CIVIL LAW — PART TWO

PROPERTY, SUCCESSION AND SPECIAL CONTRACTS

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There are very few noteworthy decisions in the remaining field of Civil Law, some of which involve quite new issues. They are treated in this article in the order of pertinent provisions of law appear in the New Civil Code.

Donations inter vivos distinguished from donations mortis causa.

Article 729 of the New Civil Code provides that when the donor intends that the donation shall *take effect* during the lifetime of the donor, though the property shall not be *delivered* till after the donor's death, the donation shall be considered *inter vivos.*

In the case of *Castro v. Court of Appeals,*[1] the deed of donation in question contained substantially these stipulations, freely translated from Spanish:

> "In consideration of the meritorious services and good attention bestowed on me since she was a child up to the present and until my death by the legitimate child of my second cousin, I hereby cede and transfer to her in the concept of an onerous donation and *inter vivos* in compensation for such services, the following properties under the following conditions:
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> 1. That while I live, the donee shall not have any intervention or right over the fruits of the lands ceded by way of donation;
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> 2. Upon my death, the donee shall pay the funeral expenses in accordance with my social standing, and
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> 3. After my death, the naked ownership and usufruct will be consolidated immediately in favor of the donee with the obligation to allocate annually a just and sufficient amount of fruits from said property for prayers for the repose of my soul and that of my deceased husband."

The Supreme Court considered this donation as one of *inter vivos* because the donor disposed of the property irrevocably in favor of the donee, reserving to herself merely the usufruct which was consolidated with the naked ownership upon the donor's death. The Court reiterated the doctrine laid down in the case of *Concepcion v. Concepcion*[2] to the effect that the donation is not *mortis causa* if the main consideration for the donation is not the death of the donor but the services rendered by the donee or the donor's affection

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1 G.R. No. 20122, April 28, 1969.

2 91 Phil. 823 (1952).

towards the donee, and that title to the property donated is transferred immediately, even though possession and enjoyment of the same shall take effect after the death of the donor.

The distinction between a donation *mortis causa* and a donation *inter vivos* is better summarized by the Supreme Court in the case of *Heirs of Bonsato v. Court of Appeals*,[3] stating that the disposition is *mortis causa* if it should reveal any or all of the following characterisitcs:

> (1) Conveys no title or ownership to the transferee before the death of the transferor; or what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;[4]
>
> (2) That before his death, the transfer should be revocable by the transferor at will, *ad nutum*; revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed;[5]
>
> (3) That the transfer should be void if the transferor should survive the transferee.

Reduction of inofficious donations — accrual of action

Article 752 of the New Civil Code provides that no person may give or receive by way of donation more than he may give or receive by will.

This prohibition was held applicable also to donations *propter nuptias*. In the case of *Mateo v. Lagua*[6] a donation of two parcels of land was made by the father in favor of one son in consideration of the latter's marriage in 1917. The donor died in 1958. In 1957, an action for annulment of one-half of the donation was brought by the other son, on the theory that the lots donated were the only properties of the donor, and that the donation impaired his legitime. The donee, however, contended that the action has prescribed, and that donations *propter nuptias* could only be revoked on the grounds enumerated under Article 132 of the New Civil Code.

The Supreme Court held that being in the nature of liberalities, donations *propter nuptias* remain subject to reduction, if inofficious, upon the donor's death, and that the action for the reduction of inofficious donations accrued only upon the death of the donor in 1958, and hence, would be governed by the New Civil Code.

Prescription of actions — interruption

Article 1155 of the New Civil Code provides that prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditor, and when there is any written acknowledgment of the debt by the debtor.

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[3] 95 Phil. 481 (1954), 50 O.G. 3568, 3572 (1954).
[4] Vidal v. Posadas, 58 Phil. 108 (1933); Guzman v. Ibeas, 67 Phil. 633 (1939).
[5] Bautista v. Sabiniano, 92 Phil. 244 (1952).
[6] G.R. No. 26270, October 30, 1969.

Article 1151 of the New Civil Code provides that the time for the prescription of actions which have for their object the enforcement of obligations to pay principal with interest or annuity runs from the last payment of the annuity or of the interest.

Article 1152 of the same Code provides that the period for prescription of actions to demand the fulfillment of obligations declared by a judgment commence from the time the judgment became final.

1. In the case of *PNB v. Pacific Commercial House,*[7] the Supreme Court reiterated the doctrine laid down in the case of *PNB v. Osete*[8] to the effect that the action to enforce a final judgment is not interrupted by partial payments of the judgment debt because acknowledgment by the debtor of the debt can not render the judgment any stronger or more efficacious.

2. On a similar question involved in the case of *PNB v. Court of Appeals,*[9] the Supreme Court held that Article 1155 refers to an action to collect a debt which could be interrupted by a written acknowledgment of the debt by the debtor, but not to an action to enforce or revive a final judgment. The action to revive a judgment runs from the time the judgment becomes final and Article 1151 applies only where payment is due at stipulated intervals.

3. In the case of *Garrido v. Enriquez*[10] the action to recover the value of jewelry entrusted to the agent and misppropriated by the latter on October 1, 1947, was brought on February 20, 1959. The defense was prescription. It appears that an information for estafa was filed against the agent on December 16, 1947. The case was provisionally dismissed on March 22, 1948, on the promise of the accused to pay the value in installments. The criminal case was revived on January 12, 1950, and the complainant reserved his right to file a separate civil action only on February 18, 1959.

The Supreme Court ruled that the civil case was deemed instituted with the criminal action filed in 1947, and that the civil liability was kept alive by the pendency of the criminal case. The criminal case was provisionally dismissed on March 22, 1948 but was revived on January, 1950. Hence, the civil action to recover the value of the jewelry had not prescribed.

Sale of movables on installment — right to recover beyond the value of the movable sold, in case of foreclosure or cancellation.

Article 1484 of the New Civil Code provides:

"In a contract of sale of personal property, the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1) Exact fulfillment of the obligation, should the vendee fail to pay;

[7] G.R. No. 22675, March 28, 1969.
[8] G.R. No. 24997, July 18, 1968.
[9] G.R. No. 27117, July 30, 1969.
[10] G.R. No. 23833, October 31, 1969.

(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any *unpaid balance* of the price. Any agreement to the contrary shall be void."

It should be noted that the prohibition to further recover from the buyer, in case of foreclosure of the chattel mortgage, refers to the recovery of the unpaid balance of the price after foreclosure. There is no need of similar provision in case the vendor chose to cancel the sale because by the cancellation of the sale, there could be no more contractual basis for the recovery of the price of the movable. The following two cases decided by the Supreme Court refer to the recovery of attorney's fees and expenses of collection where the vendor had to resort to court action to foreclose the mortgage or cancel the sale.

In the case of *Universal Motors Corp. v. Dy Hian Tat*[11] the contract contained the following stipulation:

"In case of non-compliance or violation or default by the mortgagor and foreclosure or any other legal remedy is undertaken by the mortgagee to compel payment of his obligation, the mortgagee shall be entitled to a reasonable compensation in the concept of attorney's fees and costs of collection in the sum equal to twenty-five per cent of the total amount of indebtedness then outstanding and unpaid by the mortgagor but in no case less than Fifty Pesos as well as payment of the replevin premium bonds and cost of suit in case of court action, which amounts said mortgagor agree to pay and for such payment a first lien is hereby imposed in favor of the mortgagee upon the property mortgaged."

The vendor, upon default in the payment of several installments, instituted a replevin suit for the possession of the objects of the sale. The lower court confirmed the right of the vendor to the possession of and title to the objects of the sale, and ordered the vendee to pay ₱9,305.30 as attorney's fees and costs of collection. The vendee invoked Article 1484, contending that he should no longer be held liable. The Supreme Court ruled that Article 1484 is not applicable as the action is for replevin under Rule 60 and not for the foreclosure of the chattel mortgage.

In the subsequent case of *Filipinas Investment & Finance Corp. v. Ridad*[12] when the buyer failed to pay several installments, the vendor filed a replevin suit for the seizure of the object of the sale in order to foreclose the mortgage *or* the recovery of the unpaid price, in case delivery could not be effected. The object of the sale was seized by the sheriff and the chattel mortgage on said object was extrajudicially foreclosed. The object was bought

[11] G.R. No. 23788, May 16, 1969.
[12] G.R. No. 27645, November 28, 1969.

by the vendor, as the highest bidder. The case previously filed in court continued, and the buyer was declared in default. Judgment was rendered by the lower court, ordering the payment of attorney's fees in the amount of ₱500 and of the actual expenses relative to the seizure of the object of the sale amounting to ₱163.15 plus costs. The buyer appealed from said order, contending that he should no longer be held answerable after foreclosure of the mortgage. The Supreme Court held that where the mortgagee had to resort to court action to recover possession and foreclose the mortgage, the necessary expenses in effecting the seizure and reasonable attorney's fees should be recoverable.

With due respect to the decision of the Supreme Court in the afore-mentioned case of *Universal Motors Corp. v. Dy Hian Tat*, it is submitted that there was no need to distinguish between foreclosure of mortgage and cancellation of the sale consisting of the retaking of possession and in the resumption of ownership of the movable by the vendor, because what the law prohibits is the recovery of the unpaid balance of the price after foreclosure of the mortgage. In the above-mentioned case, the vendor, in instituting a replevin suit, with the Court confirming his title to the movable, chose the remedy of cancellation of the sale. In view of the stipulation in their contract providing for the payment of reasonable attorney's fees and the costs of collection in case the vendor had to resort to the court to enforce any remedy, and in view of the fact that the buyer did not voluntarily surrender the possession of the object of the sale, after default in two or more installments, there could be no legal objection to such recovery inasmuch as there is no such prohibition in Article 1484.

In fact, in the subsequent case of *Filipinas Investment & Finance Corp. v. Ridad*, the remedy chosen by the vendor was foreclosure of mortgage, and yet the Supreme Court allowed the recovery of reasonable attorney's fees and the costs of collection. Not only does it not come under the prohibition of Article 1484, but also because the buyer could avoid further liability by peaceably surrendering possesion after default in two or more installments. In other words, such recovery would not fall within the reason for the prohibition, which is, to protect the small buyers from their own improvident buying. Certainly the law does not intend to shield such buyers for their unjustifiable refusal to allow the vendor to exercise his remedies against the object of the sale, by refusing to surrender possession of the same to the vendor.

The next two cases deal with the question as to whether a guarantor or the vendor himself may invoke the prohibition laid down in Article 1484. In the case of *Filipinas Investment & Finance Corp. v. Vitug*,[13] the vendor assigned his credit to the plaintiff by indorsing in the latter's favor, the pro-

[13] G.R. No. 25951, June 30, 1969.

missory note of the buyer, with a right of recourse against the vendor in case the buyer should fail to pay the note. The buyer defaulted in the payment of several installments, and the chattel mortgage on the object of the sale was foreclosed. There was still a deficiency, and the plaintiff sought to recover the deficiency from the vendor-assignor. The latter invoked Article 1484 to relieve himself of further liability. The Supreme Court held that Article 1484 is not applicable to the seller who assigned the credit to a third person. The case was distinguished from the case of *Cruz v. Filipinas Investment & Finance Corp.*[14] where after the foreclosure of the chatttel mortgage on the object of the sale, the seller sought to foreclose the real-estate mortgage given as additional security by a third person. In that case, the Supreme Court held that the seller had no more right to recover the deficiency from the third person-mortgagor because if the latter could be held answerable for such deficiency, he could seek reimbursement from the buyer under Article 2066 of the New Civil Code in the same way as a guarantor. Hence, Article 1484 could be circumvented in this manner.

Unpaid furnishers of materials — right to levy on building

In the case of *Pacific Farms, Inc. v. Esguerra,*[15] defendant furnished materials to Insular Farms Incorporated which used said materials in the construction of its buildings. As the price of said materials had not yet been paid in full, defendant filed an action to recover the price from Insular Farms Incorporated. Seven months prior to the filing of said action, the buildings were sold to a sister corporation. Judgment was rendered in said case against the Insular Farms Incorporated for the price, and a writ of execution was levied on said buildings. Pacific Farms Incorporated filed a third-party claim. Nevertheless, the buildings were sold to satisfy the judgment. The present action was brought by Pacific Farms Incorporated to declare the levy null and void, on the ground that the buildings did not belong to the judgment debtor.

The Supreme Court applied Article 447 of the New Civil Code of analogy, which provides:

> "The owner of the land who makes thereon, personally or through another, plantings, constructions or works with the materials of another, shall pay their value; and if he acted in bad faith, he shall also be obliged to the reparation of damages. The owner of the materials shall have the right to remove them only in case he can do so without injury to the work constructed, or without the plantings, constructions or works being destroyed. However, if the landowner acted in bad faith, the owner of the materials may remove them in any event, with a right to be indemnified for damages."

[14] G.R. No. 24772, May 27, 1968.
[15] G.R. No. 21783, November 29, 1969.

The Court held that the plaintiff corporation was chargeable with knowledge that the price of the materials used in the buildings were still unpaid by the vendor inasmuch as its director was also the president of the vendor-corporation. Hence, being a purchaser in bad faith, the buildings bought by it could be levied upon by the furnisher of materials. With due respect to the decision of the Supreme Court in this case, it is submitted that Article 447 of the New Civil Code can not be applied by analogy to the facts of this case. Article 447 presupposes that the ownership to the materials had not been transferred to the builder who made use of the same. In this case, there was a sale of the materials to the builder. Hence, the builder became the owner of the materials used in the building, not on the theory that the accessory follows the principal or that the materials became immovable by incorporation, but by the virtue of the contract of sale and delivery of the materials to the builder. Hence, as owner of the materials, although the price has not been paid in full, the builder can transfer ownership over the building to a purchaser, even though the latter knew that the materials used in the building are still unpaid. Such sale of the building could only be set aside on the theory that the sale was simulated or rescinded on the theory that the sale of the buildings was made in fraud of creditors. However, the remedy of rescission is only subsidiary and is available only if the furnishers of materials could not recover from the purchaser of the materials. The furnisher of materials used in the construction of a building has a preferred credit on the building but his claim does not constitute a lien on the building to the extent that it could follow the property in the hands of another. Hence, the purchaser of the building cannot be made to answer for the price of the materials. For the buildings in which the materials were used to be leviable for the price of the materials were used, it is necessary either to make a finding that the sale of the buildings to the plaintiff was simulated or to declare the contract of sale of the buildings to the plaintiff rescinded, if the judgment debtor is insolvent, on the theory that such sale was entered into in fraud of creditors.

Labor provisions — compensation for injuries suffered by an employee in the course of employment.

On the question as to whether an employee who is covered by the Social Security Act could also claim compensation and medical expenses under Article 1711 for injuries sustained as laborer of the Manila Yacht Club while in the performance of his duties, the Supreme Court held in the case of *Valencia v. Manila Yacht Club Inc.*[16] that receipt of benefits under the Social Security Act is not the same as compensation under the Workmen's Compensation Act or the Civil Code where the industry is made responsible, whereas under the Social Security Act, the hazard is covered by his membership for which

[16] G.R. No. 27346, June 30, 1969.

the employee had put up his own money. By ruling that the injury is compensable under Article 1711 of the New Civil Code, the Supreme Court stuck to its ruling in the case of *Alarcon v. Alarcon*[17] that the employer need not be engaged in business to be answerable for such injuries in which case, the amount of recoverable will be governed by the provisions of the New Civil Code on damages.

Common carriers — liability for acts of third persons.

In the case of *Nocum v. Laguna-Tayabas Bus Co.*,[18] a passenger suffered injuries as a result of explosion of firecrackers contained in a box loaded by another passenger in the bus and declared to contain clothes. When the box was first brought to the bus by the other passenger it was closed and tied with abaca. The question was whether the common carrier could be held liable for damages. The Supreme Court held that the diligence required of common carriers depends on all the circumstances of each case. Inquiry as to the contents of a passenger's baggage may be verbal as long as the contents are not outwardly perceptible. Calling a policeman to enable the common carrier to examine the baggage would invade the passenger's constitutional right of privacy. The Court cited, in support of its conclusion, American decisions to the effect that the carrier, through its employees, must have been aware of the nature of the article brought by a passenger and had reason to anticipate the danger therefrom, to be made answerable for damages.

Limited partnership — marriage between a general and a limited partner.

A limited partnership was formed on September 30, 1947 and registered, with one general partner and two limited partners. In 1948, the general partner and one limited partner married each other, while the other limited partner sold his interest in the partnership to the two partners. The limited partnership previously filed its income tax returns on the same basis as a corporation until the Collector of Internal Revenue consolidated the income of the firm and the individual incomes of the partners. One of the issues raised was whether the marriage of the two partners and their acquisition of the interest of the other limited partner dissolved the limited partnership. On this issue, the Court held that the spouses are not prohibited by law to form particular partnerships and the subsequent marriage of the partners is not one of the causes which dissolves a partnership.[19]

Transitory provisions of the Civil Code — vested rights to compromise agreement.

An agreement consisting of conditional sales of portions of a large tract of land was executed by the predecessor-in-interest of the defendant in 1934

[17] G.R. No. 15692, May 31, 1961, 59 O.G. 4511 (July, 1963).
[18] G.R. No. 23733, October 31, 1969.
[19] Collector of Internal Revenue v. Suter, G.R. No. 25532, February 28, 1969.

in favor of the predecessors-in-interest of the plaintiffs with an area of 5,000 sq.m. each. When the defendant refused to honor said agreements, two complaints were filed in 1941 by the plaintiffs. During the pendency of the cases, two separate compromise agreements were entered into in 1943 to the effect that the plaintiffs need no longer pay the balance of the unpaid installments, and reserving the northwestern and southeastern portions of the land, the defendant agreed to convey 1,702 sq. m. to one plaintiff and 1,854 sq. m. to the other plaintiff by way of an absolute sale. As a result of said compromise, the cases were dismissed.

Later, the defendant refused to comply with the compromise agreement. The plaintiffs brought an action in 1949 against the defendant to enforce the old contracts which were to the extent of 5,000 sq. m. each. Upon motion to dismiss based on the compromise agreement, the court dismissed the case in 1951 on the ground that the remedy is to enforce the compromise agreement.

In 1952, another complaint was filed against the defendant for the rescission of the compromise agreement. The question raised was whether the compromise agreement could be rescinded for the reason that the remedy of rescission is recognized for the first time under the New Civil Code, Article 2041 of which provides:

> "If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand."

The Supreme Court Court held[20] that it was necessary to determine whether a right has become vested and which may be impaired by giving a retroactive effect to Article 2041 of the New Civil Code. The Court adopted the definition of a "vested right" in the case of *Benguet Consolidated Mining Co. v. Pineda* as "some right or interest in property which has become fixed and established and is no longer open to doubt or controversy, as distinguished from expectant or contingent right." Applying said definition to the case before it, the Supreme Court stated that the right of the defendant is to have the plaintiff's original suit dismissed, which right is dependent on defendant's obligation to execute the deed of sale. Thus, the right of the defendant has not become vested. Article 2041 of the New Civil Code was given retroactive effect. The compromise agreement can be set aside and the plaintiffs can enforce their original demand.

With due respect to the decision of the Supreme Court in this case, it is submitted that rescission does not hinge on whether a vested right would be impaired, as the change introduced by Article 2041 of the New Civil Code is a matter of procedure. Compromise is a contract. If the old Civil Code

[20] Heirs of Zari & Concepcion v. Santos, G.R. Nos. 21213-4, March 28, 1969.

made no mention of the right of rescission in connection with compromise agreements, the same can be governed by its general provisions on Obligations and Contracts.[21] Article 1124 of the old Civil Code[22] grants the remedy of rescission in reciprocal obligations in case one of the obligors fail to comply with what is incumbent upon him. The difference in the remedy of rescission granted in Article 1124 of the old Civil Code and that provided for in Article 2041 of the New Civil Code is that in the former, there is need to obtain a court decision declaring the contract rescinded before the contract is considered rescinded, whereas there is no such need under Article 2041 before the aggrieved party could enforce his original demand. It is axiomatic that there is no vested right in procedure and Article 2258 of the New Civil Code provides that if the action was already begun under the old Civil Code, the parties concerned may choose which method or course to pursue.

[21] Titles I and II, Book IV.
[22] Now art. 1191, CIVIL CODE.