept the certificate, he brought this action for mandamus. *Held:* The GSIS has a discretionary power to accept or not the backpay certificate. Section 2 of Republic Act 304,[95] approved on June 18, 1948, should be construed as a directive on Government owned or controlled corporations to invest reasonable portions of their funds for the discount of backpay certificates from time to

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[92] G.R. No. L-1773, Dec. 30, 1961.
[93] G.R. No. L-15874, Sept. 19, 1961.
[94] 48 O.G. 2717,
[95] This section provides: ". . . And provided also, that investment banks or funds, or financial institutions owned or controlled by the Government shall, subject to availability of loanable funds, and any provisions of their charter, articles of incorporation, by-laws, or rules or regulations to the contrary notwithstanding, accept or discount at not more than 2 per cent *per annum* for ten years such certificates for the following purposes: (1) the acquisition of real property for use on the applicant's home; (2) building or reconstruction of the residential home of the payee of said certificate . . ."

time as circumstances warrant. Furthermore, the application for recognition of backpay certificates must have been filed within one year after approval of said Act, as required by the same section. In the present case, the obligation was incurred in 1957, long after the approval of Republic Act 304.

Payment of obligation incurred during the Japanese time and payable after liberation.—

It is well settled that whenever pursuant to the terms of an agreement, an obligation assumed during the Japanese occupation is not payable until liberation, the parties to the agreement are deemed to have intended that the amount stated in the contract be paid in such currency as may be legal tender at the time when the obligation becomes due.[96] Two 1961 cases illustrate the application of this rule.

In *Dizon v. Arrastia,*[97] defendant obtained a loan of ₱10,000 from the plaintiff in 1943. The loan was payable after October 23, 1947 and the debtor waived his right to pay the loan before said date. On October 9, 1944, the debtor consigned with the court the principal obligation in view of the plaintiff's refusal to accept payment. In an action by plaintiff after liberation, the lower court ordered the debtor to pay the full amount of the loan in Philippine currency. This judgment was affirmed by the Supreme Court on appeal holding: The obligation was due and demandable after liberation, consequently the debt must be satisfied peso for peso.

In *Aguilar v. Miranda,*[98] the defendant borrowed from plaintiff ₱15,000 in Japanese currency. To secure the loan, executed a mortgage over his land in favor of the creditor. The right to redeem was after the expiration of four years and four harvests from the time of the execution of the contract. As defendant failed to redeem within the stipulated period, plaintiff instituted this action for foreclosure. Issue: Whether the loan in Japanese currency should be paid in its equivalent based on the Ballantyne scale or peso for peso. *Held:* Since the obligation was incurred during the Japanese occupation and was made payable after a fixed period, the maturity falling after liberation, the debtor must pay in the Philippine currency the same amount in the obligation, peso for peso.

Payment of obligation incurred and maturing during the Japanese time.—

The case of *Garcia v. Philippine National Bank*[99] reiterates the doctrine that an obligation maturing during the Japanese time and

[96] De Asis v. Agdamag, G.R. No. L-3709, Oct. 25, 1951; Roño v. Gomez, G.R. No. L-1927, May 31, 1949; Nicales v. Matias, G.R. No. L-8093, Oct. 29, 1955.
[97] G.R. No. L-15383, Nov. 29, 1961.

presented for payment after liberation should be paid or discharged accordng to the Ballantyne schedule of values.

In the *Garcia* case, it appears that on January 5, 1945, plaintiff purchased from defendant bank a demand draft in the sum of ₱20,000 Japanese war notes. On November 15, 1954, plaintiff presented said draft for payment. The defendant refused to pay contending that it was no longer under obligation to honor the draft because the Japanese war notes had long ceased to be legal tender.

Held: The defendant is entitled to a deduction from plaintiff's as of January 5, 1945, the date appearing thereon, when the Japanese war notes were still valid and had value. Hence, it is fair and just that the defendant should not escape total liability but should pay plaintiff according to the Ballantyne scale of values.

Effect of invalidation of deposits made in Japanese war notes.—

In ***Bachrach v. Philippine Trust Company, et al.***[100] and ***Ferrier, et al. v. Philippine Trust Company, et al.,***[101] the rule enunciated is that the owner of the Japanese war notes held in deposit at the time of the invalidation bear the loss thereof.

In the *Bachrach* and *Ferrier* cases, it appears that La Orden de PP. Benedictinos de las Islas Filipinas offered for sale bonds and to secure payment thereof, it executed a mortgage deed of trust in favor of the Philippine Trust Company as trustee for the benefit of the stockholders. As La Orden defaulted in the payment of the bonds, the trustee, upon request of the bondholders, brought the matter to court for the payment of the outstanding bonds. The court ordered the sale of the mortgaged properties. In 1944, the sale was consummated and the purchase price in Japanese war notes deposited with the trustee for disbursement to the bondholders. Despite notice to the bondholders that all bonds and interests thereon were due and payable at the office of the trustee any day during office hours, plaintiffs-bondholders failed to collect payment. Upon liberation, Executive Order No. 49 was promulgated invalidating all deposits made during the war in Japanese military notes. Subsequently, plaintiffs brought this action to recover the value of their bonds. Will their actions prosper?

Held: No. Bearing in mind that the action instituted by the trustee was precisely for the collection of the payment on the out-

[99] G.R. No. L-16510, Nov. 29, 1961
[100] G.R. No. L-14996, May 31, 1961.
[101] G.R. No. L-10367, April 25, 1961.
[101] G.R. No. L-10368, April 25, 1961.

standing bonds—including those owned by plaintiffs—it requires no further argument to show that, by means of the deposit or payment thus made, the obligation of La Orden in relation to said bonds was completely satisfied and discharged. The ownership of the money deposited with the trustee was vested in the bondholders from the moment of its deposit, and from this it necessarily follows that when the deposit was voided by Executive Order No. 49, the loss had to be borne by the bondholders pursuant to the principle of *res perit domino suo.*

Compensation.—

In *Icasiano v. Icasiano,*[102] plaintiff sought to recover from defendant the sum of ₱20,000. Defendant filed a counterclaim for ₱150 represesting the amount borrowed by plaintiff from him. The lower court dismissed the counterclaim on the ground that the Court of First Instance has no jurisdiction to entertain claims less than ₱5,000, and rendered judgment against defendant for ₱20,000.

Held: The defendant is entitled to a dedutcion from plaintiff's claim of ₱20,000 the sum of ₱150 if the allegation of defendant were true. Even when no such counterclaim was set up, where all the requisites for compensation provided in article 1279 are present, compensation takes effect. In the present case, the counterclaim was set up not to obtain money judgment from plaintiff but, by way of set off, to reduce the sum collectible by the latter, if successful.

Novation.—

Conformably with article 1292 of the new Civil Code, it was held in *Leonor v. Sycip* [103] that there is no novation where there is no incompatibility between the old and the new obligations.

In the *Leonor* case, it appears that on July 11, 1955, Domingo Leonor and Francisco Sycip entered into a contract whereby the former leased to the latter a two-story building for a period of two years, beginning from August 1, 1955, at a monthly rental of ₱350. From July to October, 1956, Sycip failed to pay the corresponding rentals in view of which Leonor filed an action for unlawful detainer against Sycip on October 12, 1956. Inasmuch as on October 19, 1956, one Napoleon Coronado agreed to secure the payment of the rentals due from Sycip by assigning to Leonor his (Coronado's) rights under a chattel mortgage executed by Sycip in his (Coronado's) favor, Leonor secured the dismissal of the ejectment case.

[102] G.R. No. L-16592, Oct. 27, 1961.
[103] G.R. No. L-14220, April 29, 1961.

As Sycip kept on defaulting in the payment of rentals, Leonor tried to extrajudicially foreclose the mortgage but Sycip refused to surrender the property to the sheriff. Hence, Leonor again sued Sycip to eject him from the leased premises and to collect rentals from July, 1956 to March, 1957. The lower court sentenced Sycip to vacate said premises and to pay Leonor the rentals. On appeal, Sycip claims that the lower court erred in holding that the claim set forth in the complaint has not been "released by novation," which he maintains took place, because the deed of assignment by Coronado to Leonor of the chattel mortgage stated that the sum of ₱2,450 then due from Sycip was payable on December 31, 1956, whereas the contract of lease stipulated that the agreed rentals were payable on or before the 5th day of every month."

Held: Said assignment was made, however, on October 6, 1956, and, hence, the period therein given for the payment of the ₱2,450 due *up to that date,* did not novate or otherwise affect the obligation to pay the rentals accruing *subsequently thereto,* in conformity with the contract of lease, or "on or before the 5th day of every month," although the payment of these rentals was also secured by the mortgage assigned to Leonor. Obviously the security given to guarantee the payment of rentals falling due *after* October 6, 1956, did not extinguish or novate the obligation to satisfy the same, or impair the right of the lessor to the aforementioned remedy. There is no incompatibility between either this remedy or said obligation, on the one hand, and the aforementioned security, on the other. On the contrary, the chattel mortgage bolstered up said remedy and strengthened the effectivity of the obligation, by insuring the collection of the money judgment that may be rendered in the action for unlawful detainer.

CONTRACTS

Void stipulation in a scholarship grant.—

Article 1306 of the new Civil Code provides that the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. This provision was invoked in *Cui v. Arellano University* [104] to invalidate a stipulation in a scholarship grant.

In the *Cui case,* it appears that Emeterio Cui while studying in the defendant University, had been the recipient of scholarship

[104] G.R. No. L-15127, May 30, 1961.

grants, for scholastic merit, amounting to ₱1,033.87 from said University. Subsequently, he transferred to the Abad Santos University. When plaintiff petitioned the defendant to issue to him his transcript of records, defendant refused until he had paid back the ₱1,033.87 pursuant to a contract signed by the plaintiff before defendant awarded him the scholarship grants, to wit: "In consideration of the scholarship granted to me by the University, I hereby waive my right to transfer to another school without having refunded to the University the equivalent of my scholarship cash." Plaintiff paid the sum under protest and later brought this action to recover the same from defendant, contending that the stipulation in question is void being contrary to public policy.

Held: Plaintiff's contention is well taken. Scholarships are awarded in recognition of merit, not to keep outstanding students in school to bolster its prestige. University scholarship awards conceived as a business scheme designed to increase the business potential of an educational institution is not only inconsistent with sound policy but also good morals. The University of the Philippines which implements section 5 of Article XIV of the Constitution with reference to the giving of free scholarships to gifted children, does not require scholars to reimburse the corresponding value of the scholarships if they transfer to other schools. So also with leading colleges and universities of the United States after which our educational practices and policies are patterned. In these institutions scholarships are granted *not to attract and to keep brilliant students in school for their propaganda value but to reward merit or help gifted students in whom society has an established interest or a first lien.*

Valid condition in a retirement benefit agreement.—

In *Araneta Vda. de Liboon, et al. v. Luzon Stevedoring Company, Inc.,*[105] the Supreme Court held valid a stipulation in a pension benefit agreement granting a retired employee one month pay for each year of service to be paid to him at the rate of ₱175 per month from November 1, 1953 to April 30, 1957, provided that should he die at any time before April 30, 1957, the said monthly payments shall stop and thereafter his estate or beneficiary shall have no further claim for said benefits against the defendant employer.

Said the Court: The condition is not contrary to law, morals, good customs, public order or public policy. The pension benefit was granted to him personally out of the appellee's generosity in

[105] G.R. No. L-14893, May 31, 1961.

reward for his long and faithful service. Moreover, it is not alleged and it does not appear on record that the deceased employee had personally contributed to a pension fund which would justify the appellants' claim that they are entitled to continue receiving the pension benefits of her husband and their father.

Management contracts binding upon consignees.—

It is well settled that management contracts entered into between the Bureau of Customs and Port Services pursuant to Act 3002, as amended by Republic Act 140, are examples of stipulations *"pour autrui"* under paragraph 2 of article 1311 of the new Civil Code and binding upon consignees, though not parties thereto.[106] The reason is that by the provisions of these contracts, the arrastre contractor and the Bureau of Customs deliberately confer benefits upon the consignees, because it is to the latter that the merchandise are to be delivered in good condition and payment made in the event of loss or damage while in the control and custody of the arrastre contractor.[107] Once the consignee avails himself of the services of the arrastre contractor by taking delivery therefrom of the goods in pursuance of a permit and a pass issued by the latter, which are "subject to all the terms and conditions" of said management contract, he becomes bound to the obligations concomitant thereto.[108]

The 1961 cases of *Government Service Insurance System v. Manila Railroad Company,*[109] *Smith Bell & Company, Ltd. v. Manila Port Service,*[110] *Fearnley & Eger, et al. v. Manila Railroad Company, et al.,*[111] *Commercial Union v. Manila Port Service,*[112] *Atlantic Mutual Insurance Company v. Manila Port Service,*[113] and *Insurance Company of North America v. Manila Port Service* [114] are mere reiterations of the above doctrine.

Intimidation during Japanese time that vitiates consent.—

In order to cause nullification of acts executed during the Japanese occupation, the duress or intimidation must be more than a "general feeling of fear" on the part of the occupied over the show of might by the occupant.[115]

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[106] Bernabe & Company v. Delgado Bros., Inc., G.R. No. L-14360, Feb. 29, 1960; Northern Motors, Inc. v. Prince Line and Delgado Bros., Inc., G.R. No. L-13884, Feb. 29, 1960; Bernabe & Company v. Delgado Bros., Inc., G.R. No. L-12058, April 27, 1960; Delgado Bros., Inc. v. Li Yao & Co., G.R. No. L-12872, April 29, 1960; Ysmael & Co. v. U.S. Lines and Manila Port Service, G.R. No. L-14394, April 30, 1960; and Villanueva v. Manila Port Service and Manila Railroad Company, G.R. No. L-14764. Nov. 23, 1960.

[107] Bernabe & Company v. Delgado Bros., Inc., *supra*, note 106.

[108] *Id.*

[109] G.R. No. L-13276, Feb. 25, 1961.

[110] G.R. No. L-14711, April 22, 1961

[111] G.R. No. L-15164, May 31, 1961.

[112] G.R. No. L-14948 and L-14972, Oct. 31, 1961.

[113] G.R. No. L-16271, Oct. 31, 1961.

[114] G.R. No. L-17331, Nov. 29, 1961.

[115] De Lacson, *et al.* v. Granada, *et al.*, G.R. No. L-12035, March 29, 1961.

Meaning of "future inheritance".—

According to article 1347 of the new Civil Code, future inheritance cannot be the object of contracts except in cases expressly authorized by law. As to what matters the phrase "future inheritance" extends, is explained in *Blas, et al. v. Santos, et al.*,[116] which defines future inheritance as "any property or right not in existence or capable of determination at the time of the contract, that a person may in the future acquire by succession."

In the *Blas* case, it appears that sometime in 1898, Simeon Blas married Marta Cruz with whom he had three children. After Marta died, Blas married Maxima Santos, without the conjugal properties of the first marriage having been liquidated. On December 26, 1936, a week before he died, Blas executed a will declaring his properties as conjugal properties and giving one-half thereof to Maxima Santos as her share. On the same day, Blas caused a document (Exhibit "A") to be made, wherein it is stated that the maker (Maxima Santos) had read and knew the contents of the will of her husband Simeon Blas; and that she promised to convey, by will one-half of her share to the heirs and legatees named in her husband's will (who are his heirs during his first marriage). This document was signed by Maxima Santos. The present action was instituted by the heirs during the first marriage against the administrix of the estate of Maxima Santos, to secure a judicial declaration that one-half of the estate of Maxima be adjudicated to them. It is contended that Exhibit "A" is void because it deals with inheritance.

Held: The contention is without merit. The conjugal properties were in existence at the time of the execution of Exhibit "A". The promise does not refer to any properties that the maker would inherit upon the death of her husband. The document refers to well-defined existing properties which she will receive by operation of law on the death of her husband, because it is her share in the conjugal assets. It will be noted that what is prohibited to be the subject matter of a contract is "future inheritance". *Future* inheritance is any property or right not in existence or capable of determination at the time of the contract, that a person may in the future acquire by succession.[117]

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[116] G.R. No. L-14070, March 29, 1961.

[117] Furthermore, the Supreme Court said:

"That the kind of agreement or promise contained in Exhibit "A" is not void under article 1271 of the old Civil Code, has been decided by the Supreme Court of Spain in its decision of October 8, 1915. thus:

" 'Que si bien el art. 1271 del Codigo civil dispone que sobre la herencia futura no se podra celebran otros contratos que aquellos cuyo objecto sea practicar entre vivos la division de un caudal, conforme al articulo 1056, esta prohibicion no es aplicable al caso, porque la obligacion que contrajo el recurrido en contrato privado de otorgar testamento é instituir heredera a su sobrina de los bienes que adquirido en virtud de herencia, procedentes de su finada consorte que le quedasen sobrantes despues de pagar las de reconocer, ademas con alguna cosa a otros sob-

Cause of contract must be lawful.—

In *Mactal v. Melegrito*,[118] it appears that Filomeno Melegrito received from Miguel Mactal ₱1,770 to be used for purchasing palay for the latter with the obligation to return said sum within 10 days if not spent for the purpose. Melegrito neither bought palay nor returned the sum. Mactal accused him of estafa. When the case was about to be heard, Melegrito prevailed upon Mactal to dismiss the case on his promise to pay Mactal the ₱1,770 within a given period. The criminal case was dismissed. On failure of Melegrito to pay the present case was filed to enforce payment on the promissory note.

Held: The obligation evidenced by the promissory note is valid because its consideration was the pre-existing debt of Melegrito, not the dismissal of the estafa case, which merely furnished the occasion for the execution of the promissory note.

Interpretation of contracts.—

The case of *Gaite v. Fonacier, et al.*[119] illustrates the application of the rule in article 1378 of the new Civil Code that "if the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity."

Voidable contracts.—

The case of *Descutido, et al. v. Baltazar, et al*,[120] applies the rule in article 1391 of the new Civil Code that the action to annul a contract where the consent is vitiated by fraud, must be brought within four years from the time of the discovery of said fraud.

Partial performance takes oral contract out of Statute of Frauds.—

The case of *Paterno v. Jao Yan* [121] reiterates the settled doctrine that partial performance takes an oral contract out of the scope of the Statute of Frauds.[122]

It appears that the plaintiff in a notarized contract leased to defendant a parcel of land for 7 years commencing July 15, 1948, and defendant bound himself to construct a building of strong wood-

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rinos, se refiere a bienes conocidos y determinados existentes cuando tal compromiso se otorgo, y no a la universalidad de una herencia que, segun el art. 659 del citado Codigo civil, se determina a muerte del causante, constituyendola todos los bienes, derechos y obligaciones que por ella no se hayan extinguido: x x x' "

[118] G.R. No. L-16114, March 24, 1961.

[119] *Supra*, note 86.

[120] G.R. No. L-11765, April 29, 1961.

[121] G.R. No. L-12218, Feb. 28, 1961.

[122] 27 C.J. 206; Hernandez v. Andal, 78 Phil. 196; Facturan v. Sabanal, 81 Phil. 512; Carbonnel v. Poncio, G.R. No. L-11231, May 12, 1958; Ortega v. Leonardo, G.R. No. L-11311, May 28, 1958.

en materials thereon, which would become the property of the lessor at the termination of the lease. In an action by the lessor to recover the building in 1955, the defendant averred that the original contract had been orally extended from 7 to 10 years in consideration of his constructing a semi-concrete building. The testimonial evidence of said modification were rejected by the lower court. Defendant appealed assigning this rejection as error.

Held: In *Read Drug & Chemical Company v. Nattans,*[123] it was held that a parol agreement of a landlord to extend a lease for a specific term of years and at a specified rental, provided the tenant made certain extensive repairs to the property, was enforceable notwithstanding the Statute of Frauds, where the tenant fully performed his part of the agreement. This is precisely the case before us. The written contract of lease called for the erection, by the tenant, of a building of strong wooden materials, yet it is not contested that what he actually did construct on the leased lot was a semi-concrete edifice, at a much higher cost. Since this modification is plainly referable to the oral agreement as claimed, and the same cannot be explained on the record except as executed in reliance on the verbal modification of the original lease, the lower court should have admitted the offered testimony on the extension and modification of the original terms of the lease.

Void contracts.—

Article 1410 of the new Civil Code which provides that the action or defense for the declaration of the inexistence of a contract does not prescribe, was applied in *Boñaga v. Soler, et al.*

In the *Boñaga* case, it appears that Juan Garza was authorized by the probate court to sell certain parcels of land pertaining to the intestate estate of the spouses Alejandro Ros and Maria Isaac. The sale which was made in favor of Roberto Soler, was subsequently approved on October 9, 1944. In 1951, Julian Boñaga succeeded Garza as administrator, filed an action for the annulment of the sale on the ground that the same was fraudulently made without notice to the heirs of Ros of the hearing of the application to sell, and therefore void *ab initio.* The defendant Soler set up the defense of prescription.

Held: Actions to declare the inexistence of contracts do not prescribe, a principle applied even before the effectivity of the new Civil Code.[124]

[123] G.R. No. L-15717, June 30, 1961.
[124] See Tipton v. Velasco, 6 Phil. 67 and Sabas v. Germa, 66 Phil. 471.

ESTOPPEL

No estoppel as to void deed.—

In the *Boñaga* case, *supra,* it was likewise contended that the sale of the land by the previous administrator could not be voided on the ground of estoppel by the succeeding administrator.

Held: A decedent's representative is not estopped to question the validity of his own void deed purporting to convey land;[125] and if this is true of the administrator as to his own acts, *a fortiori,* his successor cannot be estopped to question the acts of his predecessor that are not conformable to law.

This ruling was reiterated by the Supreme Court in *De Jesus v. De Jesus.*[126] It appears here that Ines Alejandrino, the administratrix of the deceased Melecio de Jesus, entered into a stipulation of facts with the defendants whereby Ines recognized defendants as co-owners with deceased over a parcel of land registered in the name of the deceased. In turn, defendants renounced their claim against the estate. Subsequently, another administrator was appointed, Leon de Jesus. The latter filed an action to annul the stipulation of facts on the ground that the probate court had no power to approve the same and the requisite notice to the parties was not complied with. Following the ruling in the *Boñaga* case, *supra,* the Supreme Court rejected the defendants' contention that the succeeding administrator cannot question the act of his predecessor.

SALES

Conditional sale distinguished from a mortgage.—

The case of *Rodriguez v. Francisco, et al.*[127] illustrates the essential difference between a contract of conditional sale, on the one hand, and an equitable mortgage and *pacto comisorio,* on the other.

It appears in the *Rodriguez* case, that the "Contrato de Venta Conditional" executed between the parties provides that the vendor conveys to the vendee the land in consideration of the obligation assumed by the vendee—to pay what the vendor owed to several persons amounting to ₱31,395; that if the vendor paid the debts aforesaid, the sale shall become inoperative and void, but that if the vendee paid the same debts by reason of the vendor's failure to do so the sale made shall become absolute and irrevocable automatically, without the need of executing any other deed of conveyance. In an action for the delivery of the land, the defendant contended

[125] Citing Chase v. Cartwright, 22 Am. St. Rep. 207; Meads v. Olpherts, 25 L. Ed. 735; 21 Am. Jur. 756, s. 667.
[126] G.R. No. L-16553, Nov. 29, 1961.
[127] G.R. No. L-12039, June 30, 1961.

that the document is a deed of equitable mortgage; and that the terms and conditions of the same are void because they amount to a *pacto comisorio.*

Held: The agreement is obviously a perfected contract of sale and subject to a resolutory condition. It does not constitute a mere security—which is the manifest purpose of a contract of mortgage—but instead if makes a conditional transfer of ownership which becomes automatically absolute and final upon performance of the condition agreed upon, namely, the payment by the vendee of what the vendor owed the parties mentioned in the deed of conveyance. This had been done by the vendee. As a consequence, the conditional sale in his favor became absolute. Since a *pacto comisorio* can exist only if there is a mortgage, the contention that the terms of the deed amounted to a *pacto comisorio* is without basis.

Sale of a specific mass for a lump sum.—

In *Gaite v. Fonacier, et al.*[128] it appears that Gaite sold to Fonacier all his rights and interests over "the 24,000 metric tons of iron ore, more or less" that the former had extracted from certain mineral claims, in consideration of ₱75,000. In an action for the purchase prise, the buyer contended that only 7,573 tons of the estimated 24,000 tons was actually delivered, and counterclaimed for damages. It appears further that neither of the parties had actually measured or weighed the mass, so that they both tried to arrive at the total quantity by making an estimate of the volume thereof in cubic meters and then multiplying it by the estimated weight per cubic meter.

Held: The sale between the parties is a sale of a specific mass because no provision was made in their contract for the measuring or weighing of the ore sold in order to complete or perfect the sale, nor was the price of ₱75,000 agreed upon by the parties based upon any such measurement. The subject matter of the sale is therefore, a determinate object, the mass, and not the actual number of units or tons contained therein, so that all that was required of the seller was to deliver in good faith to his buyer all of the ore found in the mass, notwithstanding that the quantity delivered is less than the amount estimated by them.

Unilateral promise to sell.—

Article 1479 of the new Civil Code provides that an accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price. This provision was applied

[128] *Supra*, note 86.

in *R. F. Navarro v. Sugar Producers Cooperative Marketing Association, Inc.*[129]

In the *Navarro* case, it appears that defendant offered to sell to plaintiff from 15,000 to 20,000 metric tons of molasses at ₱50 per metric ton, giving him up to noon of September 24, 1956 within which to accept the offer. Five minutes before noon of said date, plaintiff accepted the offer. The next day defendant requested plaintiff to make clarification of its acceptance. This plaintiff did and offered payment by opening a domestic letter of credit. Defendant, however, insisted on a cash payment of 50% of the purchase price upon the signing of the contract. Plaintiff agreed on condition that the price would be reduced. Defendant rejected this counter-offer and informed plaintiff that it would not continue with the sale.

Issue: Whether the offer and acceptance produced a binding contract?

Held: The acceptance by plaintiff without consideration did not create an enforceable obligation on defendant.

Sale of chattel on installment.—

In a contract of sale of personal property the price of which is payable in installments, the vendor has three alternative remedies: (1) to exact fulfillment of the obligation; (2) to cancel the sale; or (3) to foreclose the chattel mortgage on the thing sold.[130] The case of *Southern Motors, Inc. v. Moscoso* [131] illustrates the choice of the first remedy.

It appears that plaintiff sold to defendant a Chevrolet truck on installment basis for ₱6,445. Upon making a down payment defendant executed a promisorry note for ₱4,915, representing the unpaid balance, to secure the payment of which, a chattel mortgage was constituted on the truck in favor of the plaintiff. Defendant failed to pay three installments. Hence, plaintiff filled a complaint against defendant to recover the unpaid balance. Upon plaintiff's petition embodied in the complaint a writ of attachment was issued on the properties of the defendant. Pursuant thereto, the said truck and a house and lot belonging to defendant were attached. Before the case had been set for hearing and upon plaintiff's motion, the truck was sold at public auction by the sheriff in which plaintiff was the only bidder for ₱1,000. After hearing on the merits, the lower court condemned defendant to pay to plaintiff ₱4,475, representing the unpaid balance of the purchase price.

[129] G.R. No. L-12888, April 28, 1961.
[130] Article 1484, new Civil Code.
[131] G.R. No. L-14475, May 30, 1961.

On appeal, defendant contended that the deficiency judgment was without legal basis on the ground that the act of the plaintiff in causing the attachment and sale at public auction of the mortgaged truck without waiting for the judgment on the complaint amounted to a foreclosure of the chattel mortgage, and pursuant to paragraph 3 of article 1484 of the new Civil Code, no deficiency judgment may be recovered in such case.

Held: The complaint is an ordinary civil action for the recovery of the remaining unpaid balance due on the promissory note. The plaintiff had not adopted the procedure or methods outlined by section 14 of the Chattel Mortgage Law but those prescribed for ordinary civil actions, under the Rules of Court. Had appellee elected the foreclosure, it would not have instituted this case in court, it would not have caused the chattel to be attached under Rule 59 of the Rules of Court, and had it sold at public auction in the manner prescribed by Rule 39 of the Rules of Court. That the appellee did not intend to foreclose the mortgaged truck, is further evinced by the fact that it had also attached the house and lot of the appellant. Also, there is nothing unlawful or irregular in appellee's act of attaching the mortgaged truck itself. The mortgage creditor may recover judgment on the mortgage debt and cause an attachment to be issued and levied on such property, upon beginning the civil action.

Justice J. B. L. Reyes, in his concurring opinion, added that appellant's argument ignores a substantial difference between the effect of foreclosing the chattel mortgage and attaching the mortgaged chattel. The variance lies in the ability of the debtor to retain possession of the property attached by giving a counterbond and thereby discharging the attachment. This remedy the debtor does not have in the event of foreclosure.

Return of the object of sale does not amount to cancellation of sale.—

The rule is that when the vendor demands the return of the thing sold, after the vendee has failed to pay his obligation, the vendor indicates thereby his unequivocal desire to rescind the contract, and the taking of the thing sold amounts to the cancellation of the sale.[132] The case of *Quiambao v. Manila Motor* [133] presents a different situation.

It appears in the *Quiambao* case, that the petitioner bought a car on installment plan from the respondent company. To secure the payment of the unpaid balance he executed a chattel mortgage on the car in favor of the company. Petitioner defaulted, so the com-

[132] H.E. Heacock v. Buntal Manufacturing Company, 66 Phil. 245.
[133] *Supra*, note 84.

pany filed an action for the unpaid price and obtained judgment thereon. The petitioner, however stayed the execution thereof by surrendering the car and making a part payment in the sum of ₱500. No further payments were made. Meanwhile, the war broke out. After liberation, the company collected a war damage compensation on the car and also made repeated demands for the unpaid balance but petitioner refused to pay. Hence, the company demanded the execution of the pre-war writ. Petitioner now seeks the annulment of the writ contending that the return of the car to the company amounted to a rescission or cancellation of the sale.

Held: No rescission took place in these circumstances. Unlike in the *Heacock* case, it was the buyer herein who offered to surrender the car and make further payments in order to stay the execution of the writ. Moreover, if the company intended to rescind the contract, it would not have demanded from the petitioner subsequent installments. These facts militate against the rescission of the contract.

Acceptance of war damage compensation on chattel does not amount to foreclosure.—

In the *Quiambao* case, *supra,* it was likewise contended by the petitioner that the acceptance by the company of the war damage compensation on the object sold and mortgaged, amounted to the foreclosure of the chattel mortgage.

Held: The acceptance of war damage compensation by the creditor-mortgagee did not amount to the formal foreclosure of the mortgage. The company, in collecting the compensation, was protecting the rights of the car owner and its own. Such action cannot be construed as a constriction of its rights under the pre-war judgment. It is the actual sale of the chattel in accordance with section 14 of Act 1508 (Chattel Mortgage Law) that would bar the creditor from recovering any unpaid balance. Nevertheless, the petitioner should be credited the amount which the company has received from the War Damage Commission.

Purchaser in good faith.—

Where the buyer was aware of sufficient facts to induce a reasonably prudent man to inquire into the status of the title to the land, he cannot be deemed a purchaser in good faith.[134]

Pacto de retro sale.—

In *Gargollo v. Duero, et al.,*[135] the Supreme Court applied article 1616 of the new Civil Code, which requires the vendor *a retro* to

[134] Mañacop v. Casino, G.R. No. L-13971, Feb. 27, 1961.
[135] G.R. No. L-15973, April 29, 1961.

reimburse necessary and useful expenses made on the thing sold before he can avail himself of the right of repurchase.

It appears in this case that Perpetua Gargollo sold with *pacto de retro* a parcel of land to Alfredo Duero. When Gargollo later offered to repurchase the land, Duero refused to accept the redemption price if the value of the improvements he had introduced on the land would not be reimbursed by Gargollo. The lower court, applying article 546 and 547 of the new Civil Code, ruled for plaintiff-vendor *a retro*. On appeal the Supreme Court *held:* This is a reversible error because the provision applicable in this case is article 1616 which deals specifically with conventional redemption. The vendor *a retro* is given no option to require the vendee *a retro* to remove the useful improvements on the land subject of the sale, unlike that granted the owner of a land under articles 546 and 547 on possession in good faith. Since plaintiff is unwilling to reimburse defendant of the value of the useful improvements introduced by the latter on the land in question, defendant may not be lawfully ordered to vacate the premises.

Sale of homestead.—

It appears in *Manzano, et al. v. Ocampo* [136] that a homestead patent was issued to Victoriano Manzano on June 25, 1934. On January 4, 1938, he and Rufino Ocampo agreed on the sale of said himestead for ₱1,990, ₱1,000 of which was paid on the same day. Knowing that said sale was prohibited at that time, the parties agreed that the deed was to be made only after five years from the date of issuance of the patent. After the five-year period, the Undersecretary of Agriculture and Natural Resources approved the proposed sale to Ocampo and the deed was then executed. This is an action to annul the sale on the ground that the same was made within the prohibitory period.

Held: A perfected contract of sale had been entered on January 4, 1938 (within the period of prohibition) for the price of ₱1,990. The sale being in violation of section 118 of the Public Land Act is illegal and void. The approval of the Undersecretary and the execution of the formal deed after the expiration of the prohibitory period did not and could not legalize the contract. The law prohibiting this kind of transections does not distinguish between executory and consummated sales.

[136] G.R. No. L-14778, Feb. 28, 1961.

Adequacy of repurchase price.—

In sales with option to repurchase, it is the case that the price is fixed deliberately at a minimum to make it easy for vendor to repurchase. Consequently, the purchase price is seldom equivalent to the real value of the property. Hence, the repurchase cannot be set aside on the ground of insufficiency of consideration.[137]

Illustration of equitable mortgage.—

In *Quinga v. Court of Appeals, et al.*[138] respondent Salas executed a deed of absolute sale over his two-hectare land in favor of the petitioner, in view of his indebtedness to him in the amount of ₱200. The deed allowed Salas to remain in possession of the land and to repurchase the same within ten years. Petitioner registered the deed and obtained a Transfer Certificate of Title in his name. Within the redemption period, Salas offered to pay the repurchase price but petitioner refused to allow her to repurchase. So Salas deposited the amount in court and filed a suit to compel the petitioner to resell the land, contending that the contract was in reality a loan secured by a mortgage and not an absolute sale as claimed by Salas.

Held: The contract is not an absolute sale but a loan with mortgage in accordance with the provisions of article 1602 of the new Civil Code. The following circumstances point to the transaction as an equitable mortgage: (1) that the vendor remained in the possession of the land; (2) that the vendee started to receive the fruits of the land after nine years from the time of the alleged sale; and (3) that the price of the two hectares of land was inadequate.

LEASE

Lessee cannot deny title of lessor.—

In *Reyes v. Villaflor, et al.*,[139] plaintiff obtained a parcel of foreshore land by lease from the Government before the war. In 1957, he subleased the same to the defendants, who refused to vacate the premises after the sublease expired claiming that plaintiff had no title or right to sublease it to them on account of the alleged cancellation of plaintiff's lease from the Government in 1944.

Held: The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.[140]

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[137] De Lacson, *et al.* v. Granada, *et al.*, G.R. No. L-12035, March 29, 1961.
[138] G.R. No. L-14961, Sept. 19, 1961.
[139] G.R. No. L-15755, May 30, 1961.
[140] See Section 68(b), Rule 123, Rules of Court.

Lease of estate to administrator.—

In the matter of the Intestate Estate of Mercedes Cano [141] is an application of article 1646 of the new Civil Code disqualifying the administrator from becoming a lessee of the estate under administration.

Lessor may or may not reimburse lessee for useful improvements.—

Article 1678 of the new Civil Code provides that if the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby.

In *Cortez v. Manibo,*[142] the Supreme Court took cognizance of the fact that the lessee is not entitled to reimbursement for the useful expenses or improvements that he may have incorporated in the premises when the lessor does not choose to appropriate the same. The only right of the lessee is to take them away. It appears that the defendants were lessees of a parcel of land belonging to Pedro Cruz. Cruz subsequently sold the land to plaintiffs. In the ejectment suit filed by plaintiffs, defendants sought to secure reimbursement for the house they constructed on the land.

Held: The defendants are not entitled to reimbursement since the plaintiff did not choose to appropriate the house. If the rule were otherwise, it would always be in the power of the tenant to improve his landlord out of his property.[143] Since the tenant continues to occupy the land only during the life of the lease contract, the tenant introduces improvements on said property at his own risk in the sense that he cannot recover the property from the landlord, much less retain the premises until such reimbursement.[144]

Lessee is not a possessor in good faith.—

The principle of possession in good faith cannot apply to a lessee because as such lessee he knows he is not the owner of the leased premises.[145]

Employer's liability for death compensation.—

Article 1711 of the new Civil Code provides that owners of enterprises and other employers are obliged to pay compensation

[141] G.R. No. L-15445, April 29, 1961.
[142] G.R. Nos. L-15596 and L-15597, Oct. 31, 1961.
[143] Alburo v. Villanueva, 7 Phil. 277.
[144] Lopez, Inc. v. Philippine Eastern Trading, G.R. No. L-8010, Jan. 31, 1956.
[145] Cortez v. Manibo, *supra*, note 142.

for the death of or injuries to their laborers, workmen, mechanics or other employees, even though the event may have been purely accidental or entirely due to a fortuitous cause, if the death or personal injury arose out of and in the course of the employment.

The phrase "and other employers" was clarified by the Supreme Court in *Alarcon v. Alarcon*,[146] as referring only to persons who belong to a class analogous to "owners of enterprises," such as those operating a business or engage in a particular industry or trade, requiring its managers to contract the services of laborers, workers and/or employees. Thus, in the *Alarcon* case, a mere school teacher who hired a laborer to dig a well on his land was not held liable to pay compensation for the accidental death of said laborer arising out of and in the course of the employment.

Building contractor.—

Article 1724 of the new Civil Code requiring a written authorization of the owner for changes in the plans in order that the building contractor may recover additional costs, was applied in *San Diego v. Sayson*.[147]

In the *San Diego* case, it appears that the parties entered into a contract whereby Sayson would furnish labor for the construction of a building, in accordance with the plans approved by the city engineer at the price of ₱15,000. In the course of the construction, changes were made in the plans for which Sayson had to furnish additional labor valued at ₱6,840.31. In an action brought by Sayson for additional price, the owner set up the special defense that recovery is barred by article 1724 inasmuch as no written authorization for the changes was ever given by him. Both the trial court and the Court of Appeals allowed recovery on the ground that article 1724 is not applicable to the case, which is one to be decided under the theory of unjust enrichment—that since the alterations entailed expenses, time and efforts on the part of the contractor, then the absence of a written authorization should not be allowed to make the contractor poorer and the owner of the building richer. The owner appealed.

Held: Whereas under the old article (1593, old Civil Code) recovery for additional costs in a construction contract can be had if authorization to make such additions can be proved, the amendment evidently required that instead of merely proving authorization, such authorization by the proprietor must be made in writing. The

[146] G.R. No. L-15692, May 31, 1961.
[147] G.R. No. L-16258, Aug. 31, 1961.

evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plans. This additional requirement of a written authorization is not merely to prohibit admission of oral testimony against the objection of the adverse party as inferred from the fact that the provision is not included among those specified in the Statute of Frauds, article 1403 of the new Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery. Judgment reversed.

AGENCY

Agent's acts done without knowledge of principal's death are valid.—

The case of *Herrera, et al. v. Luy Kim Guan, et al.*[148] is an application of article 1931 of the new Civil Code which provides that anything done by the agent, without knowledge of the death of the principal, is valid and shall be fully effective with respect to third persons who may have contracted with him in good faith.

It appears in the *Herrera* case that before leaving for China, Luis Herrera executed a general power of attorney authorizing Luy Kim Guan to administer and sell his properties. Accordingly, said agent sold three parcels of land belonging to Luis. Plaintiff, daughter of Luis, now seeks to nullify the sales on the ground that they were executed after the death of Luis.

Held: Death has not been satisfactorily proved. And even if Luis were dead when the sales were effected there is no evidence that the agent, was aware of such death at the time of the sale. The death of the principal does not render the act of the agent unenforceable where the latter had no knowledge of such extinguishment of the agency.

COMPROMISES

Court approval necessary in compromise entered into by parents.—

Article 2032 of the new Civil Code which provides that the court's approval is necessary in compromises entered into by parents, was applied in *People v. Verano.*[149]

Nature of a judicial compromise.—

When a compromise agreement has been approved judicially, it becomes for all intents and purposes, incorporated in the decision, and acquire the same force and effect as the latter.[150]

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[148] G.R. No. L-17043, Jan. 31, 1961.
[149] *Supra*, note 54.
[150] Deudor, *et al.* v. J. M. Tuason & Company, Inc., *supra*, note 88; Intestate Estate of Martin Emiliano Lacson, Jr., G.R. No. L-15739, April 29, 1961.

Judicial compromises may be enforced by writ of execution.—

In *Tria v. Lirag* [151] the parties entered into a compromise agreement whereby plaintiff bound himself to pay to defendant ₱13,500 on or before December 31, 1955, and defendant agreed to deliver the litigated land to plaintiff upon full payment by the latter. The trial court approved said agreement. Upon failure of the plaintiff to pay the amount within the stipulated period, defendant filed a motion for execution, which was granted. Plaintiff now insists that the compromise agreement was merely a contract, which may be enforced by ordinary action for specific performance, not by writ of execution.

Held: Said compromise agreement is more than a contract. Having been submitted to the court for approval with the request that judgment be rendered in accordance therewith, and accordingly approved by the court and incorporated in its decision, it was part and parcel of the judgment and may, therefore, be enforced, as such, by writ of execution.

If violation of compromise is alleged, court must determine same before issuing writ of execution.—

In *Cotton v. Almeda-Lopez*,[152] the lower court rendered a judgment pursuant to the compromise agreement of the parties, whereby the defendant agreed to pay monthly support to the plaintiff, to pay all obligations of the property and deliver the same property free and clear of liens and encumbrances. The defendant failed to comply with his obligation and, therefore, plaintiff moved for a writ of execution. The lower court denied the writ on the ground that the defendant complied with the obligation although beyond the period stipulated. Plaintiff now seeks to compel the lower court by mandamus to issue the writ.

Held: The rule is that the issuance of writs of execution is a matter of right for the parties in cases of judgments upon compromise agreements which have become final and executory. In these cases, the judgment sought to be enforced is complete and certain in itself.[153] However, where the judgment requires the performance of a condition or obligates the parties to perform certain acts, the rule is different. The court in said case, must first determine whether the conditions have been complied with. The present case is an example that calls for exercise of judgment on the part of the lower court and any error by judgment, not by mandamus.

[151] G.R. No. L-13994, April 29, 1961.
[152] G.R. No. L-14113, Sept. 19, 1961
[153] Buenaventura v. Garcia, 78 Phil. 759; Seifert v. Bachrach, 79 Phil. 784; Reyes v. Ugarte, 75 Phil. 505; Palarca v. Arizon, G.R. No. L-14780, Nov. 29, 1960.

In case of breach of compromise aggrieved party may insist upon his original demand.—

Article 2041 of the new Civil Code provides that if one of the parties fails or refuses to abide by the compromise, the other party may enforce the compromise or regard it as rescinded and insist upon his original demand. The choice of the second alternative remedy is illustrated in *Leonor v. Sycip*.[154]

It appears that Domingo Leonor filed an action for unlawful detainer against Francisco Sycip. Inasmuch as one Napoleon Coronado agreed to secure payment of the rentals due from Sycip by assigning to Leonor his (Coronado's) rights under a deed of chattel mortgage executed by Sycip in his (Coronado's) favor, Leonor agreed to have the ejectment case dismissed. As Sycip kept defaulting in the payment of rentals, Leonor soughtt he extrajudicial foreclosure of the chattel mortgage but Sycip refused to surrender the mortgaged property to the sheriff. Hence, Leonor again sued Sycip for unlawful detainer.

Issue: Is an action for rescission necessary before a party to a compromise may insist upon his original demand?

Held: No. Unlike article 2039 of the new Civil Code, which speaks of "a *cause* of annulment or rescission of the compromise" and provides that "the compromise *may be annulled or rescinded*" for the cause therein specified, thus suggesting an action for annulment or rescission, article 2041 confers upon the party concerned, not a "cause" for rescission, or the right to "demand" the rescission of a compromise, but the authority not only to "regard it as rescinded," but also, to "insist upon his original demand." The language of article 2041 particularly when contrasted with that of article 2039, denotes that no action for rescission is required in said article 2041, and that the party aggrieved by the breach of a compromise agreement may, if he chooses, bring the suit contemplated or involved in his original demand, as if there had never been any compromise agreement, without bringing an action for rescission thereof. He need not seek a judicial declaration of rescission, for he may "regard" the compromise agreement already "rescinded".

GUARANTY

Guaranty is not a formal contract.—

By guaranty a person called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case

[154] *Supra*, note 103.

the latter should fail to do so.[155] It is not a formal contract and shall be valid in whatever form it may be, provided that it complies with the Statute of Frauds.[156] Thus, a letter of introduction to a creditor which says: "for which by their guaranty I pledge payment" can only mean that the writer undertakes to guarantee payment of the principal debtors' obligation should they fail to pay.[157] Said writer need not be notified by the creditor of the acceptance of his offer of guaranty in order that the guaranty be valid, for two reasons: (1) his letter already constitutes his undertaking of guaranty and (2) since the guaranty is merely accessory to the principal contract between the principal debtors and the creditor, and the latter contract having been already perfected, the contract of guaranty became binding upon effectivity of said principal contract.

Scope of guaranty.—

The provision of article 2055 of the new Civil Code that a guaranty "cannot extend to more than what is stipulated therein," was invoked in the case of *Macondray & Company, Inc. v. Piñon, et al.*[158] In said case, it was held that this rule is not applicable where the variation between the things intended to be bought and that actually sold by the creditor to the principal debtor consists merely in kind and not in subject matter. And the fact that the original price was reduced by such a variation rendered the obligation even less onerous. Nor is the obligation rendered more onerous than what the guarantor actually bound himself where the latter mentioned in his undertaking that the principal debtor's obligation would be "payable within 3 months ending April 30, 1954," while in the contract between the principal debtor and the creditor they have stipulated that the obligation would be payable on or before May 9, 1954, where the principal contract was consummated on February 9, 1954.

MORTGAGE

Mortgagor must be the owner of the mortgaged property.—

Article 2085 provides as an essential requisite to the contract of mortgage that the mortgagor be the absolute owner of the thing mortgaged. The case of *Marcelo Vda. de Bautista v. Marcos*[159] is an application of this provision.

In the *Bautista* case, it appears that defendant mortgaged to the plaintiff a parcel of land as security for a loan. Possession of

[155] Article 2047, par. 1, new Civil Code.
[156] Macondray & Company, Inc. v. Piñon, *et al.*, G.R. No. L-13817, Aug. 31, 1961.
[157] *Id*
[158] *Id.*
[159] G.R. No. L-17072, Oct. 31, 1961.

the land was turned over to the mortgagee by way of usufruct with no obligation on her part to apply the fruits thereof to the principal obligation. Subsequently, defendant obtained a free patent to the land. Defendant having defaulted in the payment of the loan. plaintiff filed an action for foreclosure of the mortgage. Defendant contended that the Public Land Law prohibits any foreclosure on the land within five years from the issuance of the patent. The lower court dismissed this contention on the ground that the Public Land Law does not apply to mortgages executed prior to the issuance of the patent.

Held: The prohibition of the Public Land Law [160] applies not only to debts contracted during the five-year period but also those contracted before the issuance of the patent. However, the mortgage herein is void and ineffective for the reason that the mortgagor was not the absolute owner of the thing mortgaged and could not thereby encumber the same. The land was still part of the public domain. The subsequent acquisition of a free patent did not validate the mortgage under the doctrine of estoppel. Plaintiff, nevertheless, has the right to recover the full amount of the loan without the duty to account for the fruits obtained by her from the land. The plaintiff, believing the mortgagor to be the owner of the land mortgaged, and not being aware of the flaw which invalidated the mode of acquisition, was a possessor in good faith.

Mortgage on homestead improvements is valid.—

Following section 118 of the Public Land Law, it was held in *Tolentino v. Baltazar* [161] that a mortgage constituted on the improvements on a parcel of land acquired by homestead, is valid, although the mortgage was made within the five-year prohibitory period for encumbrancing or alienating the homestead itself.

Mortgage of truck must be registered in Motor Vehicle Office to affect third persons.—

The case of *Aleman, et al. v. De Catera, et al.*[162] reiterates the ruling in *Borlough v. Fortune Enterprise, Inc.*[163] that a mortgage of a motor vehicle in order to affect third persons should not only be registered in the Chattel Mortgage Registry but the same should also be recorded in the Motor Vehicle Office as required by section 5(c) of the Revised Motor Vehicle Law.

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[160] Section 118, Commonwealth Act 141.
[161] G.R. No. L-14597, March 27, 1961.
[162] G.R. Nos. L-13693 and L-13694, March 25, 1961.
[163] 53 O.G. 4070.

It appears in the *Aleman* case that the Southern Motors, Inc. sold on installment basis a passenger truck to Wenceslao Defensor who, to secure the payment of the balance of the purchase price, mortgaged the truck in favor of the company. This mortgage was registered in the Chattel Mortgage Registry but not in the Motor Vehicle Office. Subsequently, Defensor sold the truck to Presentacion de Catera. The sale was registered in the Motor Vehicle Office. Said truck later figured in an accident which resulted in the death of three persons. In an action for damages against De Catera, the truck was attached. The Southern Motors filed a third party claim.

Issue: Which has a better right to the attached truck—the mortgagee or the families of the victims?

Held: Inasmuch as the mortgage in favor of Southern Motors is not recorded in the Motor Vehicle Office, the same is ineffective against the families of the victims who, though mere judgment creditors, may be deemed innocent purchasers, deriving their right from an innocent purchaser, De Catera, who had her purchase of the truck from Defensor recorded in the Motor Vehicle Office.

Ownership of property not transferred in chattel mortgage.—

The case of *Warner, Barnes & Company, Ltd. v. Flores* [164] reiterates the settled rule that in chattel mortgage ownership is not transferred to the mortgagee.[165]

It appears that Ramon Flores purchased on credit ₱3,027.90 worth of fertilizer from Warner, Barnes & Company, payable on or before December 31, 1941. To secure the payment of his obligation, Flores executed in favor of the company a chattel mortgage on his sugar. The sugar was burned without the fault or negligence of the mortgagee. When sued for the purchase price of the fertilizer, Flores interposed the defense that under clause 8 of the chattel mortgage, the plaintiff had already been paid by him.

Held: Clause 8 did not transfer the ownership of the sugar to the mortgagee. It merely authorized it to sell said sugar in case the defendant failed to pay on the maturity date, to retain the proceeds of the sale the value of the fertilizer bought and should there be any surplus to turn over the same to defendant. If the mortgagee were the owner of the sugar, there would be no need for defendant to authorize the former to sell it and defendant would not have any right to the surplus. As defendant was the owner

[164] G.R. No. L-12377, March 29, 1961.
[165] Martinez v. Philippine National Bank, G.R. No. L-4080, Sept. 1, 1953.

of the sugar at the time of its loss he shall bear the loss, on the principle of *res perit domino suo.*

QUASI-DELICTS

Liability for tortious acts of persons for whom one is responsible.—

In order to hold the parents liable for damages caused by their child, it must be shown that the child is a minor who lives in their company.[166] In the case of an employer, the employer-employee relationship must be established.[167]

Father is liable for damages for the criminal act of his son.—

In *Fuellas v. Cadano,*[168] it appears that Rico Fuellas, 13 years of age and living in the company of his father petitioner herein, broke the right forearm of Ruperto Cadano in a quarrel with the latter. Rico was convicted in a criminal case of serious physical injuries without pronouncement on the civil liability. In a civil case against the petitioner, the latter was held liable for damages therefor under article 2180 of the new Civil Code. On appeal, the Supreme Court affirmed the decision of the lower court on the ground that inasmuch as the Revised Penal Code is silent on the subsidiary liability of the parents where the child, who is over 9 years and below 15, acted with discernment, the Civil Code should be resorted to so as not to leave the crime unpunished.

DAMAGES

Actual damages must have actually been caused to the claimant.—

Article 2199 of the new Civil Code provides that "except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." The case of *Basilan Lumber Company v. Cagayan Timber Export Company, et al.*[169] illustrates the application of this rule.

In the *Basilan* case, it appears that plaintiff Basilan Lumber Company entered into a contract with the Cagayan Timber Export Company whereby the latter agreed to deliver to the former 740,000 board feet of logs on or about September 1, 1951 to be loaded at the minimum rate of 50,000 board feet per gang per hatch per weather working day. It was also agreed that in case the seller fails to comply with said terms, the seller shall indemnify the buyer for whatever damages the buyer would be held liable to their buyers

[166] Canlas v. Chan Lin Po, *et al.*, G.R. No. L-16929, July 31, 1961.
[167] *Id.*
[168] G.R. No. L-14409, Oct. 31, 1961.
[169] G.R. No. L-15908, June 30, 1961.

in Japan as a consequence thereof. The plaintiff sold the logs to a Japanese buyer, who had entered into a contract with the plaintiff through the East Asiatic Company, which acted as intermediary. Only 483,672 board feet were supplied by defendant and because of poor stevedoring service the loading which was to last 2½ days, took 7 days actually. Because of this plaintiff brought an action against defendant for damages due to breach of contract, contending that the demurrage and dead freight due the buyer in Japan had already been paid by the East Asiatic Company through which plaintiff sold the logs. Plaintiff argued that in accordance with the decisions of the United States courts, it is enough that there be proof or reasonable certainty that substantial future damages will result in order that a recovery for damages can be had.

Held: Under article 2199 of the Civil Code, damages must be duly proved. This new provision, which does not exist in the Civil Code of Spain, denies the grant of speculative damages not actually proved to have existed and to have been caused to the party claiming the same. In the case at bar, there is no proof that plaintiff had already paid, or had already been required to pay the East Asiatic Company which paid the damages to the buyer in Japan. And while these have not happened the damage to the plaintiff may not, under article 2199, be deemed to have actually been caused to him. As regards the express terms of the agreement holding the seller liable for the damages it may cause the buyer the same are merely declaratory of the obligation assumed. And it is only when the obligee actually suffers the damage, that compliance with the obligation may be demanded.

Illustration of highly speculative damages.—

In *Ventanilla v. Centeno*,[170] it was held that plaintiff's bare allegation that by reason of defendant's negligence and failure to perfect his appeal, he lost his chance to recover certain sums which he could have recovered, indicates that his claim for actual or compensatory damages must establish and prove by competent evidence actual pecuniary loss.

No actual damages for the death of an unborn child.—

Article 2206 of the new Civil Code provides that the amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos. In *Geluz v. Court of Appeals, et al.*[171] it was held that this minimum award for the death of a person,

[170] Ventanilla v. Centeno, G.R. No. L-14333, Jan. 28, 1961.
[171] G.R. No. L-16439, July 20, 1961.

does not cover the death of an unborn foetus that is not endowed with personality. Under the system of our Civil Code *"la criatura abortiva no alcanza la categoria de persona natural y en consecuencia es un ser no nacido a la vida del Derecho,"* [172] being incapable of having rights and obligations. Since an action for pecuniary damages on account of personal injury or death pertains primarily to the one ijured, it follows that if no action for such damages could be instituted on behalf of the unborn child on account of the injuries it received, no such right of action could derivatively accrue to its parents or heirs. In fact, even if a cause of action did accrue on behalf of the unborn child the same was extinguished by its prenatal death, since no transmission to anyone can take place from one that lacked juridical personality.

Grounds for recovering attorney's fees.—

The enumeration of the grounds for recovering attorney's fees in article 2208 of the new Civil Code, is exclusive.[173]

Where the basis of the claim for attorney's fees is "clearly unfounded civil action or proceeding against the plaintiff," bad faith in filing said action or proceeding must be proved. This, in effect, is the ruling of the Supreme Court in two 1961 cases.

In *NARIC v. Antonio, et al.*[174] it appears that on December 29, 1951, an application made in the name of Juan Antonio to purchase empty sacks payable within 120 days was approved by the National Rice and Corn Corporation on condition that the purchaser should file a surety bond in the sum of ₱2,000. Said bond was signed on the same date by Capital Insurance and Surety Company. As only ₱160 was paid on account of the purchase price within the stipulated period, the present action was brought on March 6, 1953, against Juan Antonio and the surety company. The lower court rendered judgment dismissing the action and ordering the NARIC and the surety for having presented the complaint and cross-claim, respectively, without cause, jointly to pay Juan Antonio attorney's fees besides actual and moral damages. On appeal the Supreme Court reversed the judgment insofar as it sentenced the appellants to pay damages and attorney's fees.

Held: It is clear from the evidence that Juan Antonio was impersonated in connection with the transaction involved herein. That he incurred expenses and may have undergone moral suffering and anxiety as a result of the litigation cannot be denied, but it is equally

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[172] Casso-Cervera, Dccionario de Derecho Privado, Vol. 1, p. 49.
[173] Ventanilla v. Centeno, *supra*, note 170.
[174] G.R. No. L-11926, June 30, 1961.

clear and true that the NARIC and the surety were as much victims of fraud by the impersonator as Juan Antonio was, and that *neither the NARIC nor the surety acted in bad faith in filing the complaint and the cross-claim.* At the time they submitted those claims in court, they did not know, or at least, they had no evidence in their hands showing that Juan Antonio's signatures on the application to purchase and the indemnity agreement had been forged. They were, therefore, in the legitimate exercise of a right when they filed their respective claims.

In the case of *Lazatin v. Twaño, et al.*[175] there is no showing in the decision appealed from that plaintiff's action is "clearly unfounded." Plaintiff-appellant's complaint was not dismissed because the facts alleged therein were found untrue, but on purely technical grounds of prescription and *res adjudicata.*

Said the Supreme Court: While it may be hard to believe that plaintiff had labored under the impression that the matters involved in his complaint had not been adjudicated in the previous litigation between the same parties because plaintiff was himself a lawyer, such error of judgment on his part would not justify the inference that the action was "clearly unfounded." Defenses such as prescription and *res adjudicata* raise questions of law not always of obvious and easy solution. One cannot nullify without cause, the good and honest motive, which should be presumed, when a litigant goes to court for the determination of his alleged right.

Under these circumstances, however, and in view of the fact that defendants were drawn into the litigation by the plaintiff and were compelled to hire an attorney to protect and defend them, plus the work done by defendant's attorney throughout the proceedings, the Supreme Court awarded attorney's fees for defendants under paragraph 11 of article 2208.

In another case,[176] it was held that attorney's fees cannot be awarded to defendant simply because the judgment was favorable to them for it may amount to imposing a premium on the right to redress grievance in court. To warrant recovery of attorney's fees on the ground of "clearly unfounded" civil action, the plaintiff's action must be "clearly unfounded and filed with a harassing purpose," [177] or so untenable as to amount to gross and evident bad faith.[178]

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[175] G.R. No. L-12786, July 31, 1961.
[176] Herrera, *et al.* v. Luy Kim Guan, *et al.*, G.R. No. L-17043, Jan. 31, 1961.
[177] Sison v. David, G.R. No. L-11268, Jan. 28, 1961.
[178] Herrera, *et al.* v. Luy Kim Guan, *et al.*, *supra*, note 176.

Where the defendant acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim, attorney's fees can be recovered.[179] The presumption, however, is that defendant's refusal to accede to plaintiff's demand which leads to the institution of the case has been motivated by no other than an honest conviction or belief that he (defendant) has a valid cause under the law.[180] Thus, it was held in *De los Reyes v. Pastorfide*[181] that attorney's fees cannot be awarded to plaintiff simply because he was able to establish his ownership over the property in litigation. It appears in this case that a Transfer Certificate of Title was issued over the land in question to plaintiff's predecessor-in-interest in 1922. Notwithstanding this fact, the Bureau of Lands sold the same lot to defendant in 1935. On the strength of this sale, defendant refused repeated demands of plaintiff to vacate the land. In an action to recover said land, plaintiff was able to establsh his ownership but his claim for attorney's fees was denied because he failed to prove bad faith on the part of the defendant.

Discretion of courts in the assessment of moral damages.—

The rule in article 2216 6of the new Civil Code that the assessment of moral damages is left to the discretion of the court, according to the circumstances of each case, was applied in *Quimsing v. Lachica, et al.*[182]

In the *Quimsing* case, it appears that defendants arrested plaintiff for operating his cockpit on a Thursday, not a legal holiday, in violation of article 199 of the Revised Penal Code. Plaintiff Quimsing, therefore, filed an action for moral damages claiming that cockfighting on Thursdays is authorized by Ordinance Nos. 5 and 58 of the City of Iloilo, in relation to Republic Act 938, and hence that the acts of defendants constituted an arbitrary arrest which entitles him for moral damages under paragraph 5 of article 2219. It appears that defendants were unaware of said ordinances and had acted in good faith and under firm conviction that they were faithfully discharging their duty as law-enforcing agents in arresting Quimsing. For this reason and in view of article 2216 of the Civil Code, the Supreme Court absolved the defendants from liability for moral damages.

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[179] Article 2208, par. 5, new Civil Code.
[180] De los Reyes v. Pastorfide, G.R. No. L-14516, June 30, 1961.
[181] *Id.*
[182] G.R. No. L-14683, May 30, 1961.

Moral damages for malicious attachment.—

Where a writ of attachment has been maliciously sued out by plaintiff, moral damages may be recovered.[183] The reason is that the action to recover damages from the attachment plaintiff for the wrongful issuance and levy of an attachment (malicious attachment) is identical or is *analogous* to the ordinary action for *malicious prosecution.*[184]

Generally no moral damages may be recovered in breach of contract.—

The case of *Lira v. Mercado* [185] reiterates the settled rule that no moral damages can be recovered in breach of contract of carriage except (1) where the passenger of the common carrier proves bad faith or fraud, or (2) where the mishap resulted in the death of the passenger, in which case moral damages may be recovered under paragraph 3 of article 2206.[186]

In the Lira case, it appears that the plaintiff, a passenger in a bus operated by defendant, sustained physical injuries when the said bus fell into a ravine as a result of the bursting of a tire thereof. There was no evidence of fraud or bad faith on the part of the common carrier. Issue: Can plaintiff recover moral damages? *Held:* No. No moral damages can be recovered in view of articles 2219 and 2220 of the new Civil Code, authorizing indemnification for moral damages in cases of quasi-delicts or criminal offenses, not in breaches of contract where there is no proof that defendant acted fraudulently or in bad faith. The case of breach of contract cannot be considered included in the descriptive expression "analogous cases" used in article 2219 inasmuch as article 2220 covers damages involving breach of contract and article 2176 excludes the existence of a pre-existing contractual relationship in the definition of quasi-delict.

Other rulings on moral damages.—

1. The unauthorized use of name unless coupled with bad faith or culpable negligence will not render the user liable for moral damages to the person entitled to the exclusive use of the name.[187]

2. Where the defendant was guilty of bad faith in not carrying out his agreement with the plaintiff, the latter is entitled to recover moral damages.[188]

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[183] Lazatin v. Twaño, G.R. No. L-12736, July 31, 1961.

[184] Sasten v. Bank of Stockton, 56 Am. Rep. 77, 4 Pac. 1106; Robinson v. Kellum, 6 Cal. 399; Grant v. Moore, 29 Cal. 644; King v. Montgomery, 50 Cal. 50; Gonzales v. Cobliner, 68 Cal. 151, 8 Pac. 697; Asevado v. Orr, 100 Cal. 293, 34 Pac. 777.

[185] G.R. No. L-13358, Sept. 29, 1961.

[186] Cachero v. Yellow Taxi, G.R. No. L-8721, May 28, 1957; Necesito v. Paras, G.R. No. L-10605, June 30, 1958; Fores v. Miranda, G.R. No. L-12163, March 4, 1959.

[187] Silva, et al. v. Peralta, *supra*, note 53.

[188] Coscolluela v. Valderrama, G.R. No. L-13757, Aug. 31, 1961.

3. The dismissal of the estafa case filed by plaintiff against defendant is insufficient to warrant a judgment for moral damages in the latter's favor, there being no competent evidence that in filing said complaint plaintiff had acted in bad faith.[189]

4. Since the appellant's claim for moral damages is not predicated upon any of those specifically enumerated in article 2219 nor upon article 2220 of the new Civil Code, the lower court did not err in declining to award moral damages to him.[190]

5. Where the allegedly libelous statements imputed were covered by the protective mantle of privileged communication, no moral damages may be awarded.[191]

Nominal damages.—

The assessment of nominal damages is left to the discretion of the court, according to the circumstances of each case.[192] The case of *Ventanilla v. Centeno* [193] is an illustration of the application of this rule.

It appears that plaintiff retained the services of Atty. Centeno to prosecute for him a civil case for the recovery of ₱4,000 plus damages. Judgment was adverse to plaintiff but no appeal was perfected due to the negligence of Atty. Centeno. As a result, plaintiff sued Atty. Centeno, among others, for nominal damages in the sum of ₱2,000, but the lower court granted him ₱200 only. On appeal, the Supreme Court held: The amount of ₱2,000 that the appellant seeks is excessive. The assessment of nominal damages lies in the court's discretion according to the circumstances. Considering the degree of negligence committed by the appellee in not depositing on time the appeal bond and filing on the record on appeal within the extension period granted by the court, the amount awarded by the trial court may seem exiguous. Nevertheless, considering that nominal damages are not for indemnification for loss suffered but for the vindication or recognition of a right violated or invaded; and that even if the appeal bond had been perfected, it was not an assurance that the appellant would succeed in recovering the amount he had claimed in his complaint, the amount awarded by the trial court should not be disturbed.

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[189] Sison v. David, *supra*, note 177.
[190] Ventanilla v. Centeno, *supra*, note 170.
[191] Sison v. David, *supra*, note 177.
[192] Article 2216, new Civil Code.
[193] *Supra*, note 170.

Temperate damages.—

Where the claimant is not entitled to actual or compensatory damages but has been awarded nominal damages, such award precludes the recovery of temperate or moderate damages.[194]

Exemplary damages.—

In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[195] However, exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.[196]

CONCURRENCE AND PREFERENCE OF CREDITS

Scope of application.—

The articles of the new Civil Code on concurrence and preference of credits are not limited in its application to insolvency cases.[197] If this portion of the Code were to be interpreted as intended only for insolvency cases, then other creditor-debtor relationships where there are concurrence of credits would be left without any rules to govern them, and it would render purposeless the special laws on insolvency.[198]

To be preferred, vendor's lien need not be registered.—

The case of *Barretto, et al. v. Villanueva, et al.*[199] is authority for the rule that the vendor's lien on the unpaid price of real property sold need not be recorded in the Registry of Property in order to be given preference under article 2242 of the new Civil Code.

In the *Barretto* case, it appears that Rosario Cruzado sold a parcel of land to Pura Villanueva on installment basis, the buyer executing a promissory note therefor. Subsequently, Villanueva mortgaged the lot to Magdalena Barretto to secure a loan of ₱30,000. As Villanueva defaulted on her promissory note, Cruzado filed an action and recovered judgment against Villanueva for the unpaid balance of the purchase price. Villanueva also failed to pay her indebtedness to Barretto, so the latter filed the instant action for foreclosure of the mortgage, impleading Cruzado as defendant. Barretto argues that inasmuch as Cruzado's vendor's lien was not

[194] *Id.*
[195] Article 2232, new Civil Code.
[196] Article 2233, new Civil Code; Ventanilla v. Centeno, *supra*, note 170.
[197] Barreto, *et al.* v. Villanueva, *et al.*, G.R. No. L-14938, Jan. 28, 1961.
[198] *Id.*
[199] *Supra*, note 197.

registered, it should not prejudice her (Barretto's) rights over the property.

Held: Article 2242 of the new Civil Code enumerating the preferred claims, mortgages and liens on immovables, specifically requires that—unlike the unpaid price of real property sold—mortgage credits, in order to be given preference, should be recorded in the Registry of Property. If the legislative intent was to impose the same requirement in the case of the vendor's lien, on the unpaid price of real property sold, the lawmakers could have easily inserted the same qualification which now modifies mortgage credits. In view of this, and applying article 2249—which provides that if there are two or more credits with respect to the same specific immovable property or real rights, they shall be satisfied *pro rata*—it is only proper that the unpaid vendor and the mortgagee be credited with their *pro rata* share from the proceeds of the sale of the land in question.

TRANSITIONAL PROVISIONS

Article 2263.—

Following the rule in article 2263 of the new Civil Code that rights to the inheritance of a person who died, with or without a will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court, the right of an acknowledged natural child to inherit from an intestate who died on July 20, 1946, was settled in accordance with the old Civil Code in the case of *Montilla v. Montilla.*[200]

[200] G.R. No. L-14462, June 30, 1961.