

**CIVIL LAW — PART ONE**  
**PERSONS AND FAMILY RELATIONS**  
**AND**  
**OBLIGATIONS AND CONTRACTS**

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As in past years, this survey deals with cases decided by the Supreme Court in 1970 interpreting and applying Civil Code provisions pertaining to Persons and Family Relations as well as Obligations and Contracts. The period under review has been a lean year, insofar as decisions in this area of civil law is concerned.

Naturalization and citizenship, a subject which is the common concern of both Civil Law and Political Law, is treated under the former.

In Obligations and Contracts, the high court was called upon repeatedly to determine the propriety of decreeing an award of rescission under certain factual circumstances.

**PERSONS AND FAMILY RELATIONS**

**NATURALIZATION AND CITIZENSHIP**

*Occupational qualification*

One of the qualifications required of an applicant for Philippine citizenship is that he must have some known lucrative trade, profession or lawful occupation. As in previous years, the Supreme Court had several opportunities for setting the standard as to what constitutes "lucrative income". In one case,<sup>1</sup> a net income of only ₱5,228.06 for 1960 and ₱4,333.35 for 1961 was not considered adequate enough to meet the requirements of the law considering that petitioner had a wife and eight children to support; nor a monthly income of ₱150.00,<sup>2</sup> an annual income of ₱2,400.00,<sup>3</sup> annual salaries of ₱4,800.00, ₱4,800.00 and ₱5,543.32 for the years 1963, 1964 and 1965, respectively, petitioner having had a wife and six children to maintain and

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<sup>1</sup> *Que Tee Tiao v. Republic, G.R. No. 22497, July 31, 1970.*

<sup>2</sup> *Sy v. Republic, G.R. No. 24857, February 17, 1970.*

<sup>3</sup> *Dy v. Republic, G.R. No. 21958, September 28, 1970; Tan v. Republic, G.R. No. 26327, October 16, 1970.*

educate<sup>4</sup> and much less ₱3,600.00 annually<sup>5</sup> or even ₱500.00 a month.<sup>6</sup> Such income is to be determined of course as of the date of the filing of the petition and increases in the earnings thereafter cannot be taken into consideration.<sup>7</sup>

#### *Exemption from declaration of intention*

While the filing of a declaration of intention is mandatory under Section 6 of Commonwealth Act No. 473, otherwise known as the Revised Naturalization Law, certain persons may be exempted therefrom. For instance, persons who were born in the Philippines and had received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality need not file such a declaration of intention. Theirs is the burden, however, of proving that said schools meet the statutory requirement. It cannot be presumed from the mere fact of its having been recognized by the Government, especially when it is considered that the term "Chinese" appears in the name of the school, that it is maintained by the Chinese Educational Society of Zamboanga, and that its principal teacher is a Chinese.<sup>8</sup>

Neither will the bare, unsupported assertion of the petitioner that the schools concerned are "not limited to any race or nationality" suffice.<sup>9</sup>

In addition to this requirement, the applicant's child should have taken his primary and secondary education in the public schools or private schools recognized by the Government and not limited to any race or nationality. The fact that such a child had been living in Hongkong did not excuse petitioner in one case from making every effort to bring said son here so he could be given the required education.<sup>10</sup>

#### *Contents of the petition*

Buttressing a long line of decisions, the Supreme Court has declared fatal the omission to state the following matters in the petition for naturalization:

1. Former places of residence even if petitioner was a minor when he stayed thereat.<sup>11</sup>

<sup>4</sup> Ong Chiong v. Republic, G.R. No. 27622, July 31, 1970.

<sup>5</sup> Ong Siao Liong v. Republic, G.R. No. 23544, July 31, 1970.

<sup>6</sup> Choa Tion Chong v. Republic, G.R. No. 25608, August 31, 1970.

<sup>7</sup> Yap v. Republic, G.R. No. 26820, July 31, 1970.

<sup>8</sup> Luy v. Republic, G.R. No. 28860, July 24, 1970.

<sup>9</sup> Guan v. Republic, G.R. No. 26196, July 31, 1970; Republic v. Borromeo, G.R. No. 26970, May 29, 1970.

<sup>10</sup> Tan v. Republic, G.R. No. 20604, May 29, 1970.

<sup>11</sup> Guan v. Republic, G.R. No. 26196, July 31, 1970; Tan Tiu v. Republic, G.R. No. 21558, January 30, 1970; Choa Tion Chong v. Republic, G.R. No. 25608, August 31, 1970; Republic v. Co Keng, G.R. No. 19829, August 31, 1970; Dy v. Republic, G.R. No. 21958, September 28, 1970.

2. Other name or names by which he had been known in the past<sup>12</sup> even if said name was only used in his Chinese class for it would have the effect of depriving people who might have known him by that name, of the opportunity to testify in court about him.<sup>13</sup>

*Supporting affidavits of two credible persons*

Section 7 of the Revised Naturalization Law provides that the petition must be supported by the affidavit of at least "two credible persons". This being a legal requirement, it is incumbent on the applicant to establish affirmatively that his character witnesses are credible persons in the sense required by law. It is well-settled in our jurisprudence that a "credible person" is not merely an individual without a previous conviction of a crime; who is not a police character and has no police record; who has not perjured in the past or whose affidavit or testimony is not incredible, but he must be a person with a good standing in the community, reputed to be trustworthy and reliable, whose word may be taken on its face value as a good warranty of the integrity and trustworthiness of petitioner. Where the character witnesses of petitioner do not satisfy the aforementioned standard, his application for Philippine citizenship would be denied.<sup>14</sup>

PROCEDURAL ASPECT OF CITIZENSHIP CASES

*Nature of naturalization proceeding*

In one case,<sup>15</sup> respondent judge dismissed the appeal of petitioner Republic of the Philippines from his order allowing the private respondent to take his oath of allegiance as a Filipino citizen, hence the government filed this certiorari and mandamus petition. The basis for dismissal on the part of respondent judge was that he gave credence to the private respondent's imputation of harassment and revenge to the Solicitor General's office due to the fact that the latter was the complaining witness in an information for robbery and extortion against three employees of said office.

In declaring null and void the lower court's order and granting this petition for certiorari and mandamus, the Supreme Court stressed that a naturalization proceeding is not to be regarded as a private contest between the applicant and whoever might be the occupant of the Office of the Solicitor General. It is a "matter impressed with the highest public interest, involving as it does an inquiry as to when our law on naturalization, necessarily

<sup>12</sup> *Que Tee Tiao v. Republic*, G.R. No. 22497, July 31, 1970; *Yap v. Republic*, G.R. No. 26820, July 31, 1970; *Lim v. Republic*, G.R. No. 19835, May 29, 1970; *Tan v. Republic*, G.R. No. 20604, May 29, 1970; *Dy v. Republic*, G.R. No. 21958, September 28, 1970.

<sup>13</sup> *Republic v. Borromeo*, G.R. No. 26970, May 29, 1970; *Choa Tion Chong v. Republic*, G.R. No. 25608, August 31, 1970.

<sup>14</sup> *Siao Tick Chong v. Republic*, G.R. No. 22151, March 30, 1970.

<sup>15</sup> *Republic v. Cloribel*, G.R. No. 27281, June 30, 1970.

of the most exacting kind because of the consequences of a favorable action, has been satisfied.”

*Grant of citizenship by competent court can only be nullified in proceedings to cancel certificate of naturalization*

Quite understandably, the 1958 Supreme Court rulings, notably *Gan Tsitung v. Republic of the Philippines*,<sup>16</sup> which held that non-compliance with the requirement that the notice of the filing and of the hearing of the petition for naturalization must be published once a week for three consecutive weeks, placed in a dubious light the naturalization acquired by a number of aliens who had not strictly complied with the said requirement.

Taking judicial notice of said far-reaching pronouncement, respondent judge in *Queto v. Catolico*<sup>17</sup> haled before his court fifty naturalized citizens whose naturalizations were declared null and void by him inasmuch as their oath-taking was defective for lack of notice to the Solicitor General. They were ordered to appear before him “for the purpose of discussing ways and means of how to avoid further ill use of your pretended Philippine citizenship either by acquiring real properties which is prohibited by the Constitution to aliens like you, or exercising the right of suffrage.”

After the hearing where respondent judge subjected one of the naturalized Chinese to overbearing and abusive tongue-lashing, he declared that herein petitioners had never acquired Filipino citizenship by naturalization since their oath-taking was void for lack of notice to the Solicitor-General.

On a petition for prohibition, the Supreme Court pointed out that a judge cannot *motu proprio* declare null and void the grant of citizenship pursuant to final judgment of a competent court. The jurisdiction of the court to inquire into and rule upon certain infirmities which taint the proceedings must be properly invoked in an action for the cancellation of the naturalization certificate “upon motion made . . . by the Solicitor General or his representatives, or by the proper provincial fiscal,” as specified in Section 18 of Commonwealth Act No. 473.

In relation hereto, the Court, in another case,<sup>18</sup> reiterated the rule that neither estoppel nor *res judicata* may be set up to bar the State from initiating appropriate proceedings for the cancellation or nullification of the certificate of naturalization.

*Withdrawal of petition for naturalization*

An applicant for Filipino citizenship who filed a motion to withdraw his petition for naturalization, without prejudice on his part to file a new

<sup>16</sup> G.R. No. 20819, November 29, 1965.

<sup>17</sup> G.R. Nos. 25204 & 25219, January 23, 1970.

<sup>18</sup> Republic v. Reyes, G.R. No. 23075, August 19, 1970.

one subsequently, on the ground that the character witnesses he had presented failed to vouch for his character and attest to the merits of his petition, was allowed to do so by the Supreme Court. Such matter, according to the court, is addressed to the sound discretion of the trial court. In fact, even if the case were terminated with a final judgment denying the petition for naturalization, the same would not constitute a bar to the renewal of the petition provided the applicant had in the meantime acquired all the qualifications and did not have any of the disqualifications provided by law.<sup>19</sup>

*Renunciation of previous citizenship prerequisite to acquisition of another*

A Chinese who wishes to be a naturalized Filipino citizen must obtain from the Minister of Interior of Nationalist China of which he is a citizen, a permission, required by the laws of China, in order that he can validly renounce his allegiance thereto; otherwise, his petition cannot be granted.<sup>20</sup>

*Denial of the grant of Philippine citizenship*

In *Lim v. Republic*,<sup>21</sup> the petitioner relied on the former Naturalization Law, Act No. 2927. Thus, he failed to file the mandatory declaration of intention, omitted to state his educational qualification, and failed to send notices of the hearing to the Solicitor General. His application for Filipino citizenship was therefore denied.

*Acquisition of Philippine citizenship separately from Chinese husband by Chinese wife*

May a Chinese woman be lawfully naturalized as a citizen of the Philippines separately from her husband who is also a citizen of the Republic of China? The Supreme Court answered this question in the negative. Petitioner-appellant, being a Chinese citizen by birth and marriage could not possibly become a citizen of the Philippines during coverture, because, as long as her marriage to an alien subsists, she must by our laws have the same citizenship as that of her husband, said the court. In fact, a Filipino woman loses her citizenship upon contracting marriage to an alien if by virtue of the laws in force in her husband's country she acquired the latter's nationality.<sup>22</sup> Notwithstanding the grant of citizenship by naturalization to a female alien applicant while her marriage to another alien is subsisting, said alien will still be deemed to be a citizen of the country of her husband. The result, if the rule were otherwise, would be dual citizenship which is not contemplated by our laws, declared the court.<sup>24</sup>

<sup>19</sup> *Ang v. Republic*, G.R. No. 22216, January 30, 1970.

<sup>20</sup> *Luy v. Republic*, G.R. No. 28860, July 24, 1970.

<sup>21</sup> G.R. No. 27126, May 29, 1970.

<sup>22</sup> G.R. No. 26327, October 16, 1970.

<sup>23</sup> Com. Act No. 63 (1936), sec. 1(7).

<sup>24</sup> *Po v. Republic*, G.R. No. 30669, July 31, 1970.

*Effect of marriage of alien woman to Filipino citizen*

As an offshoot of the recent ruling in the *Burca* case<sup>25</sup> that marriage of an alien woman to a Filipino husband does not *ipso facto* confer his citizenship on her, the Supreme Court has held that such marriage would not excuse her from her failure to depart from the Philippines upon the expiration of the extended period of her temporary stay; neither would the subsequent birth of children.<sup>26</sup>

## MARRIAGE

*Fraud as a ground for annulment of marriage:*

Does non-disclosure by a husband to his wife of his pre-marital relationship with another woman constitute fraud as to be a ground for annulment of the marriage?

The Supreme Court answered this question in the negative in *Anaya v. Palaroan*.<sup>27</sup> Fraud, as a vice of consent in marriage, is one of the causes for annulling a marriage under Article 85, No. 4 of the Civil Code. Unlike the other causes of nullity, however, it is given special treatment in Article 86 which enumerates the three kinds of fraud which alone can annul a marriage, making it clear that Congress intended to exclude all other deceits such as the one at issue in the instant case.

Elaborating on this point, the Supreme Court stated: "While a woman may detest such non-disclosure of premarital lewdness or feels having been thereby cheated into giving her consent to the marriage, nevertheless the law does not assuage her grief after her consent was solemnly given, for upon marriage she entered into an institution in which society, and not herself alone, is interested."

## LEGAL SEPARATION

*Period for filing suit for legal separation*

When Article 101 of the Civil Code decrees that "an action for legal separation cannot be filed except within one year from and after the date on which the plaintiff became cognizant of the cause . . .," should the one-year period be computed from the time plaintiff became aware from hearsay information of the infidelity of her husband or when the latter admitted his infidelity and categorically stated that he could no longer return to his legitimate family?

<sup>25</sup> *Burca v. Republic*, G.R. No. 24252, January 30, 1967.

<sup>26</sup> *Joaquin v. Galang*, G.R. No. 29132, May 29, 1970.

<sup>27</sup> G.R. No. 27930, November 26, 1970.

The Supreme Court, in *Contreras v. Macaraig*<sup>28</sup> ruled that the one-year period should not be counted from the time the wife received hearsay information about her husband's infidelity for she may have thought it best to ignore the same for the sake of family solidarity and in the hope that he may yet be persuaded to return home. It is only when the husband admits his illicit relationship with another woman that the wife may be deemed to be under obligation to decide whether to sue or not to sue for legal separation.

### CONJUGAL PARTNERSHIP OF GAINS

#### *Effect of void marriage on conjugal partnership*

The case of *Gomez v. Lipana*<sup>29</sup> revolves around the effect of Article 1417 of the Spanish Civil Code on the property acquired during a second marriage contracted while the first was still subsisting, this subsequent marriage having been solemnized in 1935 under said Civil Code but terminated in 1958 when the new Civil Code was already in effect.

Undoubtedly, the second marriage under the law then prevailing, Act 3613, was illegal and void for the first marriage had not yet been dissolved when the defendant-appellant contracted the second marriage, concealing the first marriage from the second wife. He entered into the second marriage less than seven years after the first, and he failed to prove before the court that his first wife was generally considered dead or was believed by him to be so. This being the case, the conjugal partnership established by the first marriage had not yet ceased. Therefore the first wife, whether as conjugal partner in a still subsisting marriage or as her husband's putative heir, had an interest in the latter's share in the property acquired during the second marriage.

The major issue was whether defendant-appellant who gave cause for the nullity of the second marriage should be considered to have forfeited his share in the property in dispute in favor of the estate of the deceased second wife as provided by Article 1417 of the Spanish Civil Code. This provision decrees: "The spouse who, by reason of his or her bad faith, shall have given ground for the annulment of the marriage shall not receive any part of the property of the partnership." If this article is to be applied to the facts of the instant case, the first wife whose conjugal partnership is considered to be still subsisting, would be deprived of a share in the disputed property.

The Supreme Court held Article 1417 inapplicable because at the time the second marriage was dissolved by the second wife's death in 1958, the new Civil Code was already in effect and Article 1417 in the Spanish Civil

<sup>28</sup> G.R. No. 29138, May 29, 1970.

<sup>29</sup> G.R. No. 23214, June 30, 1970.

Code no longer applied. The legal situation was characterized by the Court thus: "While insofar as the second wife was concerned, she having acted in good faith, her marriage produced civil effects and gave rise, just the same, to the formation of a conjugal partnership wherein she was entitled to an equal share upon dissolution, but no action lies under Article 1417 for the forfeiture of the husband's share in her favor, much less in favor of her estate . . ."

It is misleading to state that the second marriage "gave rise . . . to the formation of a conjugal partnership." At most it resulted in a "quasi-conjugal partnership" such as that contemplated in Article 144. The real conjugal partnership was the one produced by the first marriage, it not having ceased.

Furthermore, the good or bad faith of the parties to the void marriage is immaterial. When the Court described the situation with respect to the second wife as one that produced civil effects because she had acted in good faith, it was applying Article 69 of the old Civil Code which provided, *inter alia*, as follows: "A marriage contracted in good faith produces civil effects, although it be declared void. If good faith existed on the part of only one of the spouses, it shall produce civil effects only with regard to such spouse and to the children." This article was one of those suspended by Governor General Weyler on December 29, 1889 and was not in force in this jurisdiction when the American régime began, and therefore was not in force prior to the new Code. It was, however, applied by the Supreme Court in some cases.<sup>30</sup>

Inasmuch as the second marriage in the instant case was dissolved when the new Civil Code was already in force, Article 144 of this law is applicable as regards the property relations of the spouses to the second marriage. It states: "When a man and a woman live together as husband and wife, but they are not married, *or their marriage is void from the beginning*, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership." (Underscoring supplied).

#### *Presumption in favor of conjugal partnership property*

In *Ponce de Leon v. Rehabilitation Finance Corporation*,<sup>31</sup> the Supreme Court clarified that the presumption in Article 160 in the Civil Code that all property of the marriage belongs to the conjugal partnership unless it be proved that it pertains exclusively to the husband or to the wife, should be construed in relation to Articles 153 to 159 enumerating the properties acquired during the marriage that constitute the conjugal partnership. In other

<sup>30</sup> I TOLENTINO, CIVIL CODE 243 (1968).

<sup>31</sup> G.R. No. 24571, December 18, 1970.

words, proof of acquisition during coverture is a condition *sine qua non* for the operation of the presumption. Whoever invokes the presumption must first prove that the property in controversy was acquired during the marriage.

### THE FAMILY

#### *Suit between members of the same family*

The case of *Gayon v. Gayon*<sup>32</sup> enjoins that Article 222 of the Civil Code should be read in conjunction with Article 217.

Article 222 provides: "No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035." Who are "members of the same family"? Article 217 supplies the answer, thus: Family relations shall include those: (1) Between husband and wife; (2) Between parent and child; (3) Among other ascendants and their descendants; (4) Among brothers and sisters.

Inasmuch as a sister-in-law, nephew or niece is not included in the above enumeration, it does not come within the purview of Article 222. In the case at bar, therefore, plaintiff's failure to seek a compromise before filing the complaint does not bar the same.

### ADOPTION

#### *May a person who already has an adopted child still legally adopt another?*

Applying the basic rule of statutory construction to Article 335 of the Civil Code,<sup>33</sup> there should not be much difficulty in answering the above query. The provision is clear and unambiguous on its face. Only those who have legitimate, legitimated, acknowledged natural children or natural children by legal fiction cannot adopt; therefore those who already have an adopted child or children do not suffer from this impediment.

In the *Hofileña v. Republic* case,<sup>34</sup> the Supreme Court pointed out that the above-mentioned persons who cannot adopt are related by blood with the children whose existence prevents them from adopting any other child. This provision is grounded on the need to protect the successional or hereditary rights of living children related to them by blood; on the other hand, the adoption of a minor child does not create a blood relationship between him and the adopter; neither does the adopted child become the legitimate or legitimated or natural child of the adopter, nor does he become a natural child of the latter by legal fiction. Such adoption, being merely an

<sup>32</sup> G.R. No. 28394, November 26, 1970.

<sup>33</sup> Art. 335. The following cannot adopt: (1) Those who have legitimate, legitimated, acknowledged natural children, or natural children by legal fiction;".

<sup>34</sup> G.R. No. 26476, August 31, 1970.

act of generosity, should not prevent the adopting parents from manifesting once again their generosity by adopting another child.

While it is true that an adopted child acquires successional rights by virtue of his adoption, such right is not based on the same consideration—blood relationship—that sustains the successional right of children in relation to their natural parents.

#### OBLIGATIONS AND CONTRACTS

##### *Liability for breach of obligation to do*

In an action brought by plaintiff for breach by the defendant of an oral contract to repair a typewriter, the lower court ruled for the former but awarded him only the value of the missing parts of the typewriter instead of the whole cost of labor and materials that went into its repair. It was clear that defendant contravened the tenor of his obligation to clean and repair the typewriter when he failed to work on it contrary to repeated demands of plaintiff and when obliged to return the same, gave it “cannibalized and unrepaired”. Plaintiff was forced to have it repaired in another shop.

The Supreme Court, applying Article 1167 of the Civil Code, held defendant liable, not only for the missing parts but for the cost of the labor or service expended by the other shop in repairing the typewriter. Article 1167 provides: “If a person obliged to do something fails to do it, the same shall be executed at his cost. The same rule shall be observed if he does it in contravention of the tenor of the obligation.”

The contention by defendant that the plaintiff should have first filed a petition for the court to fix a period within which he should finish the job under Article 1197 of the Civil Code was not well-taken. He virtually admitted non-performance by returning the typewriter unrepaired and with essential parts missing. The time for compliance having evidently expired, and there being a breach of contract by non-performance, it was academic for plaintiff to petition the court for the fixing of a period. It would be a mere formality and would serve no purpose than to delay.<sup>35</sup>

##### *Exemption from liability for fortuitous events*

Stone-throwing by mischievous boys resulting in the breaking of a car windshield was held to be a fortuitous event by the Supreme Court in *Dioquino v. Laureano*.<sup>36</sup> Hence, defendant, a casual passenger in plaintiff's car should not have been held liable for damages by the lower court in consonance with the spirit of Article 1174 of the Civil Code which states: “Except in cases expressly specified by the law, or when it is otherwise declared

<sup>35</sup> Chaves v. Gonzales, G.R. No. 27454, April 30, 1970.

<sup>36</sup> G.R. No. 25906, May 28, 1970.

by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen were inevitable.”

Even if caused by a fortuitous event, the party charged, defendant in this case, could have been held liable if it could be proved that he had assumed the risk incident in the nature of the obligation to be performed. Defendant could not have assumed such a risk.

*Article 1174 inapplicable in obligations to pay*

One of the assignments of error urged by the plaintiff-debtor in *Ponce de Leon v. Rehabilitation Finance Corporation*<sup>37</sup> was that he was entitled to a “suspension of payment” or a postponement of the date of maturity of his obligation to pay the RFC in view of the typhoons that had practically wiped out his sawmill in Samar, this claim being predicated on Article 1174 of the Civil Code above-quoted.

The Supreme Court drew a distinction between the obligation to pay the loan and the purpose for which the loan was intended. Quoting the trial judge, it said: “. . . in the instant case, there was an obligation on the part of the debtor to pay his loan, independently of the purpose for which the money loaned was intended to be used and this obligation to pay continues to subsist notwithstanding the fact that it may have become impossible for the debtor to use the money loaned for the particular purpose that was intended. There is hence no ground for declaring the amortizations due on the principal loan since October, 1952 as extinguished due to fortuitous event or to grant plaintiff a reasonable time to pay the due amortizations as asked for by Ponce de Leon in his complaint.”

*Effect of difficulty of performance on enforceability of obligations*

In an action for collection of a sum of money based on a promissory note signed by defendants-appellants, the latter, in their answer, did not deny the existence of the indebtedness, or the execution of the promissory note or their failure to pay the second and subsequent installments, thus making the entire obligation due and demandable. They merely asked for a reduction of the installments due to the unforeseen business reverses suffered by them.

The Supreme Court, however, declared that the difficulty of fulfilling the obligation voluntarily undertaken by them did not bar the collectibility of the obligation. Furthermore, a debtor cannot delay payment of a due obligation just to suit his convenience, the creditor not being an underwriter of his business unless so stipulated.<sup>38</sup>

<sup>37</sup> G.R. No. 24571, December 18, 1970.

<sup>38</sup> *Arabay Inc. v. Jose C. Aquino*, G.R. No. 29033, July 31, 1970.

*Law as part of contract even without any stipulation*

In the collective bargaining agreement between petitioner Union and the employer, Marinduque Mining and Industrial Corporation, a closed-shop provision was incorporated requiring members of such Union and those who become such thereafter, to continue and remain with that status "in good standing on a condition of continued employment". While said contract was still in force, some members tendered their irrevocable resignation from the Union and disauthorized it from withdrawing the check-off of union dues. These members regarded themselves as exempted from said closed-shop provision being followers of the Iglesia ni Kristo sect. Congress, in 1961, had introduced an amendment to the Industrial Peace Act exempting from the operation of a closed shop or a union security shop agreement members of any religious sect which prohibits affiliation of their members in labor organizations. The Iglesia ni Kristo is one such organization.

Petitioner union futilely attempted to convince the workers concerned to resume their membership, failing which, it recommended their dismissal to their employer. The case of *Lakas ng Manggagawang Makabayan (LMM) v. Abiera*<sup>39</sup> was a direct offshoot of this dispute.

The Supreme Court, while taking cognizance of the fact that the central issue was one of jurisdiction of the proper court, touched upon the right of the Iglesia ni Kristo members to refrain from continuing their union membership. While the above-cited amendment remains a part of the Industrial Peace Act, it declared, the parties to any collective bargaining contract must live up faithfully to its terms. The law is considered incorporated into any contract. "However broad the freedom of contracting parties may be, it does not go so far as to countenance disrespect for or failure to observe a legal prescription. The statute takes precedence."

*Cause and motive, distinguished*

The validity and enforceability of the much-publicized NAMARCO-Aguilar Trade Assistance Agreement, as threshed out in the *Republic v. Cloribel* case<sup>40</sup> involves some basic principles governing contracts.

A petition for prohibition and injunction brought by the Republic and the Central Bank of the Philippines against the Secretary of Commerce and Industry and Bienvenido Y. Aguilar in the Court of First Instance sought to enjoin respondents from releasing the consumers and producers goods imported by Aguilar under a license issued to him by the Central Bank. Petition was dismissed and petitioner Central Bank adjudged to pay Aguilar various sums representing expenses incurred, charges and damages.

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<sup>39</sup> G.R. No. 29474, December 19, 1970.

<sup>40</sup> G.R. No. 27905, December 28, 1970.

Prior to the transmittal of the record of the case to the Supreme Court, the parties arrived at a Compromise Agreement which the lower court approved but which Aguilar subsequently sought to set aside. This petition, having been denied on the ground that the Compromise Agreement had become final and executory, Aguilar filed with the lower court a motion for execution praying the court to command the NAMARCO to comply with the terms of the Compromise Agreement by implementing the Trade Assistance Agreement referred to therein.

Under said Trade Assistance Agreement executed a few days before the Compromise Agreement, NAMARCO agreed to allow Aguilar to finance the importation of certain commodities not exceeding \$15,000,000.00 U.S. currency. Because this document was attacked as immoral, illegal and ultra vires on the part of the NAMARCO, thereby placing him in a bad light, Aguilar had sought the setting aside of the Compromise Agreement which embodied the Trade Assistance Agreement.

Respondent judge issued the writ of execution prayed for by Aguilar, including the implementation of the Trade Assistance Agreement, hence this action of certiorari with preliminary injunction, the issue being whether respondent judge acted in excess of jurisdiction or with grave abuse of discretion in so issuing said order.

The Supreme Court held that respondent judge had indeed exceeded his jurisdiction and ordered the annulment and setting aside of his order. The court noted the following:

1. The Trade Assistance Agreement between NAMARCO and Aguilar was never a binding and perfected contract for it lacked the Presidential approval necessary to make it binding on the part of the government pursuant to certain executive orders.

2. In the Compromise Agreement entered into between the Central Bank and Aguilar, the cause was the mutual waiver and abandonment of claims and counterclaims of the parties in the seizure cases initiated by the Government against Aguilar as well as the waiver by the latter of his rights under the CFI decision and his reimbursement to the Central Bank of an amount which had originally been adjudicated in his favor. The Trade Assistance Agreement was never the cause or consideration of this Compromise Agreement although it was quite apparent that in so far as Aguilar was concerned, this was his motive.

At this juncture, the Supreme Court recalled the distinction between cause and motive of a contract. Quoting Manresa, it defined cause as "the essential or more proximate purpose which the contracting parties have in view at the time of entering into the contract," in other words, the essential reason for the contract. Motive, on the other hand, is the particular

reason of a contracting party which does not affect the other party and which does not preclude the existence of a different consideration. Put in different terms, the motive is personal to the party concerned. To repeat, in entering into the Compromise Agreement, Aguilar was in large measure motivated by the Trade Assistance Agreement. Unfortunately for him, the Compromise Agreement was devoid of any provision which would clearly show the intention of the parties to include the implementation of the Trade Assistance Agreement as one of the subject matters of the compromise although mention was made of it, confirming the belief that one of the parties, apparently Aguilar, was motivated by it.

Therefore there was no meeting of the minds between the parties on this matter, hence there was no compromise.

#### *Rescission of contract for breach of obligations*

During the period under review, there were quite a few cases bearing on rescission of contracts for breach of performance by one of the parties under Article 1191 of the Civil Code. The question posed invariably was: Under the facts of the case, was there a failure on the part of one of the parties to comply with what was incumbent upon him as to warrant the decree of rescission of the contract upon the initiative of the injured party?

In the *Universal Food Corporation v. Court of Appeals* case,<sup>41</sup> petitioner corporation and respondent executed a bill of assignment under which the latter ceded and transferred to the former the use of his formula for Mafran sauce and the former bound himself, among other things, to appoint him permanently as Second Vice-President and Chief Chemist. The Supreme Court, however, found that the corporation dismissed the respondent from said positions without justifiable cause, thereby violating a fundamental commitment it had assumed under the contract. Hence, respondent had every right to the rescission sought.

Regarding this remedy of rescission, Mr. Justice J.B.L. Reyes' concurring opinion sheds light on an important distinction at times overlooked even by his eminent colleagues, that is the difference between rescission under Article 1191 and that under Article 1381, et. seq. of the Civil Code.

In the above-cited case, the petitioner corporation alleged that the rescission demanded by the respondent, based on its breach of performance and therefore falling under Article 1191, could only be granted if the party suffering damage, that is, the respondent, had no other legal means to obtain reparation, invoking Article 1383. As the distinguished civilist pointed out, there is a confusion in terms here brought about by the fact that the new Civil Code, unlike the Spanish Civil Code, no longer carries the distinction

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<sup>41</sup> G.R. No. 29155, May 13, 1970.

between "resolution" for breach of stipulations, which properly falls under Article 1191, and "rescission" by reason of lesion or damage, which is contemplated under Article 1381, et seq. Justice J.B.L. Reyes cautions against confusing one with the other, considering the vital differences in cause and results of the two.

That the action of rescission, be it under Article 1191 or 1381, however, has limitations is illustrated in *Tuason v. Javier*.<sup>42</sup> Rescission is not proper where the vendee defaulted in the payment of subsequent installments on a lot. It was shown, however, that she had paid a total of ₱4,134.08 for eight years when under the contract, the principal obligation was only ₱3,619.20; and that she was willing to pay all of the installments overdue including stipulated interest and reasonable attorney's fees.

The Supreme Court invoked Article 1234 of the Civil Code which provides: If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

*Garcia v. Court of Appeals*<sup>43</sup> is one of those infrequent instances when the Supreme Court departed from the general rule that the findings of fact of the Court of Appeals are conclusive upon it. In the process, it arrived at the conclusion that the appellate court's judgment decreeing the rescission of the contract of sale in question was without basis and contrary to the indubitable evidence in the case.

Petitioner-vendees were alleged to have been remiss in their obligation to assume the mortgage debt of the respondent vendors in favor of the Development Bank of the Philippines. A close scrutiny of the facts showed that the foreclosure proceeding started months before the property was even offered to the petitioners, that respondents did not inform them about it and that the Legal and Real Estate Departments of the DBP failed to coordinate their movements, resulting in the incredible situation that DBP which had become owner of the property through the foreclosure sale still approved the assumption of mortgage by the petitioner. In any event, there was no ground for rescission of the contract as there was no failure on the part of the petitioners to discharge their obligation.

In another case,<sup>44</sup> the Supreme Court clarified the point that where an action is for declaratory relief alone (to seek a declaration that all the re-insurance contracts entered into between the parties had terminated as of a certain date) and is not one for rescission, and the petition contains no averments which would constitute grounds for rescission because respondent

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<sup>42</sup> G.R. No. 28569, February 27, 1970.

<sup>43</sup> G.R. No. 26490, June 30, 1970.

<sup>44</sup> *Fieldmen's Insurance Co., Inc. v. Asian Surety and Insurance Co., Inc.*, G.R. No. 23447, July 31, 1970.

was not guilty of a substantial breach of the contract, the same cannot be rescinded.

In the *Nagarmull v. Binalbagan-Isabela Sugar Co., Inc.* case,<sup>45</sup> the Supreme Court, in refusing to enforce a foreign judgment, that of the High Court of Judicature of Calcutta, on the ground of "clear mistake of law", applied fundamental principles regarding the rescission of contracts. It appears that for failure of plaintiff-appellee to comply with its obligation to deliver one hundred fifty-four Hessian bales to defendant-appellant on time, it had to pay additional export tax which it now seeks to pass on to defendant on the ground that the latter asked it to ship the shortage. It was established that when appellant demanded the delivery of the shortage, it did nothing more than to demand that to which it was entitled as a matter of right.

The breach of contract committed by appellee gave the appellant the right to rescind the contract or ask for its specific performance with right to damages in either case. Part of the damages awarded consisted precisely of the amount of the increase decreed in the export tax due on the shortage, which, because of appellee's fault, had to be delivered after the effectivity of the increased export tax.

Another aspect that has cropped up in this year's cases on rescission is: Whether a party, in accordance with a stipulation in the contract for unilateral rescission, may treat said contract as rescinded upon default of the other, before any judicial pronouncement to that effect.

In *University of the Philippines v. De los Angeles*,<sup>46</sup> the petitioner-university and the Associated Lumber Manufacturing Company, Inc., entered into a logging agreement which expressly stipulated that upon default of the company-debtor, the university-creditor had "the right and power to consider the Logging Agreement as rescinded without the necessity of any judicial suit." After successive defaults in payment on the part of the debtor, the creditor informed the former that it considered the contract rescinded and subsequently took steps to have another concessionaire take over the logging operations.

Regarding this issue of rescission, the Supreme Court amplified its firmly-imbedded position that it is not always necessary for the injured party to resort to court for rescission of the contract, in application of Article 1191. Of course, it must be understood that said injured party, in treating a contract as resolved, must inform the other party and must ever bear in mind that it is always provisional, being subject to scrutiny and review by the proper court; in other words, it proceeds at its own risk. It is only

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<sup>45</sup> G.R. No. 22470, May 28, 1970.

<sup>46</sup> G.R. No. 28602, September 29, 1970.

the final judgment of the court that will definitely settle whether the action taken was correct or not in law. The party that believes itself injured need not wait for a judgment before taking extra-judicial steps to protect its interest.

Should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.

*Obligation requiring payment in foreign currency must be discharged in Philippine currency*

In the *Kalalo v. Luz* case,<sup>47</sup> plaintiff-appellee who had rendered engineering design services to the defendant-appellant, sought payment of his fees arising from a certain project in dollars in accordance with their agreement. The Supreme Court, however, held that he could not oblige appellant to make said payment in dollars inasmuch as the obligation accrued after the enactment of Republic Act No. 529 prohibiting payments in currency other than Philippine currency. Said law does not provide for the rate of exchange for the payment of obligations incurred after the enactment of said Act. The logical conclusion, therefore, is that the rate of exchange should be that prevailing at the time of payment. This decision in effect modified the decision of the Supreme Court in *Arrieta v. National Rice and Corn Corporation*.<sup>48</sup>

*Interpretation of contracts*

In *Reparations Commission v. Northern Lines Inc.*,<sup>49</sup> the Court had occasion to apply the well-settled principle that contracts should be so construed as to harmonize and give effect to the different provisions. The interpretation insisted upon by the vendee of vessels from the Reparations Commission and its surety would, not only create contradictions and absurdities, but also render meaningless and set at naught provisions in the schedule of payment agreed upon.

In *Ruiz v. Sheriff of Manila*,<sup>50</sup> the Supreme Court applied the basic rule in interpretation of contracts that the same must be considered in its entirety.

What is the effect of erroneous interpretation of the contract by one of the contracting parties? In the *Kalalo v. Luz* case,<sup>51</sup> plaintiff, who rendered engineering design services for the defendant, claimed in his complaint an amount different from that contained in his statement of accounts sub-

<sup>47</sup> G.R. No. 27782, July 31, 1970.

<sup>48</sup> G.R. No. 15645, January 31, 1964.

<sup>49</sup> G.R. No. 24835, July 31, 1970.

<sup>50</sup> G.R. No. 24016, July 31, 1970.

<sup>51</sup> *Supra*, note 47.

mitted earlier to said defendant. The latter urged therefore that inasmuch as plaintiff's statement of accounts constituted his own interpretation of the contract, it should be conclusive against him.

The Supreme Court, however, declared that although the practical construction of the contract by one party, evidenced by his own words or acts, can be used against him in behalf of the other party, yet, if one of the parties carelessly makes a wrong interpretation of the words of his contract, or performs more than the contract requires (as reasonably interpreted independently of his performance), as happened in the instant case, he should be entitled to a restitutionary remedy, instead of being bound to continue to his erroneous interpretation. The court should not perpetuate the error.

#### OBLIGATIONS

##### *Estoppel*

In the case of *Kalalo v. Luz*,<sup>52</sup> the Supreme Court had occasion to expound on the correct application of the principle of estoppel, particularly estoppel *in pais*.

Plaintiff-appellee here brought an action against defendant for his engineering design services rendered to the latter, a licensed architect. In his complaint, plaintiff claimed an amount different from that contained in a statement of accounts submitted earlier to defendant.

Upon appeal from the trial court's decision in favor of plaintiff, defendant-appellant asserted that the amount stated by appellee in the statement of account barred him from asserting any claim contrary to the same; and that for estoppel to apply, it was not necessary that he actually relied on the representation, but that it was sufficient that the representations were intended to make him act thereon.

The Supreme Court ruled that an essential element of estoppel under Article 1431 of the Civil Code is that the person invoking it has been influenced and has relied on the representations or conduct of the person sought to be estopped, and this element was found wanting in the instant case. Since estoppel, when misapplied, becomes a most effective weapon to accomplish an injustice inasmuch as it shuts a man's mouth from speaking the truth, no party should be precluded from speaking out his case according to its truth unless by force of some positive principle of law. Consequently, estoppel *in pais* must be applied strictly and should not be enforced unless substantiated in every particular.

A second requisite element as related to the party claiming the estoppel is lack of knowledge and of the means of knowledge of the truth as to the

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<sup>52</sup> *Supra*, note 47.

facts in question. Here, it cannot be said that appellant did not know, or at least did not have the means of knowing, the services rendered to him by appellee and the fees due thereon. The claim of appellee was that the statement of accounts was written by him through ignorance or mistake.

The third element is action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice. Neither does this element obtain in the instant case for appellant did not act on the basis of the representations in the appellee's statement of accounts and there was no change in his position, to his own injury or prejudice.

In another case, the doctrine of estoppel was applied against petitioners who had vigorously invoked the jurisdiction of the Court of Appeals and subsequently defended the case, only to assail it before the Supreme Court after the appellant court had ruled against them. "Petitioners", said the Supreme Court, "cannot adopt a posture of double-dealing without running afoul of the doctrine of estoppel". It further continued to say that the principle of estoppel is in the interest of a sound administration of the laws. It should deter those who are disposed to trifle with the courts by taking inconsistent positions contrary to the elementary principles of right dealing and good faith.<sup>53</sup>

Likewise, defendant-lessees in an unlawful detainer case who, not only entered into a compromise agreement with their lessor but complied with the same, although somewhat irregularly, were held barred or estopped from assailing the validity of the said agreement and the decision based thereon.<sup>54</sup>

Similarly, where the administrator of an estate did not question the validity of foreclosure proceedings taken by a mortgage-creditor against a property of the estate and in fact requested the sheriff to re-schedule the date of the sale, the Supreme Court held him estopped from questioning the validity of said proceedings on the last day of the period for redemption — a total period of one year, nine months and twenty-two days.<sup>55</sup>

#### *Estoppel by laches*

In the case of *San Miguel Corporation v. Cruz*,<sup>56</sup> the Supreme Court applied the doctrine of laches or stale demands to labor disputes involving unfair labor practice. Respondent, upon being retired by the petitioner company, not only accepted full retirement benefits from the latter but even applied for disability benefits with the Social Security System. Three years hereafter, he charged his former employer with unfair labor practices for having dismissed him allegedly for union activities.

<sup>53</sup> *Crisostomo v. Court of Appeals*, G.R. No. 27166, March 25, 1970.

<sup>54</sup> *Vda. de Corpus v. Phodaca-Ambrosio*, G.R. No. 30206, March 30, 1970.

<sup>55</sup> *Soriano v. Parsons Hardware Co., Inc.*, G.R. No. 24008, August 31, 1970.

The Court construed respondent's original posture as an agreement or at least acquiescence, to the decision of the company to have him retired for physical disability. His receipt of all the benefits arising therefrom, with full knowledge of all the facts surrounding the same, amounted to a waiver of the right to contest the validity of the company's act. Moreover, all the elements for the operation of the principle of laches, enunciated by the Supreme Court in previous cases<sup>57</sup> were found to be present in this case.

To respondent's claim that laches does not apply to unfair labor practices, involving as they do, public interest, and that the Industrial Peace Act did not prescribe any period within which a right provided thereunder may be enforced, the tribunal reiterated the distinctions between prescription and laches. The defense of laches is not dependent on the existence of a statutory period of limitation; it is sufficient that there be an unreasonable and unexplained delay in bringing the action that its maintenance would already constitute inequity or injustice to the party claiming it. Here, it took respondent three years to question the validity of his retirement.

On the other hand, a mere lapse of five months in failing to pursue a claim for reinstatement<sup>58</sup> does not amount to laches on the part of an employee as to bar her from enforcing her claim. There being no proof to the contrary, it may be presumed that in the intervening period after her dismissal and before the Union went on strike, she had sought the assistance of the latter about her case.<sup>58</sup>

As a general rule, where laches is availed of as a defense, the plaintiff does have the better title but he has lost it by delay in asserting it. In the interest of public peace and stability in property relationship, the courts have invariably submitted to such dictates of public policy. Illustrative of this principle is the case of *Vda. de Delima v. Tio*<sup>59</sup> where plaintiff brought an action for the recovery of paraphernal property which was allegedly sold 28 years ago by her husband without her authority. In spite of its cognizance of the fact that there was a hint of equitable considerations on which the plaintiff could rely, the Supreme Court was constrained, in line with past decisions, to dismiss plaintiff's claim. Her inaction for 28 years amounted to laches which could not be excused by ignorance resulting from inexcusable negligence.

While the above cases illustrate estoppel by laches, it should not be overlooked that mere innocent silence will not constitute laches. The Supreme

<sup>56</sup> G.R. No. 27828, February 27, 1970.

<sup>57</sup> *Go Chi Gun v. Co Cho*, 96 Phil. 622 (1955); *Nielson and Co., Inc. v. Lepanto Consolidated Mining Co.*, G.R. No. 21601, December 17, 1966; *Tijam v. Sibonghanoy*, G.R. No. 21450, April 15, 1968.

<sup>58</sup> *Philippine Long Distance Telephone Co. v. Free Telephone Workers' Union (PAFLU)*, G.R. No. 23290, August 31, 1970.

<sup>59</sup> G.R. No. 27181, April 30, 1970.

Court pointed this out in *Beronilla v. Government Service Insurance System*.<sup>60</sup> There must also be some element of turpitude or negligence connected with the silence by which another is misled to his injury.

In this case, petitioner, who was auditor of the Philippine National Bank and a member of the GSIS, officially requested the Commissioner of Civil Service through the Auditor General to change the date of his birth from January 14, 1898 to January 14, 1900 after he allegedly discovered the truth from his mother. Upon indorsement of the request to the GSIS, the Legal Counsel denied the same but he was reversed by the General Manager. Three years later, the Auditor of the Central Bank detailed to the PNB called the attention of the Board of Trustees of the GSIS to the fact that petitioner continued drawing his salary and other fringe benefits notwithstanding his having reached his 65th birthday signifying his compulsory and automatic retirement from the government service. Acting on said communication, the GSIS Board of Trustees adopted a resolution declaring that petitioner be considered compulsorily retired from the service, which resolution is now sought to be declared null and void.

The Supreme Court upheld the action of the Board of Trustees of the GSIS over its General Manager. Petitioner's position, however, was that while the Board may have the power to reverse or modify the action of the General Manager, the former was in estoppel for not having acted on the matter for more than three years from the time of the favorable action of the latter.

On this point, the Supreme Court noted that the element of turpitude or negligence must be present for the silence to constitute estoppel; and that as regards the actuations of government officials, the general rule is that their mistakes and omissions do not create estoppel.

#### *Express trusts*

In the *De Guzman v. Aquino* case,<sup>61</sup> the guardianship by the father of his children's properties was considered as an express trust. Until the alleged repudiation of the trust could be proved, he could not deprive his children of what lawfully belonged to them.

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<sup>60</sup> G.R. No. 21723, November 26, 1970.

<sup>61</sup> G.R. No. 29134, July 31, 1970.