CIVIL LAW

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I. INTRODUCTION

A good number of naturalization cases are included in this survey. Ever since our Congress passed laws nationalizing various aspects of Philippine business life, there have been an amazing "rush" of naturalization cases. Our Supreme Court, perceiving perhaps the ulterior motives in most of the petitions, consistently took a rigid stand on them. As a result *almost all* of the appealed decisions of the Courts of First Instance granting those petitions were reversed.

Civil Law indeed covers a very wide field. We labored to make this survey a comprehensive one and hope that our work will be of some help to law students, practitioners, professors, scholars, and judges.

II. NATURALIZATION

Meaning of Lucrative Employment.

The Supreme Court defines lucrative employment in the case of *Tan v. Republic*[1] as meaning gainful employment. It is not only that a person having employment gets enough for his ordinary necessities in life. It must be shown that the employment gives one an income such that there is an appreciable margin of his income over his expenses as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid one's becoming the object of charity or public charge. To this effect, our Supreme Court has, in the case of *Yap v. Republic*,[2] denied the petition of a petitioner who was single with a salary of ₱200.00 a month, although provided with free board and lodging. In the case of *Tochin v. Republic*,[3] the petitioner has an annual salary of ₱1800.00 and occasionally earning commissions for other jobs. His income was not considered lucrative, even if the petitioner is single and has no family to support. In *Siong Hay Uy v.*

* Member, Student Editorial Board (Notes and Comments).
** Member, Student Editorial Board (Recent Legislations).
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[1] G.R. No. L-19580 Prom. April 30, 1965.
[2] G.R. No. L-19649 Prom. April 30, 1965.
[3] G.R. No. L-19637 Prom. February 26, 1965.

Republic[4] an earning of ₱120.00 a month even if coupled with free board and lodging is, according to the court, patently insufficient to be considered lucrative for purposes of naturalization. It was also held that the ruling in *Lim v. Republic* holding a monthly salary of ₱80.00 plus board and lodging will suffice had already been repealed by the cases of *Chuan v. Republic* (1964), *Koh Chit v. Republic* (1964), *Tse v. Republic* (1964), *Tan v. Republic* (1963), and *Ong v. Republic* (1961). Even an earning of ₱250.00 a month is not lucrative income according to the case of *Go v. Republic.*[5] In *Chie v. Republic*[6] the petitioner's true income is ₱150.00 a month but the petitioner's employer may grant him bonuses and allowances at the employer's sound judgment. It was held that the income is not lucrative. In *Ng v. Republic*[7] an income of ₱2040.00 a year was held *grossly* insufficient considering that the petitioner is living in Manila where the standard of living is one of the highest in the country. An income of ₱3600.00 a year with mother, brothers and sisters to support is not lucrative. Petitioner's income together with that of his wife amounting to ₱340.00 a month is a far cry from what this court has regarded as lucrative within the meaning of the law, was the ruling in the case of *Go Ling v. Republic.*[8]

In one case, *Tang Kong Kiat v. Republic,*[9] where the petitioner has a wife and four minor children to support and considering that the business of the partnership Sutong and Company had been declining and incurring losses, the Supreme Court held that the income of ₱4200.00 a year representing the salary of the petitioner, (or even conceding that he has an average annual income of ₱5000.00), is not lucrative enough as would qualify him for Philippine citizenship. In the case of *Sergio Tan v. Republic,*[10] the petitioner's income as shown by his income tax return for the years 1958, 1959 and 1960 were ₱664.90, ₱1531.45 and ₱2269.40 respectively. The court said that even if it considers only the last income, still it cannot be considered lucrative. Also in the case of *See Ho Kiat v. Republic,*[11] a monthly salary of ₱120.00 in addition to a rental of ₱180.00 was not held lucrative. In another case, our Court emphasized that an applicant earning less than ₱250.00 a month does not possess the necessary lucrative trade or profession. Still in another case, an annual income of ₱4800.00 was considered insufficient considering that the applicant has a wife and five children of school age

[4] G.R. No. L-19845 Prom. February 26, 1965.
[5] G.R. No. L-20019 Prom. February 26, 1965.
[6] G.R. No. L-20169 Prom. February 26, 1965.
[7] G.R. No. L-19646 Prom. May 31, 1965.
[8] G.R. No. L-19836 Prom. June 21, 1965.
[9] G.R. No. L-19915 Prom. June 23, 1965.
[10] G.R. No. L-20021 Prom. June 23, 1965.
[11] G.R. No. L-19348 Prom. June 30, 1965.

to support. This was the case of *Ong So v. Republic.*[12] Bonuses which depend upon the profits or income of the employing company, was, in the case of *Antonio Uy v. Republic,*[13] not and should not be considered in determining lucrativeness of the alien's income. The Supreme Court in *Uy Tian v. Republic*[14] significantly held that an income of ₱6000.00 or ₱7000.00 yearly is not considered lucrative because the petitioner has *eight children,* five of whom are already studying. This situation, said the Court, is not affected by the fact that the petitioner is the sole owner of the business from which he derives the income and wherein he invested a capital of ₱50,000.00 for what is important is that the business gives him an income which may be considered lucrative considering his *present* needs. Alleged bonus and commissions cannot be taken into consideration in determining applicant's lucrative occupation because they are, *by their nature,* indefinite and unsteady. So said the Supreme Court in *Pantaleon Sid v. Republic.*[15] The sum of ₱4000.00 as the yearly income of the petitioner with a wife and four children to support, was not considered lucrative by the court in the case of *Chua Eng Hok v. Republic.*[16] In *Serapion Lim v. Republic,*[17] a monthly salary of ₱300.00 of the petitioner with a wife and two children to support was held far from sufficient income required by law. In *Wong Kim Goon v. Republic,*[18] an annual income of ₱6000.00 of a married petitioner was not considered lucrative. In *Antonio Po v. Republic,*[19] our Supreme Court said that the petitioner's allegation of free board and lodging may only reflect that he is still dependent upon his mother for support. The Supreme Court emphatically stated in the case of *Jose Uy v. Republic*[20] that while in former decisions an income of ₱250.00 might have been considered lucrative, however today *it no longer holds* for the value of the peso has declined considerably and the cost of living has kept on increasing. Also in the case of *Senecio Dy v. Republic,*[21] the court said that an income of ₱1800 yearly is patently insufficient to characterize his trade as lucrative. However in the case of *Ramon Gan Ching Lim v. Republic*[22] the Supreme Court granted the petition for naturalization (and this is the *only* case where the Supreme Court decided in favor of the petitioner), the petitioner was a Mechanical Engineer graduate of National University but was engaged in farm-

[12] G.R. No. L-20145 Prom. June 30, 1965.
[13] G.R. No. L-20208 Prom. June 30, 1965.
[14] G.R. No. L-19918 Prom. July 30, 1965.
[15] G.R. No. L-20290 Prom. August 31, 1965.
[16] G.R. No. L-20479 Prom. October 29, 1965.
[17] G.R. No. L-20711 Prom. December 21, 1965.
[18] G.R. No. L-20373 Prom. December 24, 1965.
[19] G.R. No. L-21019 Prom. December 24, 1965.
[20] G.R. No. L-20799 Prom. November 29, 1965.
[21] G.R. No. L-21017 Prom. November 29, 1965.
[22] G.R. No. L-21859 Prom. December 24, 1965.

ing. He had *cash* asset of ₱6,137.33 apart from his *fixed* asset, land with a market value of ₱13,000.00. He was single and had no descendants to support and had an income of ₱4,944.97 for the year 1962 and about the same for other years. It was held that the petitioner has lucrative income.

Unauthorized Use of an Alias. Failure to Disclose all Names.

In *Cheng v. Republic of the Philippines*[23] the Supreme Court ruled that objection to the petition for naturalization on the ground of unauthorized use of an *alias* is meritorious. Likewise it was held in *Ng Len v. Republic,*[24] that failure to disclose other names used by the petitioner taints the publication of his application and warrants reversal of the order granting the petition for naturalization. In *Yee v. Republic*[25] the unexplained and unauthorized use of an *alias* was held sufficient to deny the petition for naturalization. In the same manner, the Supreme Court ruled in *Lee v. Republic*[26] that the unauthorized use of aliases (not authorized under C.A. 142) is a disqualifying conduct. Non-inclusion of the other names of the petitioner in the publication of the petition is fatal because it deprived persons knowing him by that other name to come forward and inform the authorities of any matter which might affect his application. Such was the ruling in the case of *Cen v. Republic.*[27] In one other case, *Chiu Bok v. Republic,*[28] it was held that the use of an alias, without authority is a clear violation of the Anti-Alias Law (C.A. No. 142) and makes the petitioner all the more disqualified to obtain Philippine citizenship. It shows that he is not a person of irreproachable conduct.

Effect of Discrepancy in the Declaration of Gross Income for the Same Year.

The fact that the petitioner in his statement for the payment of the additional residence certificate for the year 1961 declared that his gross income was only ₱8,800 although the amount set for in his income tax return for that year is ₱13,172.85 showed that his moral character is not as good as it should be. The petitioner, on that ground, among others, was denied the grant of citizenship. This was the pronouncement in *Ping Seng v. Republic.*[29]

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[23] G.R. No. L-20013 Prom. March 30, 1965.
[24] G.R. No. L-20151 Prom. March 31, 1965.
[25] G.R. No. L-20305 Prom. March 31, 1965.
[26] G.R. No. L-20148 Prom. April 30, 1965.
[27] G.R. No. L-20310 Prom. April 30, 1965.
[28] G.R. No. L-19111 Prom. June 22, 1965.
[29] G.R. No. L-19575 Prom. February 26, 1965.

Petitioner Must State All Past and Present Residences. Failure to Do So is Fatal to the Petition.

In *Tan v. Republic of the Philippines*[30] the Supreme Court held that under section 7 of the Revised Naturalization Law, the petitioner is required not only to state his present address, but even his former places of residence. In other words, what is called for to be stated is not the legal residence or domicile but the actual residence or places where petitioner *has actually resided...* And the failure to state all the places where petitioner has resided is fatal to his application for naturalization. Such failure, according to the case of *Yu Ti v. Republic*,[30a] cannot be cured by proving the omitted places of residence later at the trial. The case of *Tan Nga Kok v. Republic*[31] also enunciated that failure to mention all places of residence is sufficient ground for denying the petition. To the same effect was the ruling in the case of *Yao Long v. Republic*.[32]

Circumstances Showing Lack of Proper and Irreproachable Character.

In the case of *Teofilo Lu v. Republic*,[33] our Supreme Court found out that the petitioner lacked proper and irreproachable character because of the following circumstances, to wit: a) in the marriage contract he falsely alleged that he was a Filipino; b) he testified that his mother was Cirila Rivera while in evidence it was shown to be Tan Hoa Eng, a Chinese; c) he claimed to be a Filipino while he was registered as a Chinese in the Chinese Embassy and in the Bureau of Immigration; d) he made the same allegation in his residence certificate; e) he failed to register himself and his daughter within the period prescribed therefor in the Alien Registration Act.

Effect of Only One Publication in the Official Gazette.

Citing Ong Sen Cui v. Republic, L-9858, May 29, 1957, the court held in the case of *Gan Tsitung v. Republic*[34] that there being only one publication of the notice of hearing of the case in the Official Gazette, the same is clearly incomplete and therefor insufficient to confer jurisdiction to the court *a quo* to try the case and grant the petition.

The rule that the failure of the petitioner to state in his petition for naturalization all the names is fatal to his petition was reiterated in the case of *Lim Uy v. Republic*.[35] In *Celestino Tan v.*

[30] G.R. No. L-19694 Prom. March 30, 1965.
[30a] G.R. No. L-19913 Prom. June 23, 1965.
[31] G.R. No. L-16767 Prom. June 30, 1965.
[32] G.R. No. L-20910 Prom. November 22, 1965.
[33] G.R. No. L-20915 Prom. November 27, 1965.
[34] G.R. No. L-20819 Prom. November 29, 1965.
[35] G.R. No. L-19916 Prom. June 23, 1965.

Republic,[36] our Court reiterated that the use of an alias without judicial authority indicates that the applicant has not conducted himself in a proper and irreproachable manner as required by law.

What Character Witnesses Must Establish.

The Supreme Court pointed out in the case of *Serapion Lim v. Republic*[37] that since there were grounds not established by the witnesses such as lucrative employment, ability to speak and write the required languages and the absence of contagious disease, the petition must fail because witnesses must attest in court that petitioner has each of the requisite qualifications.

How To Qualify To Be Credible Witnesses.

In order to be "credible witnesses" within the contemplation of the Naturalization Law, they must qualify to be "insurers of the petitioner's conduct." The petitioner having allegedly resided in the Philippines for thirty years, the witnesses who have known him for a much shorter period are not the ones contemplated by law. This was the holding in *Republic v. Reyes, et al.*[38]

Proof of the Petitioner's Proper and Irreproachable Conduct Must Cover the Entire Period of his Residence in the Philippines.

In *Uy Ching Ho v. Republic of the Philippines*,[39] the Supreme Court held that since the character witnesses testified as to the character of the petitioner from the year 1940 although he landed in the Philippines ever since 1926, the absence of evidence of the petitioner's character between 1926 and 1940 is sufficient to deny his petition for naturalization because the law requires proper and irreproachable conduct during the entire period of his residence in the Philippines. In the same manner, the Supreme Court in deciding the case of *Uy Tian v. Republic*[40] against the petitioner held that the character witnesses are not fully qualified and their testimonies would be very insufficient to attest to the good conduct and reputation of the petitioner since they have known him only for ten years when the petitioner has resided in the Philippines for twenty-five years.

Exemption from Filing Declaration of Intention.

In *Yao Long v. Republic*,[41] it was held that exemption from filing declaration of intention requires that the petitioner's residence in the Philippines for a period of thirty years be continuous and

[36] G.R. No. L-20287 Prom. July 30, 1965.
[37] *Supra.*
[38] G.R. No. L-20602 Prom. December 24, 1965.
[39] G.R. No. L-19582 Prom. March 26, 1965.
[40] *Supra.*
[41] *Supra.*

not punctuated with interruptions indicative of an intention not in line with the spirit of the law.

Misrepresentation That the Petitioner is Married Shows Lack of Good Moral Character.

In *Jesus Yap v. Republic,*[42] the Supreme Court found the petitioner lacking in good faith because he had lived with Ligaya Jose, as his wife, without benefit of marriage, and that in his income tax return of 1960, he declared that Ligaya was his wife although they were not married until January 7, 1961 and claimed the corresponding exemption for married persons, to which he was not entitled until 1961. The court continued that regardless of the degree of immorality that extra-marital relations must entail to effectively impair the qualification of a person to be naturalized, it is obvious that the statement in petitioner's income tax return for 1960 to the effect that he was then married is not merely an innocent mistake, but a deliberate misrepresentation, which may constitute perjury as well as a violation of the Internal Revenue Code for in said return he claimed the statutory exemption of ₱3000.00 for married persons or heads of families, thus evincing a serious flaw in his moral fiber justifying the order appealed from.

Testimony of the Character Witnesses on Professional and Business Matters not Sufficient.

In *Tan Sang v. Republic,*[43] the petitioner's character witnesses testified as to the professional and business activities of the petitioner. They were not personal nor intimate acquaintances of the petitioner. Our court ruled that professional or business dealings alone do not provide sufficient basis for deriving intimate knowledge of the conduct and moral character of the petitioner.

Enrollment of Children of School Age in Prescribed Schools.

In the case of *Ong So v. Republic*[44] it was decided that since two of the applicant's minor children x x x were in 1959 still out of the Philippines and they were born in 1948 and 1949, they were not yet enrolled in the Philippine schools prescribed by law despite their being of school age, the condition imposed by the statute was not complied with.

In *Republic v. Reyes, et al.*[45] our Supreme Court reemphasized that since children of the petitioner were already born when he started his residence in the Philippines, he was under obligation to give said children the training that this country desires of its citizens. This the petitioner failed to do because four of his children

[42] G.R. No. L-21192 Prom. November 29, 1965.
[43] G.R. No. L-19914 Prom. June 23, 1965.
[44] *Supra.*
[45] *Supra.*

never came here. The court reiterated that financial difficulties, strict immigration laws, marriage of a child, or his adoption by a godfather do not constitute valid excuse from failure to comply with this requirement of the law.

Requirement Under Section 9 of the Revised Naturalization Law Mandatory and Essential.

Section 9 of the Revised Naturalization Law, as amended, explicitly requires that immediately upon the filing of a petition for naturalization copies thereof and the notice of hearing shall be posted in a public or conspicuous place in the office of the clerk of court or in the building where said office is located setting forth in such notice the name, birthplace, and residence of the petitioner, the date and place of his arrival in the Philippines, the names of witnesses whom the petitioner wishes to introduce in support of his petition and the date and hearing of his petition, which petition shall not be heard within six months from the date of the last publication of the notice. No proof of such posting was presented in the proceeding to which reason the Government opposed the petition contending that the requirements of the law is essential and mandatory. The court concurred with the Government's contention. This was the ruling laid down in the case of *Frank Yu Tui v. Republic.*[46]

Purpose of R.A. No. 530 Amending the Naturalization Law.

Our Supreme Court said in the case of *Cheng Kiat Giana v. Republic*[47] that Republic Act No. 530 amending Com. Act No. 430, was enacted to give the State an additional two-year-period to test the sincerity of an applicant for citizenship and to safeguard itself against the admission of those disqualified, unworthy and unfit who do not measure up to the requirements of the law. In this connection, it appears that although the decision admitting the appellant as citizen was promulgated on September 7, 1953, it was only more than six years thereafter that he filed his petition for reception of evidence in connection with his oath-taking, instead of filing it within two years. This cannot but show his lack of interest in the matter and in this case, it may be further assumed that such lack of interest on his part was due to the fact that he had several criminal cases pending before different agencies of the Philippines.

Requisite to be Exempt from Filing a Declaration of Intention.

Section 6 of the Revised Naturalization Law exempts from filing the declaration of intention an applicant who has resided continuously in the Philippines for at least 30 years, adding to it the requirement that he must have given primary and secondary educa-

[46] G.R. No. L-19844 Prom. June 30, 1965.
[47] G.R. No. L-16999 Prom. June 22, 1965.

tion to all his children in the approved schools.[48] In the case of *Yu Ti v. Republic*[49] the Supreme Court reiterated the rule that *all* of the petitioner's children, *not only his minor children,* must have been enrolled in approved schools.

In *Antonio Dy v. Republic,*[50] the court held that a petitioner must prove conclusively that he was born in the Philippines in order to be able to exempt himself from the requirement of filing a declaration of intention one year prior to the filing of the petition. Failure to prove it conclusively will cause denial of the petition because of the absence of the filing of such declaration of intention. In *Sio Kim v. Republic,*[51] the Supreme Court held that the failure to file the declaration of intention constitutes a jurisdictional defect which rendered the entire proceeding null and void.

Failure to State Any of the Principles Underlying the Constitution Belies his Alleged Belief on those Principles.

It was laid down in the case of *Go v. Republic,*[52] that where the applicant has repeatedly stated his belief on the principles underlying the Constitution but was unable to mention *even one* of those principles he allegedly believed in, then the petitioner has not proved that he really believed in those Principles.

Where Petitioner Resided in China as a Minor While His Father Was a Philippine Resident.

The rule that a minor child follows the residence of his father cannot apply when, as in this case, the law demands actual and substantial residence. Consequently, the residence during the years the petitioner was in China was that country and not the Philippines despite his minority and the fact that his father was then a resident of the Philippines. This is the doctrine laid down in the case of *See Yek Tek v. Republic.*[53]

Marriage of an Alien Woman to a Filipino Citizen.

Marriage of an alien woman to a Filipino citizen does not automatically make her a Philippine citizen. She must, as a *prerequisite,* establish satisfactorily in *appropriate proceedings,* that she has all the qualifications under section 2 and none of the disqualifications under section 4 of the Naturalization Law. This

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[48] Other persons exempt from filing a declaration of intention are persons born in the Philippines who received their primary and secondary education in public schools or private schools recognized by the government and not limited to any race or nationality and the widow and minor children of an alien who has filed his declaration of intention but dies before he is actually naturalized

[49] G.R. No. L-19913 Prom. June 23, 1965.

[50] G.R. No. L-20348 Prom. December 24, 1965.

[51] G.R. No. L-30414 Prom. December 29, 1965.

[52] G.R. No. L-20227 Prom. May 31, 1965.

[53] G.R. No. L-19898 Prom. June 28, 1965.

was the rule enunciated in the case of *Brito and Tan Soo v. The Commission of Immigration*,[54] which rule is just a reiteration of the same doctrine adopted in a long line of cases.

Entire Record of the Case is Open for Scrutiny on Appeal.

In *Cheng v. Republic of the Philippines*,[55] the Supreme Court stated that a petition for naturalization is of a special nature necessarily involving public interest. Thus, in case of appeal, the entire record of the case is open for scrutiny whether an objection has been submitted in the lower court or not. As a matter of fact, the State is not even precluded from objecting to petitioner's qualifications during the hearing of the latter's petition to take the oath.

III. SUPPORT

In the case of *Serfino v. Serfino*,[56] it was ruled by the Court that the amount of support shall be in proportion to the resources or means of the giver and to the needs of the giver. Payment thereof shall begin from the date the support is extrajudicially demanded. It shall be demandable from the time the person who has a right to receive the same needs it for maintenance. It was also held that if the duty to support is admitted but in spite of demands thereof, the duty is not complied with and the person to be supported has to resort to the court for the enforcement of his right, then the person obliged to give support must pay reasonable attorney's fees. In actions for legal support, even in the absence of stipulation, attorney's fees are recoverable in line with paragraph 6 of Article 2208 of the Civil Code.

IV. FOREIGN DIVORCE

Summing up, the Supreme Court ruled in the case of *Tenchavez v. Escaño, et al.*[57] that: 1) a foreign divorce between Filipino citizens sought and decreed after the effectivity of the New Civil Code is not entitled to recognition as valid in this jurisdiction; and neither is the marriage contracted with another party by the "divorced" consort, subsequent to the foreign decree of divorce, entitled to validity in this country; 2) the remarriage of the "divorced" wife and her cohabitation with a person other than the lawful husband entitled the latter to a decree of legal separation; 3) the desertion and securing of an invalid divorce decree by one consort entitles the other to recover legal damages; 4) an action for alienation of affections against the parents of one consort does

[54] G.R. No. L-16829 Prom. June 30, 1965.
[55] *Supra.*
[56] G.R. No. L-17315 Prom. July 31, 1965.
[57] G.R. No. L-19671 Prom. November 29, 1965.

not lie in the absence of proof of malice and unworthy motives on their part; 5) that a valid marriage remains subsisting and undissolved under Philippine laws notwithstanding the decree of absolute divorce from a foreign court; 6) to grant effectivity to foreign divorces would be a patent violation of the declared public policy of the State especially in view of the 3rd paragraph of Article 17 of the Civil Code.

V. ADOPTION AND RECOGNITION

Relationship Established by Adoption is Limited to the Adopter and Adopted.

Under our laws, the relationship established by adoption is limited solely to the adopter and adopted and does not extend to the relatives of the adopting parents or of the adopted child except only as expressly provided by law. This was the ruling enunciated in the case of *Teotico v. Ana del Val.*[58]

The adopted minor cannot bear the surname of the adopter's husband for the latter has not joined his wife in the petition for adoption. To allow a minor in such a case to adopt the surname of the husband of her adopter would mislead the public into believing that she has also been adopted by her adopter's husband which is not the case. That was the ruling of our High Court in the case of *Suarez v. Republic.*[59]

Recognition of a Natural Child in an Authentic Writing.

In *Gustilo v. Gustilo,*[60] the ruling stated that recognition of a person as a natural child on the strength of statements in an authentic writing to be effective, the statements must be made and in the writing of the alleged father himself.

Compulsory Recognition of a Natural Child.

The case of *Navarro v. Bacalla*[61] stemmed from a complaint against Bacalla for compulsory recognition of a natural child, support, damages and attorney's fees. The trial court found that defendant is the father of plaintiff minor. Nevertheless, the trial court rules that defendant cannot be compelled to acknowledge plaintiff minor as his natural child upon the ground that the evidence of paternity adduced was not of the kind stated in Article 283 of the Civil Code as grounds for compulsory recognition of a natural child. The Supreme Court held that the testimony of the mother of the child that "he, (defendant) impregnated me" and that at the time before and during the child's conception she had

[58] G.R. No. L-18753 Prom. March 26, 1965.
[59] G.R. No. L-20914 Prom. December 24, 1965.
[60] G.R. No. L-18038 Prom. May 31, 1965.
[61] G.R. No. L-20607 Prom. October 14, 1965.

no affair with any other man aside from the defendant is *included* in the *broad* scope of paragraph 4, Article 283, Civil Code. The fact that the paternity of the child has been established by evidence and is no longer disputed by the father, the latter should be compelled to recognize the child as his own. Defendant was also ordered to pay the plaintiff support, moral damages and attorney's fees.

VI. PROPERTY

Owner may Establish Easement on His Real Estate.

The case of *Trias v. Araneta*[62] was as follows:

Trias was the registered owner of the lot in question. The lot is formerly a part of a subdivision and originally belonged to Tuason and Co. which, upon selling the lot to a purchaser imposed the prohibition that no factories will be permitted to be built in said lot. The prohibition was printed on the back of the Title issued to the purchaser and Trias acquired the lot subject to such limitation. Trias sought the cancellation of the prohibition on the ground that it infringes the owner's right to use her land. It was *held* that the prohibition is in reality an easement which every owner of real estate may validly impose under Article 688 of the Civil Code. No law was cited outlawing this prohibition which evidently was imposed by the owner of the subdivision to establish a residential section in that area.

Friar Lands Bought Before Woman's Marriage Are Paraphernal.

Reiterating *Lorenzo v. Nicolas* (91 Phil. 686), the Court held in *Alvarez v. Espiritu*[63] that friar lands bought by a woman before her marriage were her paraphernal properties, although some of the installments on their price were paid out of conjugal funds. The conjugal partnership would only be entitled to reimbursement for the installments made. The fact that the certificate of title was issued in the names of both spouses is not decisive in the determination of whether the properties are paraphernal or conjugal.

In an Action to Recover, Property Must be Identified.

In *Pisalbon v. Balmoja*,[64] the plaintiff sought to recover from the defendant property which the trial court, after due proceedings, found out not to have been duly nor clearly delineated nor described in the complaint. The Supreme Court held that dismissal of the complaint is proper for it is a rule that in an action to recover, the property must be identified and the plaintiff must rely on the

[62] G.R. No. L-20786 Prom. October 30, 1965.
[63] G.R. No. L-18833 Prom. August 14, 1965.
[64] G.R. No. L-17517 Prom. August 31, 1965.

strength of his Title and not on the weakness of the defendant's claim.

VII. DONATIONS

Rules Governing Donations.

Our Supreme Court, in the case of *Ping, et al. v. Magbanua Peñaflorida, et al.*,[65] reiterated several rules on donation already established by jurisprudence; to wit: 1) that donation *mortis causa* has been eliminated as a judicial entity from and after the enactment of the Spanish Civil Code of 1889 (Art. 620) as well as the Civil Code of the Philippines (Art. 828); 2) that an essential characteristic of dispositions *mortis causa* (which must be embodied in a valid will) is that the conveyance should be revocable *ad nutum*, i.e., at the discretion of the grantor or so-called "donor" simply because he changed his mind; 3) in consequence, the specification in the deed that the act *may be* revoked by the donor indicates that the donation is *inter vivos*, 4) that the designation of the donation as *mortis causa* or a provision in the deed that the donation is to take effect "at the death of the donor" are not controlling; such statements must be construed together with the rest of the instruments in order to give effect to the real intent of the transferor; 5) that an onerous conveyance is governed by the rules or contract and not by those on testament or donation; 6) that in case of doubt the conveyance should be deemed donation *inter vivos* rather than *mortis causa*.

VIII. SUCCESSION

Uncles and Aunts Cannot Succeed ab intestato if Decedent Has Nephews and Nieces.

In the case of *De Bacayo v. De Borromeo*,[66] the Supreme Court cited that under Article 1009 of the Civil Code, the absence of brothers, sisters, nephews and nieces of the decedent is a precondition to the other collaterals (uncles, aunts, etc.) being called to the succession. Under our laws, a decedent's uncles and aunts may not succeed *ab intestato* so long as nephews and nieces of the decedent survive and are willing and qualified to succeed.

Illegitimate Children's Successional Rights.

In deciding the case of *Teotico v. Ana del Val*,[67] the Supreme Court cited Article 922 of the Civil Code which according to the Tribunal prohibits an illegitimate child from succeeding *ab intestato* from the legitimate relatives of his father or mother.

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[65] G.R. No. L-15939 Prom. November 29, 1965.
[66] G.R. No. L-19382 Prom. August 31, 1965.
[67] *Supra.*

Articles 1003 and 988 were cited in the case of *Cacho v. Udan*[68] to support the ruling of the court that brothers and sisters do not concur with illegitimate children but are excluded by the latter.

Rights of Legitimate Children and Surviving Spouse.

In the case of *Santillan v. Miranda,*[69] Pedro Santillan died intestate. He left a spouse and one legitimate child. *Issue*: What will be the share of each in the estate of the decedent. *Held*: Article 892 of the Civil Code is not applicable because it falls under the chapter on Testamentary Succession. The pertinent provision applicable is Article 996 of the Civil Code. It is a maxim of statutory construction that words in plural include the singular. So Article 996 would and should be read to conform with facts of this case "if the widow or widower and a legitimate child are left, the surviving spouse has the same share as that of the child." Consequently each of them will get an equal share of one-half of the decedent's estate, (the conjugal half, the other half being the property of the wife as her share in the conjugal partnership).

The court cited Article 1430 of the Civil Code entitling the widow and children of the decedent to certain allowances for their support *out of the estate* pending its liquidation to justify the act of the surviving spouse and the adopted son of the decedent in borrowing money payable with the property included in the estate of the decedent in the case of *Vda. de Gil v. Cancio.*[70]

IX. OBLIGATIONS

Parties Jointly and Severally Liable.

The Supreme Court in the case of *Philippine National Bank v. Nuevas*[71] held that a judgment is totally enforceable against any of the judgment debtors who are "jointly and severally liable" as per provision of Article 1216 of the Civil Code. The fact that the present suit is for revival of judgment does not alter the rules on how to proceed against solidary debtors.

Loss of the Thing Given as Security.

In the case of *Republic v. Grijaldo,*[72] it was held that where the defendant is a debtor for a sum of money evidenced by five promissory notes and as security, the standing crops on the land of the debtor was mortgaged in favor of the creditor by way of Chattel Mortgage, the loss of such standing crops given as security because of *force majeure* will not extinguish the principal obligation to pay

[68] G.R. No. L-19996 Prom. April 30, 1965.
[69] G.R. No. L-19281 Prom. June 30, 1965.
[70] G.R. No. L-21472 Prom. July 30, 1965.
[71] G.R. No. L-21255 Prom. November 29, 1965.
[72] G.R. No. L-20240 Prom. December 31, 1965.

the sum of money. The court went on to say that the debtor was not to deliver a *determinate* thing, i.e., crops from the debtor's land or its value, but to pay a *generic* thing — the amount of money representing the sum total of his loans. The tribunal continued that the Chattel Mortgage does not dictate the character of the obligation, it being simply a security for the fulfillment of the debtor's obligation. The obligation is a simple loan and that nature is not affected by the Chattel Mortgage.

Where Rentals Cannot be Recovered from the Occupant.

In *Laperal v. Rogers,*[73] certain property was sold and the vendee immediately took possession of the property. The purchase price was delivered to the vendor. Later, vendee's successor took possession of the property. In the meantime, a litigation arose to nullify the sale of the property. Pending litigation, vendee's successor continued in possession of the property. The deed of sale was finally adjudged to be null and void, and the property was ordered to be restored to the vendor. The *issue* is whether the vendor is entitled to the payment of rentals during the period the vendee's successor was in possession of the property. It was *held* that he was not entitled to such rentals because while the vendee's successor was enjoying the property, during the same period, the vendor was also enjoying the money constituting the purchase price. The court further stated that in the absence of showing considerable disparity in the benefits thus derived by the two parties concerned, equity will presume that they are more or less the same.

When Suspension of the Rentals is Illegal.

In the case of *Reyes, et al. v. Arca,*[74] one Millar was the lessee of three parcels of registered land with an option to buy if the lessors decide to sell the property. The properties were later sold to the petitioners who respected the lease in favor of Millar. Millar later sought in court the nullification of the sale and asked to be permitted to exercise his option to buy. While the action was pending, Millar at first deposited the rentals with the court but later suspended the making of the deposit with permission of the court. Petitioners objected to this suspension of the payment of rentals by Millar. The Supreme Court *held* that Article 1658 of the Civil Code provides that in only two instances may the lessee suspend payment of the rentals. The present situation does not come under the term of the said Article. Therefore the action of the trial court in allowing Millar to suspend the payment of rentals as they become due is without legal ground.

[73] G.R. No. L-16590 Prom. January 30, 1965.
[74] G.R. No. L-21447 Prom. November 29, 1965.

Vendor's Warranty.

In the case of *Romana v. Imperio,*[75] it was ruled that unless a contrary intention appears, the vendor warrants his title to the thing sold, and that, in the event of eviction, the vendee shall be entitled to the return of the value which the thing sold had at the *time of the eviction* be it greater or less than the purchase price.

Debts Contracted Before Marriage Not Chargeable to the Conjugal Partnership. Exception.

In *Lacson v. Diaz*[76] it was held that as a general ruel, debts contracted by the husband and wife before the marriage are not chargeable to the conjugal partnership. However, such obligations may be enforced against the conjugal assets if the responsibilities enumerated in Article 161 of the Civil Code have already been covered, and that the obligor has no exclusive property or the same is insufficient.

Necessary Expenses Refundable even to Possessors in Bad Faith.

In *Cosio v. Palileo,*[77] the expenses in restoring the house to its original condition after it had been damaged by fire were held necessary expenses. As such they were held refundable even to possessors in bad faith in accordance with Article 546 of the Civil Code.

When Both Parties Acted in Bad Faith.

Adapting the trial court's decision, the Supreme Court held in the case of *Mindanao Academy v. Yap*[78] that due to the fact that both the vendee and the vendor in the sale acted in bad faith, vis-a-vis each other, they must be treated as having acted in good faith for the purpose of determining whether damages is due from one party to the other. In this particular case, the damages sought to be recovered by the vendor, is in the form of rents and attorney's fee. The court declared that inasmuch as the vendors, like the vendee, acted in bad faith, no damages could be awarded in favor of the plaintiff-vendor against the defendant-vendee. Such *legal fiction* of one party's good faith however ends, said the court, when another person injured by the sale files a complaint against him. The service of summons legally interrupts the possessions in good faith by a person.

X. CONTRACTS

When Promise to Sell Not Binding Upon Promissor.

In *Mendoza, et al. v. Comple,*[79] the facts are the following:

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[75] G.R. No. L-17280 Prom. December 29, 1965.
[76] G.R. No. L-19346 Prom. May 31, 1965.
[77] G.R. No. L-18452 Prom. May 31, 1965.
[78] G.R. No. L-17682 Prom. February 26, 1965.
[79] G.R. No. L-19311 Prom. October 29, 1965.

Defendant agreed to sell the plaintiffs a parcel of land for ₱4500.00. Upon their mutual agreement, plaintiffs were given up to May 6, 1961 within which to raise the said amount. Before the expiration of the period of three weeks, defendant called off the deal. Hence, this action to compel defendant to comply with her alleged contract to sell the land. *Held*: The complaint contained no allegation that plaintiffs had agreed to buy the land. According to the facts described in the complaint, if plaintiffs did not produce or have the money on or before May 6, 1961, no liability attached to them. Neither could defendant, if she so elected, compel them to buy. The negotiation merely amounted to an undertaking by the defendant that if plaintiffs had the necessary amount by May 6, 1961 or before, she would sell the lot to them and that plaintiffs accepted or agreed to such promise. The Civil Code provides that such promise is binding upon the promissor *if* the promise is supported by a consideration distinct from the price (Article 1479). As there was no such distinct consideration, the defendant was not bound by her promise to sell even if accepted by the plaintiff.

Privity of Contract.

In the case of *Republic v. Grijaldo*,[80] appellant Grijaldo contended that the Republic of the Philippines has no personality to sue him because there was no privity of contract between him and the Republic. The court answered by saying that such contention was untenable because the Republic of the Philippines had been *subrogated* to the rights of the Bank of Taiwan, with whom Grijaldo had privity of contract — thus giving the Republic a personality to sue.

Indemnity Agreement Between Surety and Principal Obligor.

The stipulation in the indemnity agreement allowing the surety to recover even before it paid the creditor is enforceable. This was the ruling in *Cosmopolitan Insurance Co. v. Reyes*[81] following previous rulings in the case of *Security Bank v. Globe Insurance*, 58 O.G. 3706 and *Alto Surety and Insurance Co., Inc. v. Aguilar*, et al., G.R. No. L-5625, March 16, 1954. The high tribunal stated that such stipulation does not in any way militate against public good nor are they contrary to the policy of the law.

Contractual Liability of Person Acting on Behalf of a Corporation Which Has no Valid Existence.

A person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and obligations and becomes *personally liable* for contracts entered into or for

[80] *Supra.*
[81] G.R. No. L-20199 Prom. November 23, 1965.

further acts performed as such agent. This was the principle enunciated in *Albert v. University Publishing Co., Inc.*,[82] citing *Salva tierra v. Garlitos* (56 O.G. 3069).

Persons Obtaining Title Over Property Through Fraud Held it In Trust.

In accordance with Article 1456 of the Civil Code, the Supreme Court held in the case of *Gonzales v. Jimenez*[83] that since it appears that the land in question was obtained by the defendants through fraudulent representation by which a patent and a title were issued in their names, they are deemed to hold it in trust for the benefit of the person prejudiced by their act.

Reformation of Instruments.

The court said that in reforming instruments, courts do not make another contract for the parties. They merely inquire into the intention of the parties and having found it, reform the written instrument (not the content) in order that it may express the real intention of the parties. Such was the ruling in the case of *Cosio v. Palileo.*[84]

Risk of Loss After Delivery.

In *Lawyer's Cooperative Publishing v. Tabora*,[85] the court said that "where delivery of the goods has already been made to the buyer but the ownership was, under the contract, retained by the seller *merely* to secure performance by the buyer of his obligations under the contract, the goods shall be at the buyer's risk after such delivery."

Conflicting Sales

The Supreme Court in the case of *Dagupan Trading Co. v. Macam*[86] pointed out that if the lands covered by conflicting sales were unregistered, the one basing his right in a prior sale coupled with public, exclusive and continuous possession thereof shall have a better right. On the other hand, if the lands are registered, the one who registered the deed of sale will have a better right because in the latter case, the registration of the deed of sale covering registered land is the operative act that gives validity to the transfer.

Where Prior Sale Was After Suit Was Filed but Before Judgment.

In the case of *Gaspar v. Dorado, et al.*,[87] a certain Hodges filed a suit against Alimodin for the recovery of a sum of money.

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[82] G.R. No. L-19118 Prom. January 30, 1965.
[83] G.R. No. L-19073 Prom. January 30, 1965.
[84] *Supra.*
[85] G.R. No. L-21263 Prom. April 30, 1965.
[86] G.R. No. L-18497 Prom. May 31, 1965.
[87] G.R. No. L-17884 Prom. December 29, 1965.

While the suit was pending Alimodin sold his half portion of a residential lot in Roxas City to Gaspar. The sale in favor of Gaspar was inscribed in the land registry. Subsequently thereafter, the suit by Hodges against Alimodin resulted in the victory of the former. Alimodin was adjudged judgment debtor and later the mentioned half portion of the residential lot previously sold to Gaspar was levied upon and later sold on execution sale. The subsequent sale was later held null and void. Appellants Hodges, et al. maintained that the prior sale was fraudulent upon the presumption set forth in Article 1387 of the Civil Code. *Held*: Article 1387 states that alienation by onerous title are presumed fraudulent when made by persons against whom some judgment has been rendered. It is at once obvious, said the court, that the presumption does not apply in this, judgment having been attained *after* the sale.

XI. EQUITABLE MORTGAGE

Equitable Mortgage Presumed.

Where the purported vendor *a retro* continued to remain in possession of the land allegedly sold and paid the land tax, the presumption under Article 1602 of the Civil Code arises. The presumption, the Supreme Court said in the case of *Santos v. Duata*[88] is that the contract is one of equitable mortgage and not a sale with *pacto de retro.*

If Real Intention is to Enter into Equitable Mortgage, the Pretended Vendee's a retro's Taking of Possession Is in Bad Faith.

In *Cosio v. Palileo*[89] the court ruled that if the real intention of the parties was not to execute a *pacto de retro* but an equitable mortgage, then the act of the pretended vendee-a-retro and her brother of taking possession of the property will be in bad faith because he knew from the very beginning that he is not entitled to such possession, the contract contemplated by him and the other party being merely one of equitable mortgage. As possessors in bad faith, they are jointly liable for the payment of rentals.

XII. RIGHT OF REPURCHASE

Where no Definite Period Fixed for Repurchase Under Old Civil Code.

Under Article 1508 of the *Old* Civil Code, if there is no definite period for the exercise of the right of repurchase in a sale with pacto de retro, the same shall be exercised within four years from the

[88] G.R. No. L-20901 Prom. August 31, 1965.
[89] *Supra.*

execution of the contract or from the start of the effectivity of the right. This was in effect the ruling in *Almirañez v. Devera.*[90]

Effect of Stipulation Prohibiting Repurchase Within 10 Years in a pacto de retro Sale.

Citing *Santos v. Heirs of Crisostomo* (41 Phil. 342), the court held in the case of *Tayao v. Dulay*[91] that in a *pacto de retro* sale the prohibition of exercising the right of repurchase within ten years after the execution of the contract is illicit for being contrary to Article 1508 of the Old Civil Code, now Article 1606 of the New Civil Code. However, it does not mean that the parties cannot lawfully suspend the exercise of the right within ten years from the date of the sale.

However, the illicit stipulation will not change the nature of the contract as a sale with *pacto de retro,* the only effect will be that the particular stipulation will be disregarded and the right of repurchase can be exercised within ten years from the date of sale.

XIII. CONSOLIDATION OF OWNERSHIP

Article 1607 of the Civil Code Requires the Filing of an Ordinary Civil Action.

The facts of the case of *Ongoco v. Judge, CFI of Bataan*[92] are as follows: Felix Ongoco and Belen Consunji, sponsors, sold a parcel of land to Apolonio Soriano and Cirila Mina with a right of repurchase within three years. No repurchase was made on the agreed time. Soriano and Mina filed a "Petition" before the CFI of Bataan for an order declaring them the absolute owners of the land. No summons was served upon the respondent vendors who were only sent a copy of the petition by registered mail. *Held*: Article 1607 of the Civil Code governing the consolidation of ownership in case of real property due to failure to repurchase requires the filing of an *ordinary civil action* and consequently, *service of summons* on the parties defendant. The petition to consolidate ownership in real property does not partake of the nature of a motion, it not being merely an incident to an action or special proceeding but is an ordinary civil action cognizable by the Court of First Instance. Inasmuch as no summons is served, the respondent-vendors were deprived of their right to be heard in violation of Article 1607 of the Civil Code.

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[90] G.R. No. L-19496 Prom. February 27, 1965.
[91] G.R. No. L-21160 Prom. April 30, 1965.
[92] G.R. No. L-20941 Prom. September 17, 1965.

XIV. DELIVERY

Execution of a Public Instrument is Constructive Delivery.

In the case of *Abuan v. Garcia*[93] it was emphasized that ownership of the thing sold shall be transferred to the vendee upon the *actual or constructive delivery* thereof. Under Article 1498 of the Civil Code, when the sale is made through a public instrument — as in this case — the execution thereof *shall be equivalent to the delivery* of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot be clearly inferred.

XV. PRESCRIPTION

Prescription Does Not Run Against the State.

In *Republic v. Grijaldo*,[94] the appellant contended that the action in favor of the Government has already prescribed. This contention was adjudged without merit because the plaintiff is the Government *acting in the exercise of its sovereign functions*, and under paragraph 4 of Article 1108 of the Civil Code, prescription does not run against the State. The same ruling was laid down in *Republic of the Philippines v. Philippine National Bank*.[94a]

Obligation to Pay Which Has Prescribed. Renewal.

The plaintiff extended crop loans to defendant in various amounts totalling to ₱9,692.00 to finance defendant's sugar crop for the year 1941-42. The indebtedness was evidenced by various promissory notes executed by the defendant in favor of the plaintiff the last promissory note dated June 23, 1941. Defendant paid only the amount of ₱6,786.39 of the indebtedness but after demands on the balance left on May 7, 1957 offered a plan of payment of the remaining balance. But for reasons unknown to plaintiff, the defendant's proposed plan of payment did not materialize. The plaintiff therefore brought the action on June 18, 1959. The defendant filed a motion to dismiss on the ground of prescription. The trial court dismissed the complaint.

The Supreme Court in overruling the trial court's action dismissing the complaint stated in the case of *Philippine National Bank v. Hipolito*[95] that an obligation to pay assuming it has prescribed, was renewed by a subsequent offer of payment by the obligor. No other observation was made by the Supreme Court as to whether the subsequent offer has the effect of novation or whether it merely interrupts the period of prescription.

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[93] G.R. No. L-20091 Prom. July 30, 1965.
[94] *Supra.*
[94a] G.R. No. L-16485 Prom. January 30, 1965.
[95] G.R. No. L-16463 Prom. January 30, 1965.

Prescription of Implied Trust.

In the case of *Gonzales v. Jimenez*,[96] the court said that there being an implied trust in the transaction, the action to recover the property prescribed after the lapse of ten years.

Damages Based on Quasi-delict.

An action for recovery of damages based on *quasi-delict* prescribed after four years. This was the ruling in *Capuno v. Pepsi Cola Bottling Co.*[97]

XVI. DAMAGES

When Attorney's Fees may be Awarded.

Cotabato Timberland Co., Inc. v. Plaridel Lumber Co., Inc.[98] illustrates that when the plaintiff was forced to institute court proceedings against the defendant due to the latter's conduct and in order to protect itself (plaintiff) in view of the defendant's open defiance of the plaintiff's rights, the defendant should be sentenced to pay the attorney's fees to the plaintiff.

When Moral Damages may be Awarded in Breach of Contract.

"We have held in various cases that in breach of contracts, moral damages may be awarded *only* where the breach was *wanton and deliberately injurious,* or the one responsible acted *fraudulently* or with *malice* or *bad faith.* The fact that the injured party suffered economic hardships is not enough to warrant moral damages." These were the words of the Court in the case of *Perez v. Court of Appeals.*[99] Similar pronouncement was made by the Court in the case of *Solis and Yarisantos v. Salvador.*[100]

What is Comprehended in Indemnification for Damages. What lucro cessante Usually Consists of.

In *Associated Realty Development Co. v. Court of Appeals,*[101] it was decided that indemnification for damages comprehend not only the value of the loss suffered, but also the profits which the obligee failed to obtain because of the default of the obligor. *Lucro cessante,* according to the Court, is usually the price which the thing could have commanded on the date that the obligation should have been fulfilled but was not.

In the case of *Mindanao Academy v. Yap*[102] it was also held

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[96] *Supra.*
[97] G.R. No. L-19334 Prom. April 30, 1965.
[98] G.R. No. L-19432 Prom. February 26, 1965.
[99] G.R. No. L-20238 Prom. January 30, 1965.
[100] G.R. No. L-17022 Prom. August 14, 1965.
[101] CA-G.R. No. L-18056 Prom. January 30, 1965.
[102] G.R. No. L-17682 Prom. February 26, 1965.

that compulsory damages cannot be awarded if the property recovered by the plaintiff was being operated at a loss by him even before he lost his possession thereof and where the defendant who succeeded in taking possession was no more successful than the former.[103]

Interest in the Absence of Agreement.

In the case of *Almeda v. Rubio,*[104] the Court held that since there was no stipulation as to the payment of interest Article 2209 of the Civil Code comes into play which mandates the interest in such a case to be 6% per annum. As to when the imposition of interest should commence, the court said that it should be when demand for payment was made. But since in the case at bar, there is nothing upon the appellant, the computation of interest should be redeemed from the filing of the complaint.

Physical Injuries Found in Article 33 of the Civil Code Interpreted.

In the case of *Capuno v. Pepsi-Cola Bottling Co.*[105] the term physical injuries in Article 33, Civil Code, was interpreted in the same manner as in previous cases as to include bodily injuries causing death. In such case therefor, the civil action for damages can be commenced immediately after the death of the victim and the same shall not be stayed by the filing of the criminal action against the perpetrator of the act.

XVII. PREFERENCE OF CREDITS

Preference of Credit for Unpaid Rentals.

In *Gomez v. Syjuco,*[106] the appealed order reads as follows: "3. Claim of Augusto Syjuco, et al. for unpaid rentals for one year. Under Article 2241 of the Civil Code the claim for unpaid rentals must have been incurred by the decedent himself. It is admitted that up to the death of Go Fook rentals were paid; what remain unpaid are rentals that occurred when the administratrix went ahead with the lease with the approval of the court. Following strict interpretation of the law, this Court must hold that insofar as the property of Go Fook is concerned, the lease entered into by his administratrix cannot enjoy preference over property that belonged to him, so that this claim must also be denied preference." *Held:* Judgment was reversed. Article 2241 establishes a preference in favor of "credits for rent for *one year* upon the personal property of the lessee existing on the immovable leased, and on the fruits of the same" without imposing the condition that the rent should

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[103] *Supra.*
[104] G.R. No. L-21451 Prom. July 30, 1965.
[105] *Supra.*
[106] G.R. No. L-16784 Prom. May 19, 1965.

have been incurred personally by lessee, now deceased, and not by the executor or administrator of the lessee-decedent's estate.

Furthermore, the contract of lease was entered into in behalf of the estate with court approval. Consequently, the rentals that fell due thereunder are for all legal purposes the same as those provided in the original contract of lease.

Preference of Credit.

In *Uy v. Zamora,*[107] the court emphasized that considering the fact that the intervenor registered its mortgage *subsequent* to the date the writ of attachment was obtained by the plaintiff, the credit of the intervenor cannot prevail over that of the plaintiff.

Article 559 of the Civil Code Explained.

In the case of *Aznar v. Yapdiongco,*[108] it was explained that Article 559 of the Civil Code embodies a general rule to wit: 1) when the owner has lost the thing, and 2) when the owner has been unlawfully deprived thereof. The possessor cannot retain the thing as against the owner who may recover it without paying any indemnity, except when the possessor acquired it in a public sale.

Judicial Compromise.

A judgment based on a compromise agreement is in the nature of a contract and is in effect an admission of the parties that the judgment is a just determination of their rights on the facts of the case, had they been proved. A compromise has upon the parties the effect and authority of *res judicata.* This was the pronouncement in the case of *Serrano v. Miave.*[109]

XVIII. TRADEMARKS

Ground for Refusal of Registration of Trademark.

In *Chua Che v. Philippines Patent Office,*[110] the court ruled that registration of a trademark should be refused in cases where there is a *likelihood* of confusion, mistake, or deception even though the goods fall into different categories. The trademark sought to be registered is X-7 for the applicant's soap Class 51 product. Oppositor's objection was that he is already the registered owner of trademark X-7 used on products like perfume, lipstick and nail polish. In making the above ruling, the Supreme Court stated that although the applicant's and oppositor's products are *specifically* different, yet their products belong nowadays under one classification — that is, they are *household products* — so much so that

[107] G.R. No. L-19482 Prom. March 31, 1965.
[108] G.R. No. L-18536 Prom. March 31, 1965.
[109] G.R. No. L-14678 Prom. March 31, 1965.
[110] G.R. No. L-18337 Prom. January 30, 1965.

confusion as to who is the real manufacturer, as well as deception, will likely occur.

Binding Force of the Finding of Facts of the Director of Patents.

In *Bagano v. Director of Patents,*[111] it was held that the findings of the Director of Patents as to question of facts if supported by evidence will be binding upon the Appellate Court.

[111] G.R. No. L-20170 Prom. August 10, 1965.