A HARVEST OF EIGHTEEN YEARS: A SURVEY OF JOSE B. L. REYES' LEADING SUPREME COURT DECISIONS ON CIVIL LAW *

(PART II)

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From June 30, 1954 to August 19, 1972, José Benedicto Luis Reyes y Luna—or JBL, as he is fondly referred to by just about everyone—served with great distinction (as the invitation to this afternoon's lecture points out) as Associate Justice of the Supreme Court. During the 18 years, one month, and 20 days of his tenure, he penned 1,171 *ponencias*—or decisions for the entire Court, 38 concurrences, 24 dissents, and 7 concurring-and-dissenting opinions. From *Bonsato v. Court of Appeals* (decided on 30 July 1954 and reported in Vol. 95, page 481 of Philippine Reports), which was his first decision, to *People v. Canial,* (decided on 18 August 1972 and reported in the 46th volume of Supreme Court Reports Annotated, page 634), his last, his opinions are found *passim* in 16 volumes of Philippine Reports and 46 of Supreme Court Reports Annotated, or a total of 62 volumes in all. In addition some of his decisions are found under the rubric of *Unreported Cases* in Philippine Reports (a classification whose rhyme or reason I, frankly, have never understood, since they include some rather important cases) and these ones have had to be traced to the loose-leaf collections (now bound in handsome maroon volumes) in the U.P. library.

An unusually heavy proportion of his total output is on civil law, comprising more than 300 decisions, or about 26% of the *corpus* of his opinions. Small wonder this. In my law-student days at U.P. many moons ago, JBL was to us Mr. Civil Law, and whatever else he may be, for he is a man of exceedingly many facets, he is primarily and will always be Mr. Civil Law.

This, I think, more than adequately explains why the chosen topic of this lecture was Justice JBL's decisions on civil law, rather than on some other field. The same reason, I suppose, why a student or a professor of literature, asked to speak on William Shakspeare's works, would, with-

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out hesitation, elect to lecture on his supreme tragedies (Macbeth, Lear, Hamlet, Othello), rather than on his comedies or histories, (although he might be sorry about having to skip Falstaff).

That JBL, therefore, is our *pre-eminent* civilist should safely go unchallenged. Yet one other very pragmatic, though secondary, reason for choosing JBL's civil law decisions is that this professorial chair in the College of Law of the University of the Philippines, established and funded by the U.P. Law Alumni Foundation, and named in honor of JBL himself, is a chair in Civil Law, which makes the choice of topic not only appropriate, but obvious.

If, however, the choice of topic was easy, the selection of cases was not. Constraints of time do not allow a discussion of every JBL decisions on civil law, unless the lecture were to be read to pilgrims wending their way to Canterbury. So, a two-fold solution was resorted to: First, the field was divided: the areas of persons, family, property and succession were grouped together, and a lecture on JBL's decisions in those areas was delivered last year;[1] and for this year we have what many would consider the *entrée* or main dish, the very core of civil law, indeed of private law, namely obligations, contracts, and special contracts, and the occasion is no less than the ninth anniversary of the Integrated Bar of the Philippines, whose first President Justice JBL was.

That was the first part of the solution. The second was to select JBL's *leading* decisions. Now, which cases were leading, and which, not so leading? In the end, the selection had to be subjective, but this lecturer was guided, according to his lights, by one basic criterion: those cases were chosen, which, in his opinion, clarified the application or meaning of a provision, or explained an ambiguity, or laid down a rule for the first time, or confirmed a tentative principle. The choice was at least *bona fide,* if not always inerrant.

And so, let us begin.

NATURE AND EFFECT OF OBLIGATIONS

Article 1169 provides in its first paragraph:

> "Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation."

In obligations to pay a sum of money, no *mora* can set in unless and until the amount payable is ascertained or liquidated. So held the Supreme Court in the JBL *ponencia* of *Gaboya v. Cui.*[2] The basic rule, according

[1] Balane, *A Harvest of Eighteen Years: A Survey of Jose B.L. Reyes' Leading Supreme Court Decisions on Civil Law,* 56 Phil. L. J. 99 (1981).
[2] G.R. No. 19614, March 27, 1971, 38 SCRA 85 (1971).

to JBL, is "*Ab illiquido non fit mora.*" Citing several Spanish Supreme Court decisions the principle may be expressed thus:

> "No puede estimarse que incurre en mora el obligado al pago de cantidad mientras esta no sea líquida..."[3]

Of:

> "... no se puede establecer que hay morosidad ... cuando no se conoce la cantidad líquida reclamable."[4]

The nature and requisites of "fortuitous event" as a valid defense against responsibility, already adverted to briefly in the 1955 JBL *ponencia* of *Gillaco v. MRR*[5] are explained more fully in *Republic v. Luzon Stevedoring*[6] where a barge belonging to the defendant rammed against one of the wooden piles of the Nagtahan Bailey bridge, causing the bridge to tilt. In holding the defendant liable for damages, the Supreme Court, through JBL, pointed out that the concepts *caso fortuito* and *force majeure* "are identical in so far as they exempt an obligor from liability." And for an event to be considered, in a proper sense, *caso fortuito* or *force majeure*, "it is...not enough," explained JBL, "that the event should not have been foreseen or anticipated, as is commonly believed, but it must be impossible to foresee or avoid." Indeed the wording of Article 1174 of the Civil Code clearly includes this element of impossibility: "events which could not be foreseen." And JBL concludes his explanation thus: "The mere difficulty to foresee the happening is not impossibility to foresee the same: '*un hecho no constituye caso fortuito por la sola circunstancia de que su existencia haga más difícil o más onerosa la acción diligente del presente ofensor.*"[7]

The application and nature of the presumption in the second paragraph of Article 1176 were clarified in two JBL *ponencias*: *Manila Trading v. Medina*[8] and *Ledesma v. Realubin*.[9] The codal provision reads: "The receipt of a later installment of debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid."

The presumption, according to the *Manila Trading* case, applies only if the receipt specifies the period for which the payment evidenced by it is made. Thus, had the receipt involved in that case indicated that it was being issued for the installment corresponding to the month of January, 1957, the presumption would have arisen that installments prior to that

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[3] The debtor cannot be held to be in delay in the payment of a sum of money while the amount has not yet been liquidated (Sent. TS of Spain, 13 July 1904).

[4] It cannot be said that there has been delay as long as the amount demandable remains unliquidated (Sent. TS of Spain, 29 November 1912).

[5] 97 Phil. 884 (1955).

[6] G.R. No. 21749, September 29, 1967, 21 SCRA 279 (1967).

[7] Citing Peirano Facio, *Responsabilidad Extra-Contractual*, p. 465; Mazeaud, *Traite de la Responsibilite Civil*, Vol. 2, Sec. 1569.

[8] G.R. No. 16477, May 31, 1961, 2 SCRA 549 (1961).

[9] G.R. No. 18335, July 31, 1963, 8 SCRA 608 (1963).

particular month had also been paid. Since, however, the receipt contained no such recital, the presumption could not be applied. Secondly, the presumption established by the article is only *prima facie* and hence may be overturned by evidence showing that prior installments have in fact not been paid. In both *Manila Trading* and *Ledesma* cases there was proof that some previous installments remained unpaid. And as JBL states in the latter case: "Between a proven fact and a presumption *pro tanto,* the former stands, and the latter falls."

It should be noted, parenthetically, that under the Spanish Civil Code, the rule was peremptory, the provision being:

> "Art. 1110. El recibo del capital por el acreedor, sin reserva alguna respecto a los intereses, extingue la obligación del deudor en cuanto a estos.
>
> El recibo del último plazo de un débito, cuando el acreedor tampoco hiciere reservas, extinguirá la obligación en cuanto a los plazos anteriores." [10]

Thus, the rule in the Spanish Code does not merely create a presumption of payment of previous installments but extinguishes the obligation to pay them.

Article 1177 grants the creditor three remedies against the debtor for the satisfaction of the obligation, viz: 1. the primary remedy of excussion, or pursuing all the non-exempt property of the debtor; 2. the so-called *acción subrogatoria,* or exercising all the rights and bringing all the actions which the debtor may bring against his own obligors; and 3. the *acción pauliana,* or impugning all the fraudulent dispositions made by the debtor.

In *Gold Star Mining v. Jimena*[11] where the defendant bound himself to deliver to the plaintiff one-half of the proceeds of all mining claims to be purchased in consideration of the cash advances made by the plaintiff, and subsequently the defendant assigned the mining rights thus acquired to Gold Star, with a stipulation of payment of royalties, the Supreme Court, through JBL, held that the plaintiff had a right to implead Gold Star as a co-defendant, because of Gold Star's obligation to pay royalties to the defendant. The plaintiffs' right to proceed against Gold Star—the debtor's debtor—was merely an exercise of the *acción subrogatoria* granted by Article 1177, and aptly expressed in the Spanish maxim quoted by the Court: *"El deudor de mi deudor es deudor mío."*

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[10] "The receipt of the principal by the creditor, without any reservation as to the interest, extinguishes the obligation to pay the latter.

"The receipt of the last installment of a debt, when the creditor has not made any similar reservation, shall extinguish the obligation to pay prior installments."

[11] G.R. No. 25301, October 26, 1968, 25 SCRA 597 (1968).

CONDITIONS

Coming now to the conditions, when we look at Article 1179, we see that the Code defines *condition* only by indirection: "Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once." An obligation therefore whose performance *does* depend upon a future and uncertain event is a conditional one. The essence of a conditional obligation, according to JBL in *Gaite v. Fonacier*[12] is that "its efficacy or obligatory force (as distinguished from its demandability) is subordinated to the happening of a future and uncertain event; so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed."

RESOLUTION OF OBLIGATIONS

Article 1191 is an example of how infelicitous drafting can give rise to confusion. The provision reads:

> "The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
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> "The injured party may choose between the fulfillment and rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
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> "The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
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> "This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 1388 and the Mortgage Law."

The culprits in the article are the words "rescind" and "rescission," which tend to cause confusion between the remedy provided for in this provision and the identically named but essentially different remedy of rescission governed by articles 1380 to 1389, referring to defective contracts properly called *rescissible*. The Spanish Code shuns this terminological ambiguity by using different words for each remedy. For its 1191 counterpart it uses "resolver" and "resolución" (Article 1124 of the Spanish Code), and for those articles corresponding to articles 1380 to 1389 (Articles 1290-1299 of the Spanish Code), the terms "rescindir" and "rescisión" are employed.

The mischief caused by the obscurity is nowhere better seen than in the case of *Universal Food Corporation v. Court of Appeals*[13] where the respondents sought to set aside a contract entered into with the petitioner because the latter had allegedly breached the agreement. The petitioner

[12] G.R. No. 11827, July 31, 1961, 2 SCRA 830 (1961).
[13] G.R. No. 29155, May 13, 1970, 33 SCRA 1 (1970).

for his part, contended that the "rescission" of the agreement in question was not proper because "under 1383, rescission is a subsidiary remedy which cannot be instituted except when the party suffering damage has no other legal means to obtain reparation from the same." That allegation of the petitioner was brushed aside by the majority opinion but on the ground that the respondents in fact had *no other legal means to* protect their rights. Said opinion of the majority: "...the fact remains that the respondents-appellees *had no alternative but to file the present action for rescission and damages,*" (Underscoring supplied) implying that the remedy of "rescission" sought by the respondents would indeed not have been proper had there been other—less radical—remedies, that the "rescission" asked for, in other words, could be allowed only as a "last recourse" remedy, an *ultima ratio.*

This line of reasoning, however, both on the part of the petitioner and of the majority opinion, missed the whole point, for the respondents were not asking for rescission under articles 1380 to 1389, but for resolution under Article 1191. Seeing the merry mix-up, JBL wrote a concurring opinion (and students of civil law are in his debt for doing so) to clear things up. Explained JBL: "...the argument of petitioner, that the rescission demanded by the respondent-appellee...should be denied because Under Article 1383 of the Civil Code of the Philippines rescission can not be demanded except when the party suffering damage has no other legal means to obtain reparation, is predicated on a failure to distinguish between a rescission for breach of contract under Article 1191 of the Civil Code and a rescission by reason of *lesión* or economic prejudice, Article 1381, *et seq.* The rescission on account of breach of stipulation is not predicated on injury to economic interests of the party plaintiff but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Article 1191 may be scanned without disclosing anywhere that the action for rescission thereunder is subordinated to anything other than the culpable breach of his obligations by the defendant. This rescission is a principal action retaliatory in character, it being unjust that a party be held bound on fulfill his promises when the other violates his. As expressed in the old Latin aphorism: *'Non servanti fidem, non est fides servanda.'* Hence, the reparation of damages for the breach is purely secondary.

On the contrary, in the rescission by reason of *lesión* or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the *raison d'être* as well as the measure of the right to rescind. Hence, where the defendant makes good the damages caused, the action cannot be maintained or continued, as expressly provided in Articles 1383 and 1384. But the operation of these two articles is limited to the cases of rescission for *lesión* enumerated in Article 1381 of the Civil Code of the Philippines, and does not apply to cases under Article 1191.

"It is probable (JBL concludes) that the petitioner's confusion arose from the defective technique of the new Code that terms both instances as "rescission" without distinctions between them; unlike the previous Spanish Civil Code of 1889, that differentiated 'resolution' for breach of stipulation from 'rescission' by reason of *lesión* or damage. But the terminological vagueness does not justify confusing one case with the other, considering the patent difference in causes and results of either action."

The last comment—parenthetically—is apropos, and codifiers will do well to avoid, as far as possible, the same identical terms for different concepts. Such terms as *rescission, fraud, collation, ratification,* etc.— all used in the Code in varying or equivocal senses—can only ensnare students, students, professors, practitioners, and courts.

Going back then to the true meaning of Article 1191, it becomes clear from the JBL concurrence in *Universal Food* that the said article establishes, in reciprocal obligations, a tacit resolutory condition; to wit, the non-performance by either party of his prestation, in which even the other party, who is able and ready to perform *his* part, may resolve or set aside the contract. The question now arises: In what manner may the aggrieved party set the agreement aside? Must he seek a judicial declaration to that effect?

The case of *University of the Philippines v. De los Angeles*[14] furnished the opportunity for these questions to be answered. There, a logging agreement had been entered into by the U.P. and the Associated Lumber Manufacturing Company (ALUMCO). Subsequently, for failure by ALUMCO to pay its accounts, another agreement, denominated "Acknowledgment of Debt and Proposed Manner of Payment", was executed, one of the provisions of which read: "In the event that the Debtor fails to comply with any of its promises or undertakings in this document, the Debtor agrees without reservation that the Creditor shall have the right and the power to consider the Logging Agreement...as rescinded without the necessity of any judicial suit..." That subsequent agreement ALUMCO again breached by incurring additional unpaid accounts.

The basic issue, in the words of the Court, speaking through JBL, was "whether petitioner U.P. can treat its contract with ALUMCO rescinded (i.e., resolved), and may disregard the same before any judicial pronouncement to that effect." ALUMCO's contention was that it was only after a final court decree of resolution that U.P. could treat the agreement as breached and of no force and effect.

Not so, averred JBL: "In the first place, U.P. and ALUMCO had expressly stipulated...that, upon default by the debtor ALUMCO, the creditor (U.P.) has 'the right and the power to consider the Logging

[14] G.R. No. 28602, September 29, 1970, 35 SCRA 102 (1970).

Agreement...as rescinded without the necessity of any judicial suit.' As to such special stipulation . . .this Court stated in *Froilan* v. *Pan Oriental Shipping Co. et al.*:[15] "There is nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even without court intervention. In other words, it is not always necessary for the injured party to resort to Court for rescission of the contract.' "

He then proceeds to explain the nature and extent of the aggrieved party's power to resolve extrajudicially.:

> "Of course, it must be understood that the act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, 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.
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> "In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it *proceeds at its own risk.* For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203)."

Anticipating possible objection to the ruling, JBL goes on to say: "Fears have been expressed that a stipulation providing for a unilateral rescission in case of breach of contract may render nugatory the general rule requiring judicial action but, as already observed, in case of abuse or error by the rescinder, the other party is not barred from questioning in court such abuse or error, the practical effect of the stipulation being merely to transfer to the defaulter the initiative of instituting suit, instead of the rescinder."

The question, however, may be raised: would this right of extrajudicial rescission be available to the aggrieved party if there were no explicit stipulation to that effect in the contract? JBL points out that it would be, for the reason that the right is granted by the article itself, independently of contractual stipulation, citing decisions of the Spanish Supreme Court:

[15] G.R. No. 11897, October 31, 1964, 12 SCRA 276 (1964).

"El artículo 1124 del Código Civil establece la facultad de resolver las obligaciones recíprocas para el caso de que uno de los obligados no cumpliese lo que le incumbe, *facultad que, según jurisprudencia de este Tribunal, surge inmediatamente* después que la otra parte incumplió su deber, *sin necesidad de una declaración* de los Tribunales." (Sent. of the Tr. Sup. of Spain of 10 April 1929; 106 Jur. Civ. 897)

"Según *reiterada doctrina* de esta Sala, el Art. 1124 regula la resolución como una 'facultad' atribuida a la parte perjudicada por el incumplimiento del contrato, la cual tiene derecho de opción entre exigir el cumplimiento o la resolución de lo convenido, *que puede ejercitarse,* ya en la vía judicial, *ya fuera de ella, por declaración del acreedor,* a reserva claro es, que si la declaración de resolución hecha por una de las partes se impugna por la otra, queda aquella sometida al examen y sanción de los Tribunales, que habrán de declarar, en definitiva, bien hecha la resolución o por el contrario, no ajustada a Derecho.' (Sent. TS of Spain, 16 November 1956; Judisp. Aranzadi. 3, 447).

"La resolución de los contratos sinalagmáticos, fundada en el incumplimiento por una de las partes de su respectiva prestación, puede tener lugar con eficacia: 1°. Por la declaración de voluntad de la otra hecha extraprocesalmente, si no es impugnada en juicio luego con éxito; 2°. Por la demanda de la perjudicada..." [16]

Encapsulating therefore the principles laid down in *U.P. v. De los Angeles,* we may make the following summary:

1. The right of resolution afforded by Article 1191 to the aggrieved party in a reciprocal obligation in case the other fails to perform exists even if there is no stipulation in the agreement granting it, the reason being that it is granted by the law itself as a tacit resolutory condition;

2. This right of resolution may be exercised extrajudicially and will take effect upon its being communicated by the aggrieved party to the defaulting party;

3. The exercise of the right of resolution is always subject to judicial review.

Furthermore, implied in the holding are the following rules:

1. If the aggrieved party has not yet performed his prestation, all he has to do is refuse to perform it upon resolution;

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[16] "Article 1124 of the Civil Code grants the right to resolve reciprocal obligations in case one of the parties does not comply with what is incumbent upon him, and this is a right which, as this Court has held, arises as soon as the other party fails to comply with his prestation, without need of judicial declaration.

"According to a settled rule of this Court, Article 1124 regulates *resolution* as a right granted to the aggrieved party who has the option either of insisting on enforcement or resolution, and this right can be exercised either judicially or extrajudicially, by declaration of the creditor; it being clear, however, that if the declaration of resolution by one of the parties is impugned by the other, the case can be submitted to review by the courts, which will have to determine definitively whether the resolution was justified or not.

"The resolution of synallagmatic contracts, founded on failure by one of the parties to comply with his presentation, can be validly made: (a) By extrajudicial declaration of the other party, if it is not successfully impugned in a subsequent suit; and (b) by suit filed by the aggrieved party."

2. If he has already performed, and when he demands restitution for or return of what he has performed or delivered, the defaulting party refuses, he will have to go to court to enforce his claim.

Amplifying his explanation of Article 1191, JBL in the above-cited case of *Gaboya v. Cui*[17] points out that the remedy of resolution in this article—which he bids us note is a radical remedy—is available only if the breach is "so substantial and fundamental as to defeat the object of the parties in making the agreement" and therefore the court, at its discretion, if the breach is of a less serious character, may "allow a period within which a person in default may be permitted to perform the stipulation upon which the claim for resolution of the contract is based."[18]

OBLIGATIONS WITH A PERIOD

As we all know, the essential difference between a condition and a term is that the former is a future and uncertain event while the latter is future and certain. At times, however, specific stipulations of the parties will not neatly fall under one or the other category. The first step, if such a difficulty arises, is to subject the agreement to closer scrutiny. But then, what if the doubt persists?

Gaboya v. Cui[19] is enlightening on these points. There the plaintiff sold a substantial amount of iron ore to the defendant for a stated consideration, a portion of which was to be paid upon the signing of the agreement and the balance, "from and out of the first letter of credit covering the first shipment of iron ores and/or the first amount derived from the local sale of iron ore..."

The question was whether such stipulation set forth a condition or a period. Period it was, ruled the Court, for the following reasons:

1. the words of the contract ("will be paid") express no contingency in the obligation. There was, according to JBL, "no uncertainty that the payment will have to be made sooner or later; what is undetermined is merely the exact date at which it will be made."

2. a contract of sale (which this agreement was) is normally commutative and onerous, and while a sale of hopes or expectations—an *emptio spei*—may be validly entered into, it is not in the usual course of business to do so; the contingent character of the obligation must clearly appear;

3. to subordinate the obligation to pay the balance to the sale or shipment of the ore as a condition precedent would be tantamount to leaving the payment to the discretion of the debtor.

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[17] *Supra*, note 2.
[18] Citing *Banahaw v. Dejarme*, 55 Phil. 338 (1930).
[19] *Supra*, note 2.

At worst, observed JBL, there was a doubt, in which case "the rules of interpretation would incline the scales in favor of the greater reciprocity of interests', since the sale is essentially onerous," invoking, to this effect, the second sentence of the first paragraph of Article 1378:

> "Art. 1378 .... If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interests."

With respect to Article 1197—on obligations with a period—two JBL *ponencias, Araneta v. Philippine Sugar Estates Development Co.*,[20] and *Chávez v. Gonzales*[21] can be cited as explanatory of the provision.

Article 1197 provides:

> "Art. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.
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> The courts shall also fix the duration of the period when it depends upon the will of the debtor.
>
> In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them."

According to the *Araneta* case, Article 1197 involves a two-step process: 1. First, the Court must determine that the obligation does not fix a period or that the period is made to depend upon the will of the debtor (or that the debtor has bound himself to pay when his means permit him to do so, in accordance with Article 1180), but from the nature and the circumstances it can be inferred that a period was intended; and 2. "this preliminary point settled, the Court must then proceed to the second step, and decide what period was 'probably contemplated by the parties.' "

Consequently, then, explains JBL, "the court can not fix a period merely because in its opinion it is or should be reasonable, but must set the time that the parties are shown to have intended." In other words, it is not the court's function to substitute its judgment for the will of the parties (as the lower court in *Araneta* case appears to have done and for which it got a gentle chiding from JBL), but rather to discover what the parties' intention was. This is, of course, only in consonance with the principle of autonomy of will in contract law, given explicit recognition in Article 1306, which provides:

> "Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

There may be cases, however, when the fixing by the court of a period is otiose and academic and thus the court may immediately declare the

[20] G.R. No. 22558, May 31, 1967, 20 SCRA 330 (1967).
[21] G.R. No. 27454, April 30, 1970, 32 SCRA 547 (1970).

defendant in default, or *mora*. One of such cases was exemplified in the *Chávez* case, where the plaintiff having delivered to the defendant a typewriter for cleaning and servicing, three months passed without defendant having done the job and when the plaintiff went to pick it up, it was given back wrapped in a package, and on reaching home, he discovered to his rue that the machine was unrepaired and had been cannibalized. Under such circumstances as these, declared JBL for the Court, the defendant was obviously already in *mora* without the antecedent necessity of a judicial fixing of a period for performance. The reason is explained by JBL, as follows: "The time for compliance having evidently expired, and there being a breach of contract by non-performance, it was academic for the plaintiff to have first petitioned the Court to fix a period for the performance of the contract before filing his complaint in this case. Defendant cannot invoke Article 1197 of the Civil Code for he virtually admitted non-performance by returning the typewriter that he was obliged to repair in a non-working condition, with essential parts missing. The fixing of a period would thus be a mere formality and would serve no purpose [other] than to delay."[22]

SOLIDARY OBLIGATIONS

The rule in solidary obligations—expressed in the first sentence of the first paragraph of Article 1217—that "payment made by one of the solidary debtors extinguishes the obligation"—was applied in *Camus v. Court of Appeals*,[23] which involved payment by a surety. Note the provisions of Articles 2047, to wit:

> "Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> *If the person binds himself solidarily with the principal debtor, the provinsions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.*"

In that case a judgment for payment against the principal debtor and surety having been handed down by the lower court, the principal debtor sought reconsideration of the judgment and failing in that, lodged an appeal—claiming that he had a good defense which was not taken into account because the judgment was rendered *ex parte*. The valid defense alleged was usury. While the appeal was pending, the surety paid the creditor-appellee, whereupon the creditor moved for the dismissal of the appeal.

The Supreme Court, through JBL, held that the appeal should be dismissed, citing the portion of Article 1217 quoted above. Stated JBL:

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[22] Citing *Tiglao v. MRR*, 98 Phil. 181 (1956).
[23] 107 Phil. 4 (1960).

"The payment (by the surety)...extinguished the obligation of the two solidary co-debtors to appellee...and the juridical tie between the creditor on the one hand, and the solidary debtors, on the other, was dissolved thereby.... Whatever controversy remains from hereon is solely between the two co-debtors.

Nor would the principal debtor's alleged defense of usury, even if true, have any effect on the operation of the said rule in Article 1217, for, as JBL went on to explain, "...(e)ven assuming that appellants' only alleged defense of usury to the complaint is true, the same does not in any way affect the maturity and demandability of the debt but if sustained would only reduce the creditor's recovery. (Parenthetically, we may note here that as far as a usurious obligation is concerned, in the later case of *Briones v. Cammayo*[24] the Supreme Court, speaking through Mr. Justice Arsenio Dizon, held that the whole stipulation as to interest is void but the principal remains demandable. This ruling is fully consistent with *Camus*.) There is no question, of course, that the payment by [the surety]...did not extinguish his defense of usury, which he may still set up against his co-debtor when he is sued by the latter; but until the surety company files such action against the [principal debtor], it is purely an academic matter whether [the principal debtor] is entitled to such defense or not."

PAYMENT OR PERFORMANCE OF OBLIGATIONS

The normal mode of extinguishing an obligation—and the first one mentioned in Article 1231—is payment or performance. The rule in our Code is that only a party interested in the fulfillment of the obligation may compel the creditor to accept payment or performance. Such is the import of the first paragraph of Article 1236, which provides:

> "The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary."

That interested party could thus only be any of the following: 1. the debtor or obligor himself; 2. his heirs or assigns; 3. his agent; 4. a person agreed upon to make payment; or 5. a person interested in the fulfillment, such as a guarantor, a surety, or the like.

Actually, the present rule is a change from that in the Spanish Code, Article 1158 of which did—and still does—provide: "Puede hacer el pago cualquiera persona, tenga o no interés en el cumplimiento de la obligación, ya lo conozca y lo apruebe, o ya lo ignore el deudor."[25]

Thus, whereas in the Spanish Code, payment, as a general rule, may be made by any person, under our Code, the payor must be an interested party unless this requirement is waived by the creditor.

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[24] G.R. No. 23559, October 4, 1971, 41 SCRA 404 (1971).

[25] "Payment may be made by anyone, whether interested in the fulfillment of the obligation or not, and whether the debtor had knowledge thereof and consented thereto, or was unaware of the same."

In his *Observations on the New Civil Code*,[26] JBL had expressed himself critical of the change. He observed:

> "No good reason exists for departing from the rule of the Spanish Code (Art. 1158) that payment may be made by a stranger where the obligation is not *intuitu personae*. Such a rule is justified by (a) the existence of the quasi-contract of *negotiorum gestio*, of which payment for another is but a variant; and (b) the evolution of the concept of ordinary obligation from a relation of person to person (as it was in the Roman Law) to a relation of patrimony to patrimony in the modern law. Where no personal qualities are involved, what interest does the creditor have in seeing that the performance should be by A or B? And as for the debtor, he is protected by the second paragraph of Article 1236 and by Article 1237. The first paragraph of 1236 should be eliminated."

One question, however, to which our Code fails to give an explicit answer is: in an obligation to do *intuitu personae*, that is to say, where the personal qualifications of the obligor are the determining consideration, may the creditor be compelled to accept performance by someone other than the original debtor, even if an interested party?

The case of *Javier Security v. Shell Craft*[27] provides the answer to the question. There, the Supreme Court, speaking through JBL, observes preliminarily, that the Spanish Code had an express rule on this, found in its Article 1161:

> "En las obligaciones de hacer el acreedor no podrá ser compelido a recibir la prestación o el servicio de un tercero, cuando la calidad y circunstancias de la persona del deudor se hubiesen tenido en cuenta al estableces la obligación."[28]

That Article, observed JBL, was not reenacted in our Code; nevertheless, the omission—he went on to say—does not imply that the rule embodied in it has been discarded, because its spirit is latent in other provisions of our Code, such as Articles 1311 and 1726, which provide, respectively:

> "Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law."
>
> "Art. 1726. When a piece of work has been entrusted to a person by reason of his personal qualifications the contract is rescinded upon his death."

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[26] 16 Law J., No. 1, p. 48 (1951).

[27] G.R. No. 18639, January 31, 1963, 7 SCRA 198 (1963).

[28] "In obligations to do, the creditor cannot be compelled to accept the performance of the obligation or the rendition of a service by a third person when the personal qualification and circumstances of the debtor have been taken into consideration in the creation of the obligation."

In the light then of Article 1236 of our Code and the interpretative ruling in *Javier,* we could now encapsulate the rule as to performance by a third person in this manner:

1. As a general rule, the obligee can be compelled to accept performance only from the obligor himself or someone interested in the fulfillment of the obligation;

2. By way of exception, in obligations to do *intuitu personae,* the creditor cannot be compelled to accept performance by anyone other than the obligor himself because the latter's personal qualifications were a determining factor in the establishment of the obligation.

SPECIAL FORMS OF PAYMENT

There are four special forms or modes of payment recognized by the Civil Code: 1. application of payments (Art. 1252-1254); 2. payment by cession (Art. 1255); 3 consignation (Arts. 1256-1261); and 4. *dación en pago* (Art. 1245).

With regard to the first—application of payments—it is provided in Article 1254 that, if neither the debtor nor the creditor makes an application of the payment, there being several debts due, the payment shall be applied to the most onerous debt. As between debts that are guaranteed and those that are not, the guaranteed ones are the more onerous and application of the payment should be made to them. The case of *Traders Insurance v. Dy*[29] is authority for this rule. Amplifying his concurring-and-dissenting opinion on the same point in *U.P. Recreation Club v. Alto Surety,*[30] promulgated two months earlier, JBL, as *ponente* in *Traders,* explains why:

"Debts covered by a guaranty are deemed more onerous to the debtor than the simple obligations because, in their case, the debtor may be subjected to action not only by the creditor but also by the guarantor, and this even before the guaranteed debt is paid by the guarantor (Art. 2071, New Civil Code); hence, the payment of the guaranteed debt liberates the debtor from liability to the creditor as well as to the guarantor, while payment of the unsecured obligation only discharges him from possible action by only one party, the unsecured creditor."

Citing historical antecedents, JBL observes that "(t)he rule that guaranteed debts are to be deemed more onerous to the debtor than those not guaranteed, and entitled to priority in the application of the debtor's payments, was already recognized in the Roman Law,[31] and has passed to us through the Spanish Civil Code. Manresa in his Commentaries to Art. 1174 of that Code[32] expressly says:

[29] 104 Phil. 806 (1958).
[30] 104 Phil. 534 (1958).
[31] Ulpian, fr. *ad Sabinum,* Digest, Lib. 46, Tit. 3, Law 4, *in fine.*
[32] 8 Manresa, Vol. I, 5th Ed., p. 603.

"'Atendiendo al gravamen, la deuda garantida es más onerosa que la simple.'[33]

"And this is also the rule in Civil Law countries, like France and Louisiana; also Italy."

Of course, as has already been intimated above, this manner of applying the payment would be barred if either the debtor or the creditor makes application. And an application by the creditor, according to JBL in *Traders,* is valid only if the following requisites are present: 1. The creditor should have expressed the application in the corresponding receipts; and 2. the debtor should have given his assent, shown by his acceptance of the receipt without protest. Such is the mandate of Article 1252, paragraph 2. Neither requisite, however, was present in the case of *Traders*; hence, no application could be said to have been made by the creditor.

NOVATION

Novation presents more problems than any of the other modes of extinguishing obligations, due to the fact that novation, unlike the other modes, gives rise only to a *relative,* not an *absolute,* extinguishment.

Novation may be defined as a mode of extinguishment whereby the original obligation is extinguished or modified by a subsequent one, either by changing the object or principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor.

As held in the case of *Tiu Siuco v. Habana*[34] penned by Mr. Justice Johns, the requisites of a novation are: 1. a previous valid obligation; 2. the agreement of the parties to the constitution of a new obligation, (the *animus novandi*); 3. the extinguishment of the old obligation; 4. and a valid new obligation.

The essence therefore of a novation is the replacement of one obligation by a subsequent one. Thus, in *Montelibano v. Bacolod-Murcia*[35] JBL explained that "there can be no novation unless two distinct anl successive binding contracts take place with the later one designed to replace the preceding convention." Consequently, "modifications introduced before a bargain becomes obligatory can in no sense constitute novation in law."

That *animus novandi* is essential for a novation to take place was underscored in four JBL *ponencias*: *Santos v. Acuña,*[36] *La Tondeña v. Alto Surety,*[37] *Joe's Radio v. Alto Electronics,*[38] and *Board of Liqui-*

[33] "with respect to the burden imposed, the guaranteed debt is more onerous than the simple."
[34] 45 Phil. 707 (1924).
[35] G.R. No. 15092, May 18, 1962, 5 SCRA 36 (1962).
[36] 100 Phil. 230 (1956).
[37] 101 Phil. 879 (1957).
[38] 104 Phil. 333 (1958).

dators v. Floro.[39] The intent of the parties to novate must be manifested, according to the *Joe's Radio* and *Board of Liquidators* rulings, either by express stipulation of the parties or from "absolute incompatibility of the old and the new obligations, that is to say, incompatibility *in all points* between the old and the new. Cited basis for this principle was Article 1292, which provides:

> "Art. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligation be on every point incompatible with each other."

As a result, novation cannot merely be inferred or implied from the creditor's silence, leniency, or inaction. So held the Supreme Court, through JBL, in *Lerma v. Reyes.*[40]

And, according to *La Tondeña* and again *Board of Liquidators,* extension of time for the debtor to perform does not fall within the meaning of "absolute incompatibility" such as would constitute novation.[41] Extension, according to the *La Tondeña* case, quoting approvingly from Zapanta, simply gives the debtor more time for the satisfaction of the obligation.

As far as active subjective novation—or subrogation—is concerned, which involves a change of creditor, *La Tondeña* tells us that such subrogation occurs only upon *payment* by the third person of the obligation, citing as basis both Article 1210 of the Spanish Code and Article 1302 of ours. Consequently, any rights arising in favor of other parties between the time the original creditor's obligation fell due and the time of actual payment by the third person will be preferred over the third person's claim, as precisely what happened in *La Tondeña.*

It should be noted, however, that this rule would be applicable only in legal subrogation under Article 1302, and not to *conventional* subrogation under Article 1301, which would—it seems to this writer—take effect upon the agreement of the parties: the creditor, the debtor, and the third person.

CONTRACTS

Article 1306 provides: "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient provided they are not contrary to law, morals, good customs, public order, or public policy."

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[39] 110 Phil. 483 (1960).
[40] 103 Phil. 1027 (1958).
[41] Citing *Zapanta v. de Rotaeche,* 21 Phil. 154 (1912), penned by Mr. Justice Johnson; and *Inchausti v. Yulo,* 34 Phil. 978 (1914), a *ponencia* by Mr. Chief Justice Arellano.

From this article two principles can be derived: first, that entering into a contract is a free act (i.e., a person cannot be compelled to enter or not to enter into a contract); and second, that freedom to contract is limited by the constraints of law, morals, good customs, public order, and public policy.

The first principle was applied in *Republic v. PLDT*,[42] penned by JBL in 1969. The plaintiff Republic of the Philippines there asked the court to compel the Philippine Long Distance Telephone Company to execute a contract with it for the use of the facilities of PLDT's telephone system under such terms and conditions as the court might consider reasonable. The Supreme Court's holding stressed in no uncertain terms the impropriety of the relief sought. Declared the Court: "The parties cannot be coerced to enter into a contract where no agreement is had between them as to the principal terms and conditions of the contract. Freedom to stipulate such terms and conditions is of the essence of our contractual system, and by express provision of the statute, a contract may be annulled if tainted by violence, intimidation or undue influence." Cited in support of the holding was Article 1306.

Although, however, the Republic could not compel the execution of a contract, it could avail itself of the sovereign power of eminent domain to achieve the result prayed for. The Court pointed out that "the averments make out a case for compulsory rendering of inter-connecting services by the telephone company upon such terms and conditions as the court, may determine to be just," and that, therefore, "the lower court should have proceeded to treat the case as one of condemnation of such services independently of contract and proceeded to determine the just and reasonable compensation for the same."

The second principle is illustrated in *Saura v. Sindico*,[43] in which was raised the issue of the validity of a written agreement between two aspirants for nomination as Nacionalista official candidate for Congress, to the effect that "each aspirant shall respect the result of the aforesaid convention, i.e., no one of us shall either run as a rebel or independent candidate after losing in said convention." It happened that the convention loser went ahead and filed her certificate of candidacy anyway. Striking down the agreement as an absolute nullity, JBL, for the Supreme Court, averred that "(a)mong those that may not be the subject matter (object) of contracts are certain rights of individuals, which the law and public policy have deemed wise to exclude from the commerce of man. Among them are the political rights conferred upon citizens, including, but not limited to, one's right to vote, the right to present one's candidacy to the people and to be voted to public office, provided, however, that all qualifications

[42] G.R. No. 18841, January 27, 1969, 26 SCRA 620 (1969).
[43] 107 Phil. 336 (1960).

prescribed by law obtain. Such rights may not, therefore, be bargained away or surrendered for consideration by the citizen nor unduly curtailed with impunity, for they are conferred not for individual benefit or advantage but for the public good and interest."

Freedom of contract includes the right to enter into any sort of stipulation not contrary to law, etc., even if the nature of the agreement does not fit any of the standard—or nominate—contracts governed by the Code. Article 1307 in fact explicitly sanctions such non-standard agreements, the nameless, or innominate, contracts, falling only under the most general Roman law classifications of *do ut des, do ut facias, facio ut des,* and *facio ut facias.*

Santos v. Acuña[44] dealt with such a contract. After "varied and repeated attempts" to secure deferment of a writ of execution against them, the defendants entered into an agreement with the plaintiffs whereby the defendants were given the right to repurchase at a specified price the properties which had been sold to the plaintiffs in the foreclosure sale, on condition that the defendants were to pay a certain amount for the use and occupation of the premises (which they had consistently refused to vacate) until the deadline date for repurchase. The agreement stipulated that "it shall not be treated and considered as a contract of lease and shall be without prejudice to the right of the plaintiff to enforce the writ of possession....upon default of defendants to pay any of the monthly rentals of the purchase price as agreed." The defendants (because they failed to comply with th agreement), subsequently executed a volte-face and assailed it as void because of the stipulation that it should not be considered as a lease. JBL, speaking for the Court, rejected the defendants' contention, explaining that "there is no law prohibiting stipulations that contracts, although similar to leases, should not be regarded as such between the parties. The standard contracts delineated in the law may be varied by the parties at will in the absence of legal prohibition, or conflict with morals, good customs, public order or public policy. That is precisely why the new Civil Code expressly recognizes (article 1307) the so-called *innominate* contracts that do not strictly conform to the standard contracts, and the existence of which had been acknowledged also under the preceding Code."[45]

What has been discussed so far has reference to the first characteristic of contracts, namely, autonomy of will. Three other characteristics may be mentioned: mutuality (Art. 1308), relativity (Art. 1311), and obligatory force (Art. 1315). Each of these became a subject matter of JBL *ponencias,* which we will now examine.

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[44] *Supra,* note 36.

[45] Citing *Alcantara v. Alinea,* 8 Phil. 111 (1907).

Regarding the element of mutuality, the case of *Murciano v. Auditor General*[46] upheld the effectivity of a quitclaim agreement thrice prepared by one of the contracting parties (the respondent Armed Forces of the Philippines) and as many times signed by the other contracting party (the petitioner), on which, subsequently the former tried to renege. In holding the covenant to be binding despite the refusal of the Chief of Staff to honor it, JBL bade the respondent remember that "it is elementary that a contract, once perfected, is binding on both parties and its validity or compliance cannot be left to the will of one of them."[47]

The element of relativity is found in the provision of Article 1311, to the effect that a contract takes effect only between the parties, *and also*, their respective assigns and heirs. That the rights and obligations arising out of a contract should extend to the contracting party's heirs is because, according to *Galasinao v. Austria*,[48] a *ponencia* by Mr. Justice Labrador, the heirs "may not be considered third parties, there being a privity of interest between them and their (predecessor)." Thus, in *Estate of Hemady v. Luzon Surety*[49] where the Supreme Court, through JBL, ruled that a solidary guarantor's liability is not extinguished by his death and that the obligee had the right to file a contingent claim against the estate for reimbursement, the following propositions were laid down:

1. Under Article 1311, as well as Articles 774 and 776, although the responsibility of the heirs for the debts of their decedent cannot exceed the value of the inheritance they receive from him, the principle remains intact that these heirs succeed not only to the rights of the deceased but also to his obligations. Nor, observed JBL, is the binding effect of contracts upon the heirs of the deceased party altered by the provision in our Rules of Court (now found in Rule 90 of the New Rules of Court) that money debts of a deceased must be liquidated and paid from his estate before the residue is distributed among said heirs. The reason being that whatever payment is thus made from the estate is ultimately a payment by the heirs and distributees, since the amount of the said claim in fact diminishes or reduces the shares that the heirs would have been entitled to receive.

2. Under our law, therefore, the general rule is that a party's contractual rights and obligations are transmissible to the successors. The rule is a consequence of the progressive "depersonalization" of patrimonial rights and duties that, as observed by Victorio Polacco, has characterized the history of these institutions. From the Roman concept of a relation from person to person, the obligation has evolved into a relation from patrimony to patrimony, with the persons occupying only a representative position, barring those rare cases where the obligation is strictly personal,

[46] 103 Phil. 907 (1958).
[47] Citing *Civil Code*, art. 1308.
[48] 97 Phil. 82 (1955).
[49] 100 Phil. 388 (1956).

i.e., is contracted *intuitu personae,* in consideration of its performance by a specific person and by no other. (This historical transition is incidentally seen by JBL to be marked by the disappearance of imprisonment for debt.)

On these two propositions, two observations may in turn be made. As to the first, the transmissibility of an obligation to the contracting party's heirs may perhaps be seen even more clearly when the obligation does not consist in a money debt, as for instance, in the case of a lease, the lessor's death does not extinguish the lease but merely causes its transmission to the lessor's heirs who will then succeed to both the rights and the obligations of the lessor under the contract.

As to the second, it should be noted (and the *Hemady* decision did touch upon this) that there are instances provided by Article 1311 where the contract will bind only the original parties and will not be transmissible to the heirs. These cases are three: 1. intransmissibility by the nature of the obligation; 2. intransmissibility by stipulation; anl 3. intransmissibility by operation of law.

The obligatory or binding of force of contracts is adverted to in the case of *Hernaez v. De los Angeles,*[50] of which we shall see more presently, as well as the case of *Murciano v. Auditor General*[51] in both of which JBL pointed out that once a contract is perfected by consent, it is binding and cannot be overturned by either party. We must note here that the binding force of a contract extends under Article 1315, not only to the *express* stipulations of the parties but to all the requirements of good faith. Thus. in *Ramos v. Central Bank,*[52] where the respondent Central Bank was guilty of "a calculated attempt to evade rehabilitating OBM (the Overseas Bank of Manila) despite its promises," contained in and arising out of an agreement with OBM, JBL, speaking for the Court, declared that "the deception practiced by the Central Bank, on petitioners (i.e., the other contracting party) . . . was in violation of Articles 1159 and 1315 of the Civil Code of the Philippijnes." And he quotes with approval the words of Mr. Justice Bocobo in *Abelarde v. Lopez:*[53] "Cleverness should never take the place of the loyal, upright and straightforward observance of plighted undertakings."

One of the exceptions to the rule of relativity of contracts is the stipulation *pour-autrui,* set forth in the second paragraph of Article 1311, as follows:

> "If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit

[50] G.R. No. 27010, April 30, 1969, 27 SCRA 1276 (1969).
[51] *Supra,* note 46.
[52] G.R. No. 29352, October 4, 1971, 41 SCRA 565 (1971).
[53] 74 Phil. 344 (1943).

> or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person."

In *De Guzman v. Tuason*[54] we are told by JBL that for a stipulation *pour autrui* to be enforceable at all, it must first be shown "that the beneficiary of such stipulation had notified his acceptance thereof in due time to the corresponding obligor."[55]

It should be mentioned here that as a general rule the acceptance and its communication need not be in any particular form (except where the stipulation is a purely gratuitous benefit conferred on the beneficiary, in which case there is some controversy as to the form of acceptance). It may in fact even be implied from the conduct of the beneficiary, provided this is known to the promissor, as in *Tabar v. Becada,*[56] penned by Mr. Justice Malcolm.

ESSENTIAL REQUISITES OF CONTRACTS

Known to every student of law are the three essential requisites for contracts, given in Article 1318, namely: 1. consent, 2. subject matter, and 3. cause.

Article 1319 tells us that: "Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract."

The intention of the parties, however, must prevail. Thus, there will be cases where required consent must cover not only the area of subject matter and *causa* but also all other points which the parties themselves consider material to the perfection of the contract. Adopting the words of the lower court, JBL in *A. Magsaysay, Inc. v. Cebu Portland Cement*[57] points out that "while Article 1319 of the New Civil Code prescribes that 'consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract,' this rule does not apply to a situation . . . wherein one or both parties consider that other matters or details, in addition to the subject matter and the consideration, should be stipulated and agreed upon. In that case, the area of agreement must extend to all points that the parties deem material or there is no contract."

And so in that *Magsaysay* case, where the Board resolution of the defendant Corporation (relied upon by the plaintiff as constituting a perfected contract) provided as follows: "Resolved, to direct and management as it is hereby directed, to enter into a contract with A. Magsaysay, Inc., for the transportation of coal from Malangas, Zamboanga, to San

[54] G.R. No. 26264, December 26, 1969, 30 SCRA 857 (1969).
[55] Citing *BPI v. Concepcion,* 53 Phil. 806 (1929).
[56] 44 Phil. 619 (1923).
[57] 100 Phil. 351 (1956).

Fernando, La Union by water at the rate of ₱7.84 per ton, for a total of 30,000 tons, the entire shipment to be effected within a period of four (4) months, or at the rate of 7,500 tons per month. The Board further authorize (sic) the General Manager to work out the other details of this contract," there was no perfected contract, for the reason "that there were (evidently) other material points upon which the parties had not come to an agreement."

A *caveat* must, however be sounded here. Collateral points will be considered an essential subject matter of consent *only* if such was the intention of the parties, either demonstrated explicitly or gleaned from the circumstances. The general rule still is that which is provided in Article 1319 that only the thing and the cause need be agreed upon for the contract to be perfected by consent. Such statements, therefore, not attributable to JBL incidentally, to the effect that either the time or the manner of payment is a "most essential element" in a contract of sale and that failure to agree on either point will prevent a valid contract from arising may perhaps be correct under the special circumstances of some cases but, if made in sweeping and general terms, will only tend to mislead and cause the reader to misconstrue the statement as the general rule, rather than the exception which it really is. The obvious mandate of Article 1319, as well as other provisions of the Code[58] will readily show the error of such a generalization.

In the section on Consent are two articles on simulation. Simulation, as we know, is either absolute—the *contratos simulados*—or relative—the *contratos disimulados*. In absolute simulation, there is no contract at all; consequently both Articles 1346 and 1409 declare such "contracts" to be absolutely void. In relative simulation, there is a contract, but concealed under the guise of another contract. In *Rodriguez v. Rodriguez*[59] JBL had occasion to scrutinize to a certain degree the nature and effects of absolute simulation. There, in two consecutive transactions appearing to be contracts of sale, paraphernal property was conveyed first by the owner to her daughter, and then by the daughter back to her mother *and* her mother's husband (her step-father). The purpose, apparently, of the whole scheme was to evade the prohibition against donations *inter conjuges,* and thus vest in *the husband a part interest in the property in question.* Subsequently, the mother herself filed suit to have the transactions declared void on the ground, *inter alia,* that they were simulated.

Brushing aside this contention, JBL explained: "The charge of simulation is untenable, for the characteristic of simulation is the fact that the apparent contract is not really desired or intended to produce legal effects or *in any way* alter the juridical situation of the parties. Thus, where a person, in order to place his property beyond the reach of his creditors,

[58] *Vide Civil Code,* arts. 1197 and 1582.
[59] G.R. No. 23002, July 31, 1967, 20 SCRA 908 (1967).

simulates a transfer of it to another, he does not really intend to divest himself of his title and control of the property; hence, the deed of transfer is but a sham. But appellant contends that the sale by her to her daughter, and the subsequent sale by the latter to appellant and her husband .. . . were done for the purpose of converting the property from paraphernal to conjugal, thereby vesting a half interest in [the husband], and evading the prohibition against donations from one spouse to another during coverture. If this is true, then the appellant and her daughter must have intended the two conveyances to be real and effective; for appellant could not intend to keep the ownership of the fishponds and at the same time vest half of them in her husband. The two contracts of sale then could not have been simulated, but were real and intended to be fully operative, being the means to achieve the result desired.

JBL, then, for further elucidation, quotes from Ferrara's *La Simulación de los Negocios Jurídicos*:[60]

> "Otra figura que debe distinguirse de la simulación es el *fraus legis*.
>
> XXX XXX XXX
>
> "Se confunde ... el negocio *in fraudem legis* con el negocio simulado; aunque la naturaleza de ambos sea totalmente diversa. El negocio fraudulente no es, en absoluto, un negocio aparente. Es perfectamente serio: se quiere realmente.
>
> XXX XXX XXX
>
> "El resultado de las precedentes investigaciones es el siguiente: el negocio simulado quiere producir una apariencia; el negocio fraudulente, una realidad; los negocios simulados son ficticios, no queridos; los negocios *in fraudem* son serios, reales, y realizados en tal forma por las partes para conseguir un resultado prohibido: la simulación nunca es un medio para eludir la ley, sino para ocultar su violación."[61]

The second requisite—object—has the following characteristics: 1. it must be within the commerce of man, whether *in esse* or *in posse* (Art. 1347); 2. it must be licit; i.e., not contrary to law, morals, good customs, public order, or public policy (Art. 1347); 3. it must be possible (Art. 1348)); 4. it must be at least determinate as to its kind and determinable as to quantity (Art. 1349); and 5. it must be transmissible (Art. 1347).

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[60] Sp. Trans., 1926.

[61] "A distinction should be made between simulation and *fraus legis*.

"XXX XXX XXX

"A transaction in *fraudem legis* is sometimes confused with a simulated transaction, even if the natures of both are totally different. The fraudulent transaction is not a fictitious transaction. It is entered into with serious intent.

"XXX XXX XXX

"The result of the preceding inquiries is the following: the simulated transaction seeks to produce a mere appearance; the fraudulent transaction, a reality; simulated transactions *in fraudem* are serious, real, and entered into by the parties in such form as to achieve a prohibited result; simulation is never a means to go around the law, but to conceal its violation."

Excluded by Article 1347, paragraph 2, from the commerce of man is future inheritance, since the said paragraph provides: "No contract may be entered into upon future inheritance except in cases expressly authorized by law."

The interesting question is: what is meant by *future inheritance?*— and we have for consideration JBL's concurring opinion in *Blas v. Santos,*[62] to my mind, one of the most though-provoking of all his opinions:

What is the *future inheritance* upon which no contract is allowed by Art. 1347, paragraph 2? According to JBL in *Blas* what is interdicted in that article is any agreement whose subject matter is either the universality or complex or mass of property owned by the grantor at the time of his death, or else an aliquot portion thereof. Thus, where X for instance, enters into an agreement of sale over his entire estate existing at the time of his death, or over any fractional portion thereof, that agreement would fall under the prohibition in Art. 1347, paragraph 2.

This interpretation of the meaning of *future inheritance* explains JBL, correlates this provision with Article 776 which defines inheritance as including "all the property, rights and obligations of a person which are not extinguished by his death."

That settled, JBL goes on to clarify why the prohibition extends only to contracts over the universality or aliquot portions of the contracting party's estate. "If the questioned contract," he says, "envisages all or a fraction of that contingent mass, then it is a contract over 'herencia futura', otherwise it is not." And what might be the reason for these? He adduces the following:

1. If the prohibition were to be held to cover every single item of property that a man should hold at any given instant of his life, on the theory that it may become after all a part of his inheritance if he keeps it long enough, then "no donation *inter vivos,* no reversionary clause, no borrowing of money, and no alienation, not even a contract of sale (or other contract *in praesenti* for that matter), with or without deferred delivery, will avoid the reproach that it concerns or affects the grantor's 'future inheritance'. It is permissible to doubt whether the law ever contemplated the sweeping away of the entire contractual system so carefully regulated in the code."

2. Where the contract refers to specific property with the condition that it will pass to the transferee only upon death, that is really no different in essence from a donation *inter vivos* in which the donor has reserved to himself the right to enjoy the donated property for the remainder of his days, and defers the actual transfer of possession to the

[62] G.R. No. 14070, March 29, 1961, 1 SCRA 899 (1961).
[63] IV Tolentino, *Civil Code of the Philippines,* 1973 ed., p. 494.

time of his death—a transaction the validity of which has been repeatedly recognized by the Court.

What then is the reason behind the prohibition on contracts involving the whole or an aliquot portion of the grantor's estate? The following is JBL's explanation: ". . . if a man were to be allowed to bargain away all the property he expects to leave behind (i.e., his estate as a whole), he would practically remain without any incentive to practice thrift and frugality, or to conserve and invest his earnings and property. He would then be irresistibly drawn to be a wasteful spendthrift, a social parasite, without any regard for his future, because whatever he leaves will belong to another by virtue of his contract. The disastrous effects upon family and society if such agreements were to be held binding can be readily imagined."

The controversy, however, revolves around the meaning of "future inheritance" (*herencia futura*), over which no contract may be entered into. If JBL says that "*future inheritance*" refers to the universality or an aliquot portion of the grantor's property as of the time of his death, others have a different opinion. Senator Tolentino, in his *Treatise on Obligations and Contracts*[63] states: "In order that a contract may fall within the prohibition of this article (Art. 1347, par. 2), the following requisites are necessary: 1. that the succession has not yet been opened, 2. that the object of the contract forms part of the inheritance, and 3. *that the promissor has, with respect to the object, an expectancy of a right which is purely hereditary in nature.*" (Underscoring supplied). Thus, Tolentino observes, "an agreement for the partition of the estate of a living person, made between those who, in case of death, would be in a position to inherit from him, is void."[64]

Sanchez Roman, commenting on the counterpart provision in the Spanish Civil Code (Art. 1271, paragraph 2), and correlating it with Article 816 of that Code (which article is found in our Code as Article 905),[65] says essentially the same thing: "De la *transacción* no podría decirse otro tanto, atendido solo el tenor del art. 816, que se refiere únicamente, de modo expreso, a declarar la nulidad de la que se celebre entre él que debe la legítima y sus herederos forzosos y parece excluir de esta sobre caución de nulidad, todas las demás transacciones sobre degítima futura celebradas entre estos últimos, ya entre sí ya con cualquiera otra persona que no sea él que la debe. Pero hay en el Codigo otro precepto de carácter *general*, que es el del párrafo segundo del art. 1271, antes citado, á nombre del cual la nulidad para la transacción sobre legítima

[64] Citing Borrel y Soler, *Nulidad*, p. 58.

[65] Article 905 of our Code provides: "Every renunciation or compromise as regards a future legitime between the person owing it and his compulsory heirs is void, and the latter may claim the same upon the death of the former; but they must bring to collation whatever they have received by virtue of the renunciation or compromise."

futura se impone en todos los casos y formas que la misma revista, en cuanto la transacción es un *contrato* y la legítima una parte de la *herencia* . . ."[66]

He goes on: "La prohibición de los arts. 816 y 1271, no se refieren á la legítima o herencia, en general, sino sólo á la una o la otra en cuanto sean futuras, esto es, antes de que la sucesión de donde proceden se haya causado; pero será válida cualquiera renuncia a transacción que se realice en tiempo posterior ó sea las que procedan de legítima ó herencia en sucesión de persona que haya fallacido."[67]

From which it is quite clear that what Sanchez Roman understands "future inheritance" to mean is that which the grantor expects to inherit.

The difference in opinion may be illustrated thus: Supposing X sells Y whatever X expects to inherit from his father X^1, is that contract valid? If we interpret *future inheritance* to mean the whole or an aliquot part of the grantor's estate (X here being the vendor, or grantor), as understood by JBL, then the contract would be valid—being either an *emptio spei* or an *emptio rei speratae,* depending on the intent of the parties; valid because it does not fall under the prohibition. If, on the other hand, we interpret *future inheritance* to mean something that the grantor expects to inherit, as Sanchez Roman sees it, then such a contract would be void.

The point is arguable. But JBL's view is at least consistent with the definition of "inheritance" in Article 776 of our Code (Article 659 of the Spanish Code) as including "all the property rights and obligations of a person which are not extinguished by his death."

Just a word of clarification at this point: There is of course no argument about the nullity of any agreement between the predecessor and the successor on the latter's expected legitime. Such a contract is prohibited by Article 905, which provides:

> "Art. 905. Every renunciation or compromise as regards a future legitime between the person owing it and his compulsory heirs is void, and the latter may claim the same upon the death of the former but they must bring to collation whatever they may have received by virtue of the renunciation or compromise."

[66] Article 816, by its express terms, declares void only those agreements between him who owes the legitime and his compulsory heirs and seems to exclude from the prohibition all other contracts on future legitime among the compulsory heirs themselves or between a compulsory heir and a third person. But there is in the in the Code, another provision of general application (Art. 1271, Par. 2), under which a contract on future legitime is void in any case, because the legitime is part of the inheritance.

[67] The prohibition of Arts. 816 and 1271 refers to the legitime or inheritance insofar as they are still in the future, that is, before the succession opens, but a renunciation or compromise is valid when it is made after the predecessor has died.

On the matter of *causa,* the presumption established in Article 1354 that a *causa* exists was held by JBL in *Samanilla v. Cajucom*[68] to apply to a contract of mortgage despite allegations that it was executed without any consideration. JBL explains that: . . . there is a legal presumption of sufficient cause or consideration supporting a contract, even if such cause is not stated therein. This presumption appellants cannot overcome by a simple assertion of lack of consideration. Especially may not the presumption be so lightly set aside when the contract itself states that consideration was given, and the same has been reduced into a public instrument with all due formalities and solemnities . . . To overcome the presumption of consideration, appellants must show the alleged lack of consideration of the mortgage by preponderance of evidence . . ."

There is one exception to this presumption: in contracts of option to buy or to sell under Article 1479, paragraph 2, consideration is not presumed; it must be proved by the promisee. So held the Supreme Court, through Mr. Chief Justice Concepcion in *Sanchez v. Rigos.*[69]

FORM OF CONTRACTS

Article 1356, making explicit what is already virtually provided in Article 1315, states that: "Contracts shall be obligatory, in whatever form they have have been entered into, provided all the essential requisites for their validity are present." This provision expresses the basically spiritual system of our Code, indeed the trend in the modern civil law on Obligations. Gone are the excessive formalism and ritual that characterized the old Roman law.

The case of *Hernaez v. de los Angeles*[70] illustrates the principle. The contract involved there was for personal services (as leading actress in two motion pictures) for which the plaintiff Marlene Dauden claimed the unpaid balance of the compensation. The defendant movie production company resisted the claim, on the ground that under Articles 1356 and 1358, the agreement, being in excess of ₱500 had to be in writing to be valid at all—an allegation which the lower court sustained. JBL, speaking for the High Court, rejected this as "basic error," and as "a lamentable misunderstanding of the role of the written form in contracts, as ordained in the present Civil Code," and proceeded to discuss the issue from the historical and juridical aspects:

"In the matter of formalities, the contractual system of our Civil Code still follows that of the Spanish Civil Code of 1889 and of the 'Ordenamiento de Alcalá' of upholding the spirit and intent of the parties over formalities: hence, in general, contracts are valid and binding from their

[68] 107 Phil. 432 (1960).
[69] G.R. No. 25494, June 14, 1972, 45 SCRA 368 (1972).
[70] *Supra,* note 50.

perfection regardless of form, whether they be oral or written. This is plain from Articles 1315 and 1356 of the present Civil Code.

xxx xxx xxx

"To this general rule, the Code admits exceptions, set forth in the second portion of Article 1356:

> " 'However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. xxx'

"It is thus seen that to the general rule that the form (oral or written) is irrelevant to the binding effect *inter partes* or a contract that possesses the three validating elements of consent, subject matter, and *causa,* Article 1356 of the Code establishes only *two* exceptions, to wit:

"(a) Contracts for which the law itself requires that they be in some particular form (writing) in order to make them *valid* and *enforceable* (the so-called *solemn* contracts). Of these the typical example is the donation of immovable property that the law (Article 749) requires to be embodied in a public instrument in order 'that the donation may be valid', i.e., existing or binding. x x x

"(b) Contracts that the law requires *to be proved* by writing (memorandum) of its terms, as in those covered by the old Statute of Frauds, now Article 1403 (2) of the Civil Code. Their existence not being provable by mere oral testimony (unless wholly or partly executed) the contracts are exceptional in requiring a writing embodying the terms thereof for their enforceability by action in court.

"It is true that [the contract sued upon in this case] appears included in Artirle 1358, last clause, providing that 'all other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one.' But Article 1358 nowhere provides that the absence of written form in this case will make the agreement invalid or unenforceable. On the contrary, Article 1357 clearly indicates that contracts covered by Article 1358 are binding and enforceable by action or suit despite the absence of writing.

" 'Art. 1357. If the law requires a document or other special form, *as in* the acts and *contracts enumerated in the following article,* the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised *simultaneously with the action upon the contract.*' "

DEFECTIVE CONTRACTS
VOIDABLE

The difference between voidable and void contracts—hazy in the Spanish Code—is clearly delineated in our Code, both as to causes and as

[71] G.R. No. 30173, September 30, 1971, 41 SCRA 143 (1971).

to effects. Thus, we are reminded by JBL in *Tumalad v. Vicencio*[71] that "fraud or deceit does not render a contract void *ab initio,* and can only be a ground for rendering the contract voidable or annullable pursuant to Article 1390 of the New Civil Code." Basic, too, is the principle, implied in *Tumalad* that a voidable contract produces effects unless and until judicially set aside.

UNENFORCEABLE

As pointed out by JBL in the *Hernáez* case[72] one of the two classes of contracts which depart from the basic spiritual system of the Code is that group of agreements that fall under Article 1403 (2), known as the Statute of Frauds. This provision brands certain contracts as unenforceable unless "the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent . . ."

The meaning of this requirement was clarified by JBL in *Paredes v. Espino.*[73] There, two letters both signed by the defendant, were presented in evidence by the plaintiff. The first letter identified the land which was being offered by the defendant for sale. The second stated that the defendant was accepting the plaintiff's offer as to the amount of the purchase price (naming the specific amount per unit area). Subsequently, when defendant was sued for refusing to execute a deed of sale, defendant alleged that the contract was unenforceable under the Statute of Frauds. Not so, stated JBL, because "the Statute of Frauds . . . does not require that the contract itself be in writing. The plain text of [the statute] is clear that a written note or memorandum embodying the essentials of the contract and signed by the party charged, or his agent, suffices to make the verbal agreement enforceable, taking it out of the operation of the statute."

Paterno v. Jao Yan[74] reiterates the well-settled rule—now found in Article 1405—that partial performance takes the agreement out of the restriction. The parties in that case had entered into a written lease contract calling for the construction by the lessee of a building of strong wooden materials. What he actually did construct was a semi-concrete, and costlier, edifice. He then sought to prove that the original written contract had been orally extended from seven to ten years in consideration of his upgrading the materials of the building: a contention that the lessor objected to the presentation of proof on, invoking the Statute of Frauds. The Supreme Court, through JBL, brushed aside the lessor's objection, holding that: "It is an established doctrine in this jurisdiction that partial performance takes an oral contract out of the scope of the Statute of Frauds." And, citing American Jurisprudence, the decision goes on to

[72] *Supra,* note 50.
[73] G.R. No. 23718, March 13, 1968, 22 SCRA 1000 (1968).
[74] G.R. No. 12218, February 28, 1961, 1 SCRA 631 (1961).

say: "The taking of possession by the lessee and the making of valuable improvements, and the like, on the faith of the oral agreement, may operate to take the case out of the prohibition of the statute, for it would be a gross fraud to permit the lessor in such a case to avoid the lease."[75]

Another JBL *ponencia* on the Statute of Frauds was *Eusebio v. Sociedad Agrícola,*[76] adhering to the rule laid down in past cases[77] that the Statute does not apply when the case is neither for a violation of a contract nor for the performance thereof.

VOID OR INEXISTENT

One of the void contracts enumerated in Article 1409 is one which has no cause.[78] The consequence of the absence of *causa,* according to JBL's concurring opinion in *Armentía v. Patriarca,*[79] is that, the contract being void, "the property alleged conveyed never really leaves the patrimony of the transferor, and upon the latter's death . . . such property would pass to the transferor's heirs . . ' and be recoverable by them or by the Administrator of the transferor's estate, should there by any."

The imprescriptibility of the right to seek the declaration of the inexistence of void contracts was upheld in the JBL *ponencias* of *Boñaga v. Soler,* where it was pointed out that such a rule already obtained even before the effectivity of the new Code, and *Ras v. Sua.*[80]

The "pari delicto" rule in Article 1411 bars both an action for specific performance and an action for restitution, by either of the parties, the law being quite content to leave the parties to languish in the situation in which they have placed themselves and each other. "In pari delicto non oritur action." This principle, however, applies only in case of contracts void for having an illegal consideration, and not when the contract was absolutely simulated. So held the Court, speaking through JBL, in *Vásquez v. Porta.*[82] When the contract is void because *simulado,* the consequence is, as pointed out in *Armentia,*[83] that the property never leaves the grantor's patrimony and his heirs have the right to include it among his partible estate.

But where the "pari delicto" rule applies, we are told by JBL in *Liguez v. Court of Appeals*[84] that either part is barred "from pleading the

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75 Quoting 49 Am. Jur., p. 809.
76 G.R. No. 21519, March 31, 1966, 16 SCRA 569 (1966).
77 *Facturan v. Sabanal,* 81 Phil. 512 (1948); *Almirol v. Monserrat,* 48 Phil. 67 (1925); Pascual v. Realty Investments Inc., G.R. No. 4902, May 12, 1952.
78 *Civil Code,* art. 1409, par. 3.
79 G.R. No. 18210, December 29, 1966, 18 SCRA 1253 (1966).
80 G.R. No. 15717, June 30, 1961, 2 SCRA 755 (1961).
81 G.R. No. 23302, September 25, 1968, 25 SCRA 153 (1968).
82 98 Phil. 490 (1956).
83 *Supra,* note 79.
84 102 Phil 577 (1957).
85 7 Phil. 693 (1907).

illegality of the bargain either as a cause of action or as a defense." This statement, I think, invites comment. That the illegality of the agreement cannot be pleaded as a cause of action is clear. Thus, neither party may recover what he may have given, by filing an action to have the contract declared void. But what is meant by the statement that the illegality of the bargain cannot be pleaded as a defense either? What happens if one of the parties (in a situation where the parties are *in pari delicto*) brings an action for specific performance of the illegal contract How is the other party to resist the claim unless he alleges the nullity of the contract? If he is barred from pleading that as a defense, then what will stand in the way of the plaintiff's demand?

Interpreting the statement conformably with the intent of the law, we should understand it to mean what the court stated in *Perez v. Herranz*[85] penned by Mr. Justice Tracey, and quoted by JBL in *Liguez:* "where the plaintiff can establish a cause of action without exposing its illegality, the vice does not affect his right to recover," and in such a case — we may infer — the illegality of the contract cannot be alleged by the other party as a defense.

SPECIAL CONTRACTS
SALES

The definition of the contract of sale in Article 1458[86] clearly delineates its character as a commutative contract. In the words of JBL in *Ramirez v. Court of Appeals,*[87] "The contract of sale gives rise to reciprocal obligations between seller and buyer, since each party assumes obligations conditional upon those of the other, and the obligations of both are derived from a common origin, the perfected contract." A consequence of this is that breach by either party will entitle the other to the alternative remedies of specific performance and resolution, with damages in either case, pursuant to Article 1191 (discussed supra).

Moreover, owing to this element of reciprocity characterizing sales in general, the aleatory contract, called *emptio spei,* would then be the exception, rather than the rule, and, as explained by JBL in *Gaite v. Fonacier,*[88] "a contract of sale is normally commutative and onerous: not only does each one of the parties assume a correlative obligation (the seller to deliver and transfer ownership of the thing sold and the buyer to pay the price), but each party anticipates performance by the other from the very start. While in a sale the obligation of one party can be lawfully subordinated to an uncertain event, so that the other understands that he assumes tht risk of receiving nothing for what he gives (as in the

[86] Article 1458 provides: "By the cóntract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent."

[87] 98 Phil. 225 (1956).

[88] *Supra,* note 12.

case of a sale of hopes or expectations, *emptio spei*), it is not in the usual course of business to do so; hence, the contingent character of the obligation must clearly appear."

Article 1484, commonly known as the Recto Law, lays down special rules for sales of personal property on installments. The remedies there granted to the vendor are the following:

1. specific performance;

2. resolution (cancellation of the sale), if the vendee's default covers at least two installments; or

3. foreclosure of the chattel mortgage on the thing sold, if one has been constituted, again if the vendee's default covers at least two installments.

In *Quiambao v. Manila Motor Company* [88] one of the issues was whether the vendee in a sale of personality on installments had in fact exercised the second remedy of resolution. The subject matter of the sale was a sedan, payable on installment. Upon default on a number of installments, the vendor lodged a complaint for specific performance, and a judgment was obtained against the vendee. As the sheriff set out to levy upon two parcels of land belonging to the vendee, the latter pleaded to have the levy suspended, begged for time to satisfy the judgment debt, and proposed to surrender, in the meantime, the sedan. The proposal was accepted by the vendor car company, whose counsel then issued a receipt for the sedan, which receipt acknowledged the surrender of the car "pending settlement of the judgment". For failure by the vendee to comply with the judgment (The Second World War had meanwhile broken out and the car seized by the Japanese Imperial forces as enemy property) the vendor moved to have the writ of execution enforced, but the vendee's heirs (the vendee had died) resisted, claiming, *inter alia*, that the delivery of the car to the vendor amounted to resolution or cancellation of the sale, which would bar any further claim for unpaid installments. The Supreme Court, through JBL, rejected the contention, pointing out that the surrender of the car was only for the purpose of allowing more time for the vendee to satsify the judgment debt, as indicated by the receipt. Furthermore, after the car's surrender, the vendee made a further payment of ₱500.00 on account of his indebtedness. The attendant circumstances therefore revealed that the return of the car was not indicative of the resolution of the contract of sale, and thus the vendor was not barred from proceeding with specific performance.

But more interesting by far was the case of *Cruz v. Filipinas Investment*,[90] applying the third paragraph of Article 1484. That third para-

[89] G.R. No. 17384, October 31, 1961, 3 SCRA 444 (1961).
[90] G.R. No. 24772, May 27, 1968, 23 SCRA 791 (1968).

graph, giving the unpaid vendor the remedy of foreclosure of the chattel mortgage on the thing sold, if one has been constituted and if the vendee's default covers at least two installments, bars the vendor from any further remedy against the vendee to recover any unpaid balance. The legislative intent behind this restriction was explained by Mr. Justice Goddard in Bachrach v. Millan,[91] thus: "Undoubtedly the principal object of (the Recto Law) was to remedy the abuses committed in connection with the foreclosure of chattel mortgages. This amendment prevents mortgagees from seizing the mortgaged property, buying it at foreclosure sale for a low price and then bringing suit against the mortgagor for a deficiency judgment, The invariable result of this procedure was that the mortgagor found himself minus the property and still owing practically the full amount of his original indebtedness."

Thus it is that under this provision, the vendor who elects to foreclose the chattel mortgage on the thing sold has to content himself with the proceeds of the foreclosure.

In the *Cruz* case, the subject matter of the installment sale was a bus, over which a chattel mortgage was duly constituted by the vendee. In addition, however, the vendor demanded, and obtained, a second mortgage, real in nature, on a parcel of land belonging to a third party. Numerous defaults by the vendee led to the foreclosure by the vendor [actually, the vendor's successor-in-interest, to whom the vendor had assigned the credit, together with the securities] of the chattel mortgage. As the proceeds were not sufficient, the vendor then sought to foreclose the real estate mortgage on the third person's land. The vendor, in seeking to do so, advanced the beguiling theory that what was prohibited by the terms of Article 1484 (3) was additional recovery "against the vendee," not "a recourse to the additional security put up not by the purchaser himself, but by a third person." The Supreme Court, however, was not beguiled. Explaining first of all that the remedies in 1484 are alternative, and not cumulative[92], JBL went on to say that "the foreclosure and actual sale of a mortgaged chattel bars further recovery by the vendor of any balance on the purchaser's outstanding obligation not so satisfied by the sale."[93] And rejecting the vendor's argument, JBL concluded: "To sustain appellant's argument is to overlook the fact that if the guarantor would be compelled to pay the balance of the purchase price, the guarantor will in turn be entitled to recover what she has paid from the debtor vendee (Art. 2066, Civil Code); so that ultimately, it will be the vendee who will be made to bear the payment of the balance of the price, despite the earlier foreclosure of the chattel mortgage given by him. Thus, the

[91] 61 Phil. 409 (1935).

[92] Citing *Radiowealth v. Lawin*, G.R. No. 18563, April 27, 1962, 7 SCRA 804 (1962).

[93] Citing *Manila Motor Co. v. Fernandez*, 99 Phil. 782 (1956); *Bachrach v. Millan*, 61 Phil. 409 (1935); *Manila Trading v. Reyes*, 62 Phil. 461 (1935).

protection given by Article 1484 would be indirectly subverted, and public policy overturned." This holding was reiterated by, and cited in, the 1974 case of *Pascual v. Universal Motors*[94], penned by Mr. Chief Justice Makalintal.

The remedies in Article 1484 are, as mentioned in the last discussed case, *alternative* — which means that once the vendor avails himself of any one of the three recourses, or, in the words of the article, when the vendor *exercises* any of the options, he is barred from pursuing the other two. For this rule to apply, however, the vendor must have acutally *exercised* any of the remedies; otherwise, the exclusionary rule does not apply. So held the Supreme Court, speaking through JBL, in *Radiowealth v. Lawin*,[95] where the vendor of the chattel (a wet-paddy rotavator) decided to foreclose the chattel mortgage thereon for failure by the vendees to pay any of the installments. The sheriff was duly notified for the purpose, who commenced the procedure necessary to foreclose extrajudically. The day prior to the scheduled public sale, however, (the vendees had surrendered the chattel to the sheriff without objection) the vendor decided to call off the sale, notified the sheriff accordingly, and had the chattel returned to the vendee. Subsequently, the vendor filed suit for specific performance (i.e. collection of the purchase price), which the vendees resisted because of the alleged previous election of foreclosure. Sustaining the vendor's right to demand specific performance, JBL wrote: "... the vendor-mortgagee in the present case desisted, on its own initiative, from consummating the auction sale, without gaining any advantage or benefit, and without causing any disadvantage or harm to the vendees-mortgagors. The least that could be said is that such desistance of the plaintiff from proceeding with the auction sale was a timely disavowal that cancelled and rendered useless its previous choice to foreclose; x x x For this reason, the plaintiff can not be considered as having 'exercised' (the code uses the word 'exercise') the remedy of foreclosure because of its incomplete implementation, and, therefore, the plaintiff is not barred from suing on the unpaid account."

JBL concludes by pointing out that the vendee here did not assume really inconsistent positions, which is what Article 1484 interdicts.

On capacity to buy or sell, Article 1490 disqualifies husband and wife from selling to each other. The case of *Medina v. Collector*[96] penned by JBL in 1961 reiterating the holding in two previous cases[97] ruled that contracts violative of this article are null and void.

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[94] G.R. No. 27862, November 20, 1974, 61 SCRA 121 (1974).
[95] *Supra*, note 92.
[96] 110 Phil. 912 (1961).
[97] *Uy Siu Pin v. Cantollas*, 70 Phil. 55 (1940); and *Uy Coque v. Sioca*, 43 Phil. 405 (1922).

It may be mentioned here that by virtue of a subsequent decision penned by Mr. Justice Teehankee[98], all contracts falling under Article 1491 were likewise held to be absolutely void.

On the matter of sales of realty for a lump sum, the so-called *corpus certum* or *cuerpo cierto* sale the JBL *ponencia* in *Sta. Ana v. Hernández*[99] applies the rule laid down in Article 1542 that the vendor is obliged "to deliver to the buyer all the land within the boundaries, irrespective of whether its real area should be greater or smaller than what is recited in the deed .... To hold the buyer to no more than the area recited in the deed, it must be clear therein that the sale was made by unit of measure at a definite price for each unit." And quoted as highly persuasive is a ruling of the Spanish Supreme Court of 26 June 1956, construing Article 1471 of the Spanish Code (form which our Article 1542 is copied *verbatim*), to the effect that as between the absence of a recital of a given price per unit of measurement, and the specification of the total area sold, the former must prevail and determines the applicability of the norms concerning sales for a lump sum: "... entre los dos índices en contraste, constituido uno por la falta de un precio singular por unidad de medida, y otro por la concreción de las dimensiones globales del inmueble, la Ley da prevalencia al primero ..."[100]

The matter of double sales has always been something of a problem area. The rules, as set forth in Article 1544, are as follows:

1. For personal — ownership passes to the vendee who first takes possession *bona fide.*
2. For realty — ownership passes according to the following order of prelation or priority:
   a. first, to the vendee who first registers *bona fide* in the Registry of Property;
   b. in the absence of registration, to the vendee who first took possession *bona fide;* and
   c. in default of possession, to the vendee who presents the oldest title, again *bona fide.*

The operative element in the provision of 1544 is *bona fides* — good faith. Thus, in *Paylago v. Jarabe*[101] the Supreme Court rendered judgment against the vendees who, although they had their deed of sale registered, were not *bona fide* because they knew of a prior sale and delivery of the same land (which, incidentally was Torrens-registered) to a prior vendee. And JBL explains the law's basic philosophy: "The fundamental premise

[98] *Rubias v. Batiller,* G.R. No. 35702, May 29, 1973, 51 SCRA 120 (1973).
[99] G.R. No. 16394, December 17, 1966, 18 SCRA 973 (1966).
[100] "...between two conflicting indices of intent, one a failure to specify the price per unit area, and the other a specification of the total area, the law gives prevalence to the former..."
[101] G.R. No. 20046, March 27, 1968, 22 SCRA 1247 (1968).

of the preferential rights established by Article 1544 of the New Civil Code is good faith.[102] To be entitled to the priority, the second vendee must not only show prior recording of his deed of conveyance or possession of the property sold, but must, above all, have acted in good faith, that is to say, without knowledge of the existence of another alienation by his vendor to a stranger.[103] Short of this qualifying circumstance, the mantle of legal protection and the consequential guarantee of indefeasibility of title to the registered property will not in any way shelter the recording purchaser against known and just claims of a prior though unregistered buyer. Verily, it is now settled jurisprudence that knowledge of a prior transfer of a registered property by a subsequent purchaser makes him a purchaser in bad faith and his knowledge of such transfer vitiates his title acquired by virtue of the later instrument of conveyance which was registered in the Registry of Deeds ... To hold otherwise would reduce the Torrens system to a shield for the commission of fraud."[104]

The fate of the subsequent vendees in *Jovellanos v. Dimalanta* [105] was better than those in *Paylago,* because in *Jovellanos,* they had the requisite good faith. The land there involved was sold twice, first to the plaintiff by means of a public instrument, and then to the defendants, by the same means. Subsequently, the defendants (who were the later vendees) filed with the Register of Deeds a statement of adverse claim (the land sold was an unsegregated portion of a bigger parcel covered by a certificate of title). The plaintiff as first vendee filed her opposition. Upholding the later vendees, JBL pointed out that "since the second purchasers have recorded the conveyance in their favor, through the process of recording an adverse claim ... the case is plainly controlled by the second paragraph of Art. 1473 of the Civil Code of 1889, reproduced *verbatim* in Art. 1544 of the new Civil Code of the Philippines. In consequence thereof, the second purchasers should be deemed owners of the disputed land, by reason of prior registration. The question of prior possession (whether actual or symbolic) ... does not at all enter the case, for the reason that, in law, priority of possession is subordinate to priority of recording."

The protection extended by 1544 to the first registrant, however, does not extend to the purchaser of unregistered land at an execution sale, as held in *Carumba v. Court of Appeals*[106] where the owners by means of a private document, sold a parcel of unregistered land to the petitioner who forthwith took possession of the land. Much later, the land was sold in an execution sale pursuant to a judgment against the vendors. The pur-

[102] Citing *Bernas v. Bolo,* 81 Phil. 16 (1948).
[103] Citing *Obras Pias v. Ignacio,* 17 Phil. 45 (1910); *Leung Yee v. Strong Machinery,* 37 Phil. 644 (1918); and *Emas v. Zuzuarregui,* 53 Phil. 197 (1929).
[104] Citing *Gustilo v. Maravilla,* 48 Phil. 442 (1925).
[105] G.R. No. 11736-7, January 30, 1959.
[106] G.R. No. 27587, February 18, 1970, 31 SCRA 558 (1970).

chaser at the execution sale had the Deed of Sale (issued by the Sheriff) registered with the Registry of Deeds. The Court of Appeals held the second purchaser's title to be superior, on the strength of first registration. The Supreme Court, speaking through JBL, disagreed, stating: "While under the invoked Article 1544 registration in good faith prevails over possession in the event of a double sale by the vendor of the same piece of land to different vendees, said article is of no application to the case at bar, even if ... the later vendee was ignorant of the prior sale made by his judgment debtor ... The reason is that the purchaser of unregistered land at a sheriff's execution sale only steps into the shoes of the judgment debtor, and merely acquires the latter's interest in the property sold as of the time the property was levied upon ... The rule is different in case of lands covered by Torrens titles, where the prior sale is neither recored nor known to the execution purchaser prior to the levy ... "

The waiver of the warranty in case of eviction is of two kinds: the waiver *consciente,* which is the simple waiver, without knowledge of the risks of eviction; and the waiver *intencionada,* which is made with knowledge of the risks. The difference in their effects is found in Article 1554, which provides that in a waiver *consciente* the vendor is liable for the thing's value at the time of the eviction, while in a waiver *intencionada* the vendor incurs no liability whatsoever. In *Andaya v. Manansala*[107] the contract of sale, interestingly, contained a clause stating that the vendor was warranting the land "to be free from all kinds of liens and encumbrances whatever." At the same time, it was shown that the vendee at the time of the sale knew that the land was subject of a suit for recovery by one who claimed prior title (and who in fact succeeded in recovering it), for which reason the sale was at a rather low price. Under the circumstances, the Supreme Court, through JBL, agreed with the lower court that there was in fact waiver of the warranty, with knowledge of the risks. "The vendor's liability for warranty against eviction in a contract for sale is waivable and may be renounced by the vendee. The contract of sale between herein appellant and the appellees included a stipulation as to the warranty; but ... such stipulation was merely *pro forma* and ... the appellant vendor was not to be bound thereby ..."

The right of the vendee to suspend payment should he be disturbed, or have reasonable ground to fear that he will be disturbed, in the possession or ownership of the thing was upheld in *Bareng v. Court of Appeals.*[108] The purchaser in that case, (of cimematographic equipment) suspended payment of the installments when he was notified by a certain individual that he was a co-owner of the equipment in question. The Court, speaking through JBL, sustained the purchaser's right to suspend payment, citing Article 1590 "Should the vendee be disturbed in the

[107] 107 Phil. 1151 (1960).
[108] 107 Phil. 641 (1960).

possession or ownership of the thing acquired, or should he have reasonable grounds to fear such distrubance, by a vindicatory action or a foreclosure of mortgage, he may suspend the payment of the price until the vendor has caused the disturbance or danger to cease, unless the latter gives security for the return of the price in a proper case, or it has been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment. A mere act of trespass shall not authorize the suspension of the payment of the price." The Court, however, reminded the buyer that his right of suspension ended, under 1590, "as soon as 'the vendor has caused the disturbance or danger to cease' " and in this case the danger ceased when the vendor reached a compromise with his co-owner whereby the co-owner expressed his conformity to the sale, subject to the payment to him of his share in the purchase price.

We come now to one of the most controversial of JBL's decisions: the case of *Luzon Brokerage v. Maritime Building Company*. The first decision came out on 31 January 1972 [109] with JBL as *ponente*.

At issue, *inter alia*, in the case was the application of Article 1592, which provides:

> "Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

The bone of contention is the right given by 1592 to the vendee to pay, notwithstanding an express stipulation that rescission shall take place upon the expiration of the time stipulated for payment, as long as no judicial or notarial demand for rescission has been made. The Court, through JBL, declared in this first *Luzon Brokerage* case that 1592 applies only to the ordinary contract of sale, in which ownership is transferred to the buyer upon delivery, and not to the so-called contract to sell, in which the seller reserves title and promises to convey it only when the buyer has complied with the terms of the contract. In this contract to sell, the act of the seller in recovering possession of the thing upon failure by the buyer to pay is not a resolution or setting aside of the contract but an enforcement thereof, in the sense that prompt payment of the installments is a condition precedent for the delivery of ownership and upon failure of the buyer to comply with that condition the seller is no longer obligated to part with the ownership of the property.

A second decision, bearing the same title, came out on 18 August 1972[110] the eve of JBL's retirement, on a Motion for Reconsideration filed

[109] G.R. No. 25885, January 31, 1972, 43 SCRA 93 (1972).

by the defendant Maritime. This second holding, also penned by JBL, clarified the rules further. Adverting to one of the stipulations in the contract, to the effect that "(T)itle to the properties subject to this contract remains with the vendor and shall pass to and be transferred in the name of the vendee only upon the complete payment of the full price . . . ," the Court pointed out that "it (is) crystal clear that the full payment of the price (through the punctual performance of the monthly payments) was a *condition precedent* to the execution of the final sale and to the transfer of the property . . . The upshot of all these stipulations is that in seeking the ouster of [the vendee] for failure to pay the price as agreed upon, [the vendor] was not rescinding (or more properly, resolving) the contract, but precisely *enforcing* it according to its express terms. In its suit [the vendor was not seeking restitution to it of the ownership of the thing sold (since it was never disposed of), such restoration being the logical consequence of the fulfiillment of a *resolutory* condition, . . . neither was it seeking a declaration that its obligation to sell was extinguished. What it sought was a judicial declaration that because the *suspensive* condition (full and punctual payment) had *not* been fulfilled, its obligation to set to (the vendee) *never* arose or never became effective and, therefore, it was entited to repossess the property object of the contract, possession being a mere incident to the right of ownership."

A third decision, on a second Motion for Reconsideration, handed down on 16 November 1978[111] and penned by Mr. Justice Teehankee (JBL by then was in his seventh year of very active retirement), confirmed and reiterated the first two decisions, Mr. Justice Teehankee stating that "in cases of contracts to sell with reserved title, non-payment of the stipulated installment is simply the failure of a positive suspensive condition." (It should perhaps be noted, however, that in this third *Luzon Brokerage ruling,* of twelve members of the Supreme Court, five voted for denial of the Motion for Reconsideration and seven, for its granting).

The 1980 case of *Roque v. Lapuz*[112] penned by Mr. Justice Guerrero, adopts and reiterates the *Luzon Brokerage* ruling, referring incidentally to that case as "celebrated."

Actually, the *Luzon Brokerage* ruling is a but confirmation of several earlier Supreme Court decisions[113] and merely echoes a 1960 JBL decision[114] and a 1951 JBL *ponencia in the* Court of Appeals—the case of *Sing, Yee and Cuan Inc. v. Santos,*[vv5] which, in this writer's opinion, is JBL's clearest exposition of the matter:

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110 G.R. No. 25885, August 18, 1972, 46 SCRA 381 (1972).
111 G.R. No. 25885, November 16, 1978, 86 SCRA 305 (1978).
112 G.R. No. 32811, March 31, 1980, 96 SCRA 741 (1980).
113 Cited in *Roque v. Lapuz, supra* at p. 758.
114 *Manuel v. Rodriguez,* 109 Phil. 1 (1960).
115 47 O.G. 6372 (1951).

> "... a distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell ... where by agreement the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, nonpayment of the price is a negative resolutory condition; in the second place, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and can not recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. Hence, when the seller, because of non-compliance with the suspensive condition stipulated, seeks to eject the buyer from the land object of the agreement, said vendor is enforcing the contract and is not resolving the same ... And the point is made even clearer by the decisions of the Spanish Supreme Court holding that the notice to the buyer, required by Article 1504 (1592 of our Code) is a notice to agree to the resolution of the sale; and that article 1504 does not apply to sales subject to suspensive conditions."

In a nutshell then, the rule may be stated thus: in the so-called contracts to sell (i.e., where title is reserved by the seller until full payment by the buyer), failure of the buyer to pay as stipulated will entitle the seller to refuse to go on with the contract and demand the return of the realty (if its possession has already been transferred to the buyer) *without* having to serve judicial or notarial notice of rescission, since there really is nothing to rescind.

Some authorities, admittedly, find this theory arguable, to say the least. But in a survey of this nature, a more detailed discursive treatment is hardly possible. And so we must pass on to the next point.

On the matter of conventional redemption, the requirement in Article 1607 of a judicial order of consolidation after the vendor's failure to redeem the real property sold under *pacto de retro,* was the subject matter of the decision in *Tacdoro v. Arcenas*[116] where JBL, noting that the provision was a new one, clarified the nature and purpose of the requirement. He averred that the judicial order of consolidation must be the result of an ordinary civil action in which the vendor should be made a party defendant and be entitled to notice, the reason being that "(e)xperience has demonstrated too often that many sales with the right of repurchase have been devised only to circumvent or ignore our usury laws and for this reason, the law looks upon them with disfavor. When, therefore, Article 1607 speaks of a judicial order after the vendor shall have been duly heard, it contemplates none other than a regular court proceeding under the governing Rules of Court, wherein the parties are given full opportunity to lay bare before the court their real covenant. Furthermore, the obvious intent of our Civil Code, in requiring a judicial confirmation

[116] 110 Phil. 222 (1960).

of the consolidation in the vendee *a retro* of the ownership over the property sold, is not only to have all doubts over the true nature of the transaction speedily ascertained and decided, but also to prevent the interposition of buyers in good faith while such determination is being made. Under the former method of consolidation by a mere extrajudicial affidavit of the buyer *a retro,* the latter could easily cut off any claims of the seller by disposing of the property after such consolidation, to strangers in good faith and without notice. The chances of the seller *a retro* to recover his property would thus be nullified, even if the transaction were really proved to be a mortgage and not a sale."

Articles 1620, 1621, and 1622 grant to co-owners and to adjoining owners the right of redemption, under certain conditions, when property owned in common or rural or urban lands are sold. According to Article 1623, this right of redemption is exercisable with 30 days from written notice to the prospective redemptioner by the vendor. In *Sonejero v. Court of Appeals,*[117] JBL pointed out two things in explanation of this provision: first, that the written notice is indispensable and mandatory; and second, that the article does not prescribe any particular form or any distinctive method of notice. In connection with the first, it was held that mere knowledge of the sale, acquired by the redemptioner in some other manner than through notice from the vendor does not satisfy the statute; and as to the second, the decision stated that the furnishing by the vendor to the redemptioner of a copy of the document of sale was sufficient compliance with the statutory mandate, and the 30-day period would then commence to run.

With regard to assignments of credits, Article 1625 provides:

> "Art. 1625. An assignment of a credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property."

Interpreting the meaning of the term "third person" here, JBL in *Mollers, Ltd. v. Sarile,*[118] explained that the debtor of the assigned credit is not a third person within the meaning of the article, because under Articles 1198 and 1527, both of which must be harmonized with 1625, the protection given to the debtor extends only up to his acquiring knowledge of the assignment. From the time of such knowledge, regardless of the manner in which it is obtained, the assignment is binding upon the debtor. Manresa is quoted to bolster the holding:

> "... refiriendo este solamente al *conocimiento* del deudor sin determinar el medio por el cual haya podido llegar a él, es evidente que *cualquiera que sea este medio,* siempre que el conocimiento del hecho de la cesión se de en el deudor, se está fuera del supesto legal, y, por lo tanto,

[117] G.R. No. 21812, April 29, 1966, 16 SCRA 775 (1966).
[118] G.R. Nos. 7038 & 7039, August 31, 1955.

no quedará libre el expresado deudor. De donde se deduce que no habiendose extinguido la obligación legalmente, es ineludible el pago." [119]

And, for good measure, Puig Peña,[120] too, is cited, to the same effect.

LEASE

With respect to useful improvements introduced by the leasee, the first paragraph of Article 1678 provides:

> "Article 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary."

In *Merced v. Archbishop of Manila*[121] JBL, interpreting this provision, explained that the lessee has a clear right to remove the useful improvement should the lessor refuse to pay one-half of their value at the termination of the lease. However, he continues, if notwithstanding the lessor's refusal, the lessee should fail to remove the improvements, the only legal conclusion possible is that the lessee has abandoned them, and the lessor may then deal with such improvements as he pleases.

The periodic terminability of a lease subsisting on a month-to-month basis was upheld and applied by the Supreme Court in *Cajucom v. Manila Remnant Co.*[122] The case is instructive because of the presence of some special circumstances: the lessor and the lessee had entered into a written agreement providing, in essence, that the leased premises were to be put up for sale through an agent, and that a specified portion of the purchase price would go to the lessor, and the rest would be given to the lessee in consideration fo the improvements introduced by her. The agreement further stipulated that until the property is actually sold, the lessee would pay a certain sum as rental. As it turned out, the agent resigned his commission because he could not find any buyer for the property, whereupon the lessor served upon the lessee a notice of eviction within 60 days. The lessee refused, contending that the agreement gave her the right to remain as lessee until the property was sold. The Supreme Court, through JBL,

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119 "...this referring solely to the knowledge of the debtor without regard to the means by which he acquired such knowledge, provided knowledge of the fact of cession is obtained by the debtor, he would be taken out of the contemplation of law, and thus the said debtor would not be freed from liability. From which it can be deduced that, the obligation not having been legally extinguished, payment cannot be evaded." (X Manresa, 5th ed., 411-412)

120 Puig Peña, *Derecho Civil, Tomo IV*, Vol. 1, 146.

121 G.R. No. 24614, August 17, 1967, 20 SCRA 1077 (1967).

122 G.R. No. 19376, August 31, 1966, 17 SCRA 1049 (1966).

rejected the contention, and held that the sense of the agreement was that the lessee's right of possession had only an *ad interim* character, i.e., until the agent was able to make the sale, or until it became clear that the property could not be sold. Since therefore the agreement became *functus officio* with the agent's resignation, the situation of the parties reverted to what it was before the agreement—which was that of a lessor and a lessee under a lease contract that had no definite period and was therefore terminable from month to month, inasmuch as the rental was payable on that basis.

Note should be taken, however, of the fact that at present the application of this rule of 1687 has been suspended in certain instances, by Batas Pambansa Blg. 25, approved on 10 April 1979.

TRANSPORTATION

The famous case of *Necesito v. Parás*[123] is more relevant to the law on transportation and therefore belongs, in accordance with the traditional classification, to Mercantile, rather than to Civil, law. And yet certain points there brought up have a distinctively civil law flavor and must be mentioned here. The case, as we know, arose out of a vehicular accident that befell a common carrier, causing death and injuries. The cause of the accident was a defective steering knukle—a factory defect. Citing the extraordinary or utmost diligence required of common carriers under Article 1755, the Court, through JBL, held the bus company liable on the finding that the periodic and purely visual examination by the company's agents of the part in question did not measure up to the degree of diligence required. The extraordinary degree of the diligence demanded of common carriers can be gleaned from these words of JBL in the decision:

"It may impracticable, as appellee argues, to require of carriers to test the strength of each and every part of its vehicles before each trip, but we are of the opinion that a due regard for the carrier's obligations toward the traveling public demands adequate periodical tests to determine the condition and strength of those vehicle portions the failure of which may endanger the safety of the passengers."

PARTNERSHIP

The case of *Commissioner of Internal Revenue v. Suter*[124] involved the interpretation of Article 1782 which provides: "Persons who are prohibited from giving each other any donation or advantage cannot enter into universal partnership."

This article is actually an exact reproduction of Article 1677 of the Spanish Code to the effect that: "No pueden contraer sociedad universal

[123] 104 Phil. 75 (1958).
[124] G.R. No. 25532, February 28, 1969, 27 SCRA 152 (1969).

entre sí las persones a quienes esta prohibido otorgarse recíprocamente alguna donación o ventaja."

Proving that romance, business, and law are not necessarily mutually repugnant elements, the only general partner and one of the two limited partners in the last mentioned case decided that they wanted to confederate with each other not only in a commercial partnership but also in a conjugal partnership. And so, get married they did, with the other limited partner — realizing that three is a crowd — very gallantly unloading his share in favor of the newlyweds. The petitioner Commissioner — perhaps believing that though he could tax a business, he could not tax love — insisted that the partnership was dissolved by the marriage of the partners, invoking the interdiction of the old Article 1677. Not so, decreed JBL, thereby revealing himself sympathetic to emotional involvements of this sort. JBL — levity aside — pointed out that the partnership here was a particular partnership where the partners have contributed fixed sums and the prohibition in 1677 (now 1782) extended only to general partnerships. For the purpose, he quotes Castan: "Los cónyuges, según esto (i.e. 1677) no pueden celebrar entre sí el contrato de sociedad universal, pero ó podrán constituir sociedad particular? Aunque el punto ha sido muy debatido, nos inclinamos a la tesis permisiva de los contratos de sociedad particular entre esposos, ya que ningún precepto de nuestro Codigo los prohibe, y hay que estar a lo norma general según la que toda persona es capaz para contratar mientras no sea declarado incapaz por la ley."[125] And so it was that JBL refused to consider marriage a debilitating factor in human affairs.

The case of *Goquiolay v. Sycip* [v26] stresses the personal element in the contract of partnership. In that case, one of the partners had been appointed sole managing partner in the articles of partnership. Moreover, there was a stipulation that in the event of the death of any of the partners, the partnership would continue, with the heirs of the deceased partner substituting for him. It happened that the managing partner died and the issue that arose, *inter alia,* was whether his heir (the widow) succeeded him in the sole management of the partnership. The Court, through JBL, held that she did not, explaining that the grant of exclusive management to the deceased partner was premised upon trust and confidence and thus was a mere personal right that terminated upon his demise.

Magdusa v. Albaran[127] reiterates the very basic rule in partnership that "a partner's share can not be returned without first dissolving and

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125 "The spouses, according to Article 1677, cannot enter into a contract of universal partnership between themselves, but may they enter into a particular partnership? Although the matter has been much debated, we incline towards the permissive view, because there is no codal provision that prohibits it and the general rule rule is that persons are qualified to contract as long as they are not declared incapacitated by law."

126 108 Phil. 947 (1960).

127 G.R. No. 17526, June 30, 1962, 5 SCRA 511 (1962).

liquidating the partnership,[128] for the return is dependent on the discharge of the creditors, whose claims enjoy preference over those of the partners . . ."

AGENCY

The character of the agent's possession of goods received in consequence of the agency was defined in *Guzman v. Court of Appeals*,[129] where a travelling sales agent misappropriated money received by him as payment for the goods sold. Holding that a conviction for qualified theft was improper, JBL, speaking for the Court, explained that an agent does not have merely a material or physical possession of the goods. "While it is true that appellant received the proceeds of his wine sales as travelling salesman for the complainant, for and in behalf of the latter as his principal, and that possession of the agent is possession of the principal, an agent, unlike a servant or messenger, has both the *physical* and *juridical* possession of the goods received in agency, or the proceeds thereof, which take the place of the goods after their sale by the agent. His duty to turn over the proceeds of the agency depends upon his discharge, as well as the result of the accounting between him and the principal; and he may set up his right of possession as against that of the principal until the agency is terminated."

Drawing a distinction between the possession by a bank teller of money received for deposit, as in the case of *People v. Locson*[130] and possession by an agent, JBL continued: "In the former case (i.e., the bank teller) payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault."[131]

Consequently, the Supreme Court acquitted the agent of the charge of qualified theft, without prejudice to the filing of a criminal complaint for estafa.

GUARANTY AND SURETYSHIP

On the basis of the first paragraph of Article 2055, providing that "a guaranty is not presumed; it must be express and cannot extend to more than what is stipulated therein," two JBL *ponencias, Traders Insur-*

128 Citing *Po v. Lim*, 44 Phil. 177 (1923).
129 99 Phil. 703 (1956).
130 57 Phil. 325 (1932).
131 Citing Article 1914, *Civil Code*.

ance v. Dy[132] and *Pastoral v. Mutual Security*[133] confirm the rule laid down earlier in *El Vencedor v. Canlas*[134] penned by Mr. Justice Ostrand, that a guaranty or suretyship operates only prospectively, not retroactively, unless a contrary intent is clearly shown. Thus, in *Traders,* it was held that the surety could not be held liable for debts incurred by the principal before the suretyship agreement was entered into. Citing 2055, JBL observed that "to apply the payments made by the principal debtor to the obligations he contracted prior to the guaranty is, in effect, to make the surety answer for debts incurred outside of the guaranteed period, and this cannot be done without the express consent of the guarantor."

The limitation imposed by the first paragraph of Article 2055 should, however, be read together with the second paragraph of the same article, which provides: "If it (i.e., the guaranty) be simple or indefinite, it shall comprise not only the principal obligation, but also all its accessories . . ." In *NAMARCO v. Marquez,*[135] where the surety had bound itself solidarily with the principal in an obligation with a specified rate of interest, the Supreme Court, speaking through JBL, held that the surety could be required to pay not only the outstanding principal bnt also the interest due because the latter falls within the meaning of the term "accessories," for which the law also holds the surety liable. The holding is actually based on a presumption—that unless the guarantor explicitly restricts his obligation to the principal solely, he is deemed to be conformable to the provisions of the article. A passage from Manresa, on Article 1837 of the Spanish Code of which our Article 2055 is but a reproduction, is quoted favorably by JBL: "Cierto es que con ello [i.e., Article 1827, par. 2 of the Spanish Codes, which is the counterpart of our Article 2055, par. 2] se amplian los términos de la fianza a más de los límites de la obligación principal, objeto y motivo de aquella, pero esto depende de los actos del fiador, pues pudiendo este precisar y determinar al constituir la fianza los límites de la misma, restringiendo su responsabilidad única y exclusivamente a los términos estrictos de la obligación principal si no lo hizo así dejando de utilizar esa restricción, potestiva en el, debe presumirse que quiso quedar obligado en la forma amplia que en el artículo se establece."[136]

Article 2056 imposes upon the person who is bound to furnish a guarantor the duty to present one with certain specified qualities—three in number. The provision reads: "One who is obliged to furnish a guarantor shall present a person who possesses integrity, capacity to bind himself,

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132 104 Phil. 806 (1958).
133 G.R. No. 20469, August 31, 1965, 14 SCRA 1011 (1965).
134 44 Phil. 699 (1923).
135 G.R. No. 25553, January 31, 1969, 26 SCRA 722 (1969).
136 "It is clear that Article 1827 extends the terms of a guaranty beyond those of the principal obligation, but the guarantor upon assuming the guaranty is free to define and delimit the terms of said guaranty and confine his liability strictly to the amount of the principal obligation, but if he does not avail himself of this right, it is to be presumed that he consents to be bound in accordance with the provisions of this article."

and sufficient property to answer for the obligation which he guarantees." In *Estate of Hemady v. Luzon Surety*[137] JBL explains the nature and extent of the article's requirements: "It will be noted . . . that the law requires these qualities to be present only at the time of the perfection of the contract of guaranty. It is self-evident that once the contract has become perfected and binding the supervening incapacity of the guarantor would not operate to exonerate him of the eventual liability he has contracted." JBL then cites Article 2057 as confirmatory of the preceding statement, to wit:

> "Article 2057. If the guarantor should be convicted in the first instance of a crime involving dishonesty or should become insolvent, the creditor may demand another who has all the qualifications required in the preceding article. The case is excepted where the creditor has required and stipulatd that a specified person should be the guarantor."

JBL then continues: "From this article (2057) it should be immediately apparent that the supervening dishonesty of the guarantor (that is to say, the disappearance of his integrity after he has become bound) does *not* terminate the contract but merely entitles the creditor to demand a replacement of the guarantor. But the step remains *optional* in the creditor; it is his right, not his duty; he may waive it if he chooses, and hold the guarantor to his bargain."

Article 2071 enumerates seven cases where the guarantor, even before paying the creditor, may proceed against the principal debtor. The article provides:

> "Article 2071. The guarantor, even before having paid, may proceed against the principal debtor:
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> 1. When he is sued for the payment;
> 2. In case of insolvency of the public debtor;
> 3. When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period has expired;
> 4. When the debt has become demandable, by reason of the expiration of the period for payment;
> 5. After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer than ten years;
> 6. If there are reasonable grounds to fear that the principal debtor intends to abscond;
> 7. If the principal debtor is in imminent danger of becoming insolvent.
>
> In all these cases, the action of the guarantor is to obtain release of the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvancy of the debtor."

Note should be taken that demand by the guarantor upon the principal debtor, for payment, is not one of the remedies granted by this article

137 *Supra,* note 49.

to the guarantor, because the rule is, as explained by JBL in *General Indemnity v. Alvarez*[138] "an action by the guarantor against the principal debtor for payment, before the former has paid the creditor, is premature." This ruling was later reiterated by the Supreme Court, through Mr. Justice Teenhankee, in *Banzon v. Cruz*.[139]

What remedy then can the guarantor pursue, and against whom? These questions were raised and answered in *Manila Surety v. Almeda*.[140] In that case, the surety company demanded release from liability under the surety agreement on the ground that the principal debtor had been declared insolvent. The issue, therefore, was whether the insolvency of the principal debtor discharged the surety's liability. Adverting to the provisions of Article 2071, the Supreme Court, speaking through JBL, pointed out that the guarantor's action for release can only be exercised against the principal debtor and not against the debtor, as is clear from the opening clause of the article. (The guarantor . . . may proceed against the principal debtor), JBL states: "The juridical rule grants no cause of action against the creditor for a release of the guaranty, before payment of the credit, for a plain reason: the creditor is not compellable to release the guaranty (which is a property right) against his will. For the release of the guarantor imports an extinction of his obligation to the creditor; it connotes, therefore, either a remission or a novation by subrogation, and either operation requires the creditor's assent for its validity. *Especially should this be the case* where the principal debtor has become insolvent, for the purpose of a guaranty is exactly to protect the creditor against such a contingency."

If the guarantor then cannot compel the creditor to release him in any of the instances enumerated in Article 2071, JBL himself asks the question: "In what manner, then, can the article operate?" In the following manner: "Where the debtor cannot make full payment, the release of the guarantor can only be obtained with the assent of the creditor, by persuading the latter to accept an equally safe security, either another suitable guaranty or else a pledge or mortgage. Absent the creditor's consent, the principal debtor may only proceed to protect the demanding guarantee by a counterbond or counterguaranty."

One last point on guaranty: the rule on *strictissimi juris* in contracts of guaranty, in accordance with which a guaranty should be strictly construed and cannot be extended beyond its express terms (thus making guarantors "favorites of the law"), should not, according to JBL, be considered applicable to professional or compensated guarantors. In his concurring opinion in *Philippine Surety v. Royal Oil Products*[141] JBL invited attention to "the necessity of revising previous ideas on the matter" and expressed the belief that "it is time to abandon the application of the

[138] 100 Phil. 1059 (1957).
[139] G.R. No. 31789, June 29, 1972, 45 SCRA 475 (1972).
[140] G.R. No. 27249, July 31, 1970, 34 SCRA 136 (1970).

strictissimi juris rule to contracts of professional or compensated guarantors, as it is now being done by many courts of the United States." JBL then explains his position, thus: "The rule of strict interpretation of contracts of guaranty was born out of the sympathy elicted by the situation of a gratuitous guarantor who ran all the risks and received no advantages whatever from his guaranty, which was almost always given out of friendship.

"But the rule loses all *raison d'être* in the case of guarantors that make a profession or trade out of their practice of undertaking to answer for the debt or default of others for a price, and who, in addition, protect themselves against all loss by requiring counterbonds. In these cases, the guarantors practically run no risk, because the amounts they may be required to pay are later collected from the counter-guarantors, who are also made responsible for the corresponding premiums. Surely the law could not have intended that these guarantors should receive the same treatment as that accorded to the lone individual who answers gratuitously for the debt of another, at no profit to himself."

This concurrence was to become the holding of a unanimous Supreme Court in numerous subsequent cases — some of them penned by JBL himself, such as *Atkins Kroll v. Reyes*[142]; *Pastoral v. Mutual Security*,[143] and *NAMARCO v. Marquez*;[144] and others penned by other members of the Supreme Court. JBL's concurrence in *Philippine Surety* is, to my mind, still the best treatment of the matter.

PLEDGE

The case of *Manila Surety v. Velayo*[145] involved a claim by a pledgee for the balance of the debt still left unpaid after the sale of property pledged. The facts from which the case arose were, briefly, as follows: the defendant entered into a surety agreement with the plaintiff in the amount of ₱2,800. By way of pledge, the defendant delivered some pieces of jewelry to the plaintiff. It happened that the plaintiff, as surety, was subsequently compelled to pay the creditor the full amount of ₱2,800, and, failing to recoup that amount from the defendant as principal debtor, sold the pledged jewelry, realizing therefrom the minuscule amount of ₱235.00, whereupon the plaintiff lodged a complaint against the defendant for the recovery of the balance. Overturning the judgment of the lower court which allowed such recovery, the Supreme Court, speaking through JBL, cited the mandatory provisions of Article 2115, to wit:

> "Art. 2115. The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to

141 102 Phil. 326 (1957).
142 105 Phil. 640 (1959).
143 *Supra*, note 133.
144 *Supra*, note 136.
145 G.R. No. 21069, October 26, 1967, 21 SCRA 515 (1967).

> the amount of the principal obligation, interest and expenses in the proper case. If the price of the sale is more than said amount, the debtor shall not be entitled to the excess, unless it is otherwise agreed. If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary."

Characterizing said provision as *imperative, clear* and *unmistakable,* the judgment pointed out that "by electing to sell the articles pledged, instead of suing on the principal obligation, the creditor has waived any other remedy, and must abide by the results of the sale." "No deficiency is recoverable," the Court concluded. The holding, moreover, corrected a misapprehension on the part of the lower court, which assumed that the extinctive effect of the sale of the pledged chattel is derived from stipulation. This is not so, stated the Supreme Court, because the clear mandate of 2115 is to bar recovery of the deficiency, *even if there were a contrary stipulation between the parties.*

In fine, the creditor-pledgee had to be content with his ₱235.00, which was less than one-tenth of what the pledgor owed him. This ruling should be a warning to all pledgees, to appraise carefully the value of the thing pledged before selling it, in order to avoid the pathetic situation in which the pledgee here found itself, with most of its credit vanished like smoke in the air or, more aptly, lost like Shylock's ducats and the debtor as jubilant as the merchant of Venice.

MORTGAGE

The case of *Diego v. Fernando*[146] is important because it clarifies the nature of a mortgage and distinguishes it from antichresis. A deed of mortgage was there executed over two parcels of land to secure an indebtedness of ₱2,000 which was stated to be without interest. After the execution of the deed, possession of the mortgaged properties was turned over to the mortgagee. After four years, the debtor-mortgagor having failed to pay the debt, the mortgagee sued for foreclosure. It should be mentioned, however, that in the meantime the mortgagee had been receiving the harvests from the mortgaged lands. The issue was whether the contract was one of mortgage or of antichresis — the creditor claiming that it was a mortgage, and the debtor claiming that it was really an antichresis and therefore the value of the harvests received by the creditor should be deducted from the amount due.

The Supreme Court, speaking through JBL, characterized the agreement as one of mortgage, explaining that "it is not an essential requisite of a mortgage that possession of the mortgaged premises be retained by the mortgagor[147]. To be antichresis, it must be expressly agreed between creditor and debtor that the former, having been given possession of the

[146] 109 Phil. 143 (1960).
[147] Citing *Legaspi v. Celestial,* 66 Phil. 372 (1938).

properties given as security, is to apply their fruits to the payment of the interest, if owing, and thereafter to the principal of his credit; so that if a contract of loan with security does not stipulate the payment of interest but provides for the delivery to the creditor by the debtor of the property given as security, in order that the latter may gather its fruits, without stating that said fruits are to be applied to the payment of interest, if any, and afterwards that of the principal, the contract is a mortgage and not antichresis."

The true position of appellee (i.e. the creditor) herein, continued JBL, was that of mortgagee in a "mortgage in possession" as that term is understood in American equity jurisprudence, that is "one who has lawfully acquired actual or constructive possession of the premise mortgaged to him, standing upon his rights as mortgagee and not claiming under another title, for the purpose of enforcing his security upon such property or *making its income help to pay his debt*".[148]

It does not follow, it should be noted, from the fact that the agreement was one of mortgage that the creditor-Mortgagee is entitled to appropriate to himself the fruits of the property. What should be done, explained JBL, is that the creditor, having received the fruits, should deduct their value from the loan obtained.

An observation should here be made: there is a kind of agreement which is, as observed by the lower court in *Diego*, common in the provinces, whereby, by virtue of the contract of "sanglaan" or "prenda" or some other term of similar import, the understanding is that the creditor takes possession of the premises and collects and appropriates the fruits until the debt is paid, without regard to their value and without applying any part of them to principal. This, in fact, must have been on the debtor's mind in *Diego* when he went to such great lengths to try to characterize the agreement as one of antichresis, in order, so it seemed to him, to enable him to deduct the fruits from the principal — with the mistaken notion, apparently, that if it were a mortgage, the creditor, in accordance with custom, would not be bound to apply the fruits to the principal.

Now this kind of "sanglaan" or "prenda" as it is practiced is neither the mortgage nor the antichresis governed by the Civil Code. Not a mortgage because the fruits received are not accounted for by the creditor. Neither an antichresis because no matter what the value of the fruits is, the creditor retains them without the principal of the loan being diminished, which is violative of Article 2138, to wit:

> "Art. 2138. The contracting parties may stipulate that the interest upon the debt be compensated with the fruits of the property which is the object of the antichresis, provided that if the value of the fruits should exceed the amount of interest allowed by the laws against usury, the excess shall be applied to the principal."

[148] Citing *Diaz v. De Mendezona*, 48 Phil. 666, (1926); 27 Cyc. 1237.

It would seem that a good number of such "sanglaans", as they are practiced at present, run afoul of the usury laws. But the custom persists. And that raises questions of policy for the codifier. Must we insist on provision of law which do not accord with custom? Custom is many times stronger than law. When the law, because it differs from custom, is, to use Hamlet's words, "more honoured in the breach than the observance," should it not yield to custom? And more fundamentally, to what extent should custom be the law's arbiter?

Guanzon v. Argel[149] reminds us of the injunction against *pactum commissorium,* which is contained in Article 2088. "The only right of a mortgagee in case of non-payment of a debt secured by mortgage would be to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness. The mortgagor's default does not operate to vest in the mortgagee the ownership of the encumbered property, for any such effect is against public policy, as enunciated by the Civil Code."

Clarifying the rule in Article 2125, which provides, *inter alia.* that "... it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties." JBL, speaking for the Supreme Court, held in *Samanilla v. Cajucom*[150] that "... a mortgage, whether registered or not, is binding between the parties, registration being necessary only to make the same valid against third persons. In other words, registration only operates as a notice of the mortgage to others, but neither adds to its validity nor converts an invalid mortgage into a valid one between the parties."

In connection with Article 2126 and 2129[151], the case of *Rodriguez v. Reyes*[152], defines the extent of the liability of the mortgaged property's owner when he is not the debtor in the obligation secured by the mortgage. In that case, the respondent had purchased at public auction certain parcels of land subject-matter of partition proceedings among co-heirs. The parcels happened to be mortgaged to the DBP at the time of respondent's purchase, to secure an obligation of the co-heirs themselves. The vendors then claimed that the respondent, having bought the property, should assume payment of the indebtedness to DBP. The Supreme Court brushed aside the claim, explaining, through JBL: "The mere fact that the pur-

149 G.R. No. 27706, June 16, 1970, 33 SCRA 474 (1970).

150 *Supra* at note 68.

151 Article 2126: The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

Article 2129: The creditor may claim from a third person in possession of the mortgaged property, the payment of the part of the credit secured by the property which said third person possesses, in the terms and with the formalities which the law establishes.

chaser of an *immovable has notice* that the acquired realty is encumbered with a mortgage does not render him liable for the payment of the debt guaranteed by the mortgage, in the absence of stipulation or condition that he is to assume payment of the mortgage debt. The reason is plain: the mortgage is merely an encumbrance on the property, entitling the mortgagee to have the property foreclosed; i.e., sold, in case the principal obligor does not pay the mortgage debt, and apply the proceeds of the sale to the satisfaction of his credit. Mortgage is merely an accessory undertaking for the convenience and security of the mortgage creditor, and exists independently of the obligation to pay the debt secured by it.

"By buying the (mortgaged) property, . . . respondent only undertook either to pay or else allow the land's being sold if the mortgage creditor could not or did not obtain payment from the principal debtor when the debt matured. Nothing else. Certainly the buyer did not obligate himself to replace the debtor in the principal obligation, and he could not do so in law without the creditor's consent."

The foregoing rule was reiterated in the case of *Gaboya v. Cui*[153] also penned by JBL.

CONCLUSION

And now, we must conclude. For me, after the labyrinthine trip through the maze of 62 volumes (not to mention the loose-leaf collections of unreported cases), and finally finding myself out in the open space again, a little giddy, vision a little impaired, I felt the intense thrill of having picked up some precious nuggets along the dusty caverns, glistening nuggets that more than made up for the ache in bone and muscle.

Or, to change the imagery, I felt like a man coming home at dusk (having espied the ploughman homeward plodding his weary way, leaving the world to darkness and to me), having sat the livelong day at the feet of a master who imparted more wisdom than I could absorb.

In closing, I should now like to share with you, very briefly, certain impressions I have gotten from this *corpus* of JBL's decisions: First, a going back to principles, a seeing of what the law is about, and what it is for; Second, a return to the historical sources (the ancient law of Rome, Justinian, the rich tapestry of Spanish law, or the law of Napoleon) to give us an insight into the law's development and the directions which the law has taken, in order to inform ourselves of the reason for the law, the *ratio legis,* and thus enable ourselves to apply it faithfully to its intent; Third, an emphasis on the logical processes, because logic serves the law as handmaid — to explain, and reveal, and clarify; Fourth, a looking to

[152] G.R. No. 22958, January 30, 1971, 37 SCRA 195 (1971).
[153] *Supra,* note 2.

the justice and equities of the case; and Fifth, a discovering of the social dimension in law, without which the law is frequently not very meaningful.

JBL's decisions tell us many things; they have certainly taught me much. But more important even than their legal and technical wisdom, the man who was their author tells us that the law need not — indeed, *should* not — be seen as a pile of dry-as-dust provisions, sterile and academic; or a set of mechanical rules; or a jigsaw puzzle to be pieced out as a mental exercise. Law serves man in society.

But there are higher goals even. In 1972, Justice JBL addressed the graduates of the UP College of Law as their commencement speaker. It was the same year he was honored by the two schools which count him among their most distinguished alumni: the University of the Philippines, which granted him a doctorate in law, *honoris causa,* and the Ateneo de Manila, which conferred upon him the honorary degree of Doctor of Humane Letters.

In that commencement address, Justice JBL imparted the following message to the young graduates, and it may well be considered one of the major supporting pillars of his decisions: "(Since) lawyers embody the constant devotion to the cause of justice — to give every one his due. *'Jus est contans et perpetua voluntas jus suum cuique tribuere, . . .* I shall conclude by pleading . . . that (lawyers) . . . indelibly engrave in their hearts a maxim we have inherited from the great lawyers of antiquity — *'Non omne quod licet honestum est.'* Not everything that is permitted is honorable. Do not equate law, which is but the tool, with justice, that is the ultimate goal."

And for the attainment of that distant and difficult goal, Justice JBL, most fittingly, at the end of that ceremony many years ago, as evening descended and the light died slowly beyond the hills, called down upon all the assistance of the Almighty.