THE TREND TOWARD EQUITY VERSUS POSITIVE LAW IN PHILIPPINE JURISPRUDENCE*

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The intent of this lecture is to incite discussion on relatively recent Supreme Court decisions that see a growing preponderance in the application of equity in substantive law and perhaps define what may be considered the Philippine rule in the light of this development. The relevant issue would probably be whether our courts have remained faithful to, or have at least approximated, the settled principles in the application of equity; or whether, in fact, they are pioneering into a new era in equity jurisprudence, which is perhaps one of those that Director Flerida Ruth P. Romero has termed, in her inaugural talk on the occasion of the induction of the officers of the Philippine Association of Law Professors on 28 August 1982, as resulting in juridical "mutants."

The application of equity in almost all jurisprudential systems is recognized, although it is conceded that the extent of its relevance in each jurisdiction can come in varying degrees.

In legal connotation, equity has been understood in various concepts.

Equity has broadly been defined as justice according to natural law and right. Unlike positive law, it is not subject to the stringencies or technicalities, and to the restrictive and inflexible rules, by which courts of law are ordinarily circumscribed.

History teaches us that at least as far back as the Greek and the Roman philosophers, thinking men had realized that the literal application of legal rules of conduct results in certain cases, not in justice but in actual injustice; for while the purpose of the law is ultimate justice and an equal rule for everyone, circumstances in specific situations can make the application of the strict rule bring results and consequences that fair minded men find difficult to accept; hence, the vulgar saying that "circumstances alter cases"; or as the Romans put it, *"summum jus, summa injuria."*

Aristotle defined the nature of equity (Greek *epiqueia*) to be a "correction of the law where, by reason of its universality, it is deficient"; and I would like to stress the last portion of the definition, which clearly

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postulates that the application of equity requires the inadequacy of the remedy available under the positive legal rule. It is thus a cardinal maxim of courts applying equity rules that "equity follows the law"—that it is not the function of equity to assist in creating causes of action where none are claimed or asserted, nor can it *create* rights. Its mission is limited to determining what rights the parties have, and whether or in what manner it is just and proper to enforce said rights.[1]

The term "equity" has also been employed to designate the jurisdiction and system of rules, principles, practice and remedies developed by the English Courts of Chancery, in those cases that the original Courts of Law (King's Bench, Queen's Bench, Common Pleas and King's Exchequer) could not, because of technical rules, provide adequate remedy that would render complete justice to a party with a meritorious case. Originally, the equity court presided by the King's Chancellor (at first usually an ecclesiastic versed in Philosophy and Canon Law), was a court of conscience without set conditions, and only later developed its own peculiar systems, rules and remedies, evolving from the liberal to the strict. On the other hand, as noted by Buckland and McNair in the introduction to their book on Roman Law and Common Law,[2] the evolution of extra statutory remedies in Roman Law proceeded on an opposite course, from strict, abiding with the conditions prescribed by the Praetor's Edict, into a discretionary power to grant relief according to the rule, not of *equitas* (fairness), but of *benignitas* (benevolence), to the detriment of certainty in the legal principles.

The Spanish Civil Code of 1899, as extended to the Philippines, only made reference to equity in two of its articles: in Article 1154, where the judge is empowered to equitably modify a penal clause in case of partial or irregular performance, and in Article 1690, providing that where designation of profits and losses has been entrusted by the partners to a third party, the award can be assailed if the same is clearly inequitable. It should cause no surprise, therefore, that when we scan the course of Philippine jurisprudence, we notice that it is only from and after American sovereignty was implanted in these Islands that the term "equity" appears commonly used by our Supreme Court, and it was employed in reference to remedies obtainable under chancery practice. The early decisions assert that the Philippine Courts were courts not only of law, but also of equity.[3] These pronouncements were made to justify the granting of new remedies like specific performance,[4] injunction,[5] mutual mistake,[6] constructive trusts,[7]

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1 Tracy Development Co. v. Becker, 212 N.Y. 488, 106 N.E. 330 (1914).

2 BUCKLAND & MCNAIR, ROMAN LAW AND COMMON LAW; A COMPARISON IN OUTLINE (1952), pp. XVIII-XIX.

3 U.S. v. Tamparong, 31 Phil. 321 (1915); Rustia v. Franco, 41 Phil. 280 (1920); Asiain v. Jalandoni, 45 Phil. 296 (1923).

4 Seva v. Alfred Berwin & Co., 48 Phil. 580 (1926).

5 Rustia v. Franco, *supra*.

6 Asiain v. Jalandoni, *supra*.

7 Gayondato v. Treasurer of the Philippine Islands, 49 Phil. 244 (1926).

reformation of contracts,[8] estoppel by silence or laches,[9] etc., that were unknown in the Spanish law but were regulated or recognized by the Code of Civil Procedure[10] or by the rules of Anglo-Saxon equity practice.

These early decisions of the Philippine Supreme Court strictly adhered to the maxim that "equity follows the law," i.e., that equitable considerations of natural or moral law and justice warranted a remedy only in those cases where the positive law would not be violated. Typical of this attitude was the decision in the leading case of *Severino v. Severino*.[11] There, faced by a final cadastral decree in the name of Guillermo Severino, covering lands held by him as administrator of the owner, Melecio Severino, after the latter's death, and to the prejudice of Melecio's infant daughter, Fabiola Severino, the Supreme Tribunal refused, despite the fraud, to review or reopen the cadastral case, and contented itself with a decree *in personam* compelling Guillermo Severino to execute a deed of reconveyance to the minor Fabiola Severino. In its decision the Highest Court stated:

> In the United States courts have even gone so far in the exercise of their equity jurisdiction as to set aside final decrees after the expiration of the statutory period of limitation for the reopening of such decrees (Baart vs. Martin, 99 Minn., 197). But, considering that *equity follows the law* and that our statutes expressly prohibit the reopening of a decree after one year from the date of its entry, this practice would probably be out of the question here, especially so as the ends of justice may be attained by other equally effective, and less objectionable means. (Emphasis added.)[12]

The *Severino* case was the first example of an equitable decree of reconveyance which, followed by numerous other cases since 1923, has become a well established remedy in our Land Registration practice. But the essential point lies in the Court's explicit assertion that "equity follows the law"; i.e., that it is a mere complement for the attainment of justice, and not a legislative power that can supercede a statute, despite the equitable maxim that "equity will not suffer a wrong to be without a remedy."[13] And the reason is that, as held by the Supreme Court in *Labayen v. Talisay-Silay Milling Co.*[14] and *Castro v. Longa*:[15]

> It is elemental that the law requires parties to do what they have agreed to do. If a party charges himself with an obligation possible to be performed, he must abide by it unless performance is rendered impossible by the Act of God, the law, or the other party. A showing of mere

[8] Tolentino v. Gonzalez SyChiam, 50 Phil. 558(1927).
[9] Gabriel v. Baens, 56 Phil. 314 (1931).
[10] Act No. 190 (1901) of the Philippine Commission.
[11] 44 Phil. 343 (1923).
[12] *Id.* at 355.
[13] Estrellado v. Martinez, 48 Phil. 256 (1925).
[14] 52 Phil. 440, 443 (1928).
[15] 89 Phil. 581, 591 (1951).

inconvenience, unexpected impediments or increased expenses is not enough. Equity cannot relieve from bad bargains simply because they are such.

The rule then seems to be that where conflict situations are well defined and capable of being resolved by the application of legal principles, the latter must not be permitted to be overriden by or unsettled in equity. It is in this context that Article 10 of the Civil Code of the Philippines should be understood, when it expresses that: "In case of doubt in the interpretation and application of laws, it is to be presumed that the law-making body intended right and justice to prevail." *Doubt* in this article does not mean every uncertainty that may arise upon a first reading of a legal provision; it is an uncertainty that persists after thorough consideration not only of one principle but of all the statutory rules and provisions taken together as parts of an organic system; a doubt that remains after exhaustive resort to all accepted precepts of statutory construction, and after thorough inquiry into the legislative policy that the applicable laws seek to subserve. Hence, equitable principles must remain subordinate to positive law, and not be allowed to subvert it, nor do they give to the Courts authority to make it possible to do so.[16] It is the sworn duty of the judge to apply the law without fear or favor—never to tamper with it according to the judge's personal inclination.[17] For the Courts are duty bound to interpret and apply laws regardless of whether or not they are wise and salutary.[18]

Let us consider some of the latest final decisions of the Supreme Court, and study how closely they have hewed to the principles discussed.

Carbonell v. Court of Appeals and Infante.[19] In this case, Jose Poncio, the owner of a piece of registered land, agreed to sell it to Carbonell in a private document. Respondent Infante later offered Poncio a higher price for the lot, and Poncio executed a notarial deed of sale in her favor. Having found that the second buyer had begun to fence the disputed lot, Carbonell recorded an adverse claim with the Register of Deeds, several days before Infante (the second buyer) registered the sale in her favor. Despite the adverse claim, Infante went ahead, took possession and covered the lot with garden soil and built a house. The Supreme Court declared her a buyer in *bad faith* and declared Carbonell entitled to the lot. However, *as a matter of equity,* the Court declared the possessor in bad faith entitled to remove the improvements unless the lawful possessor refunded the amount of the useful expenditures, applying by analogy the provisions of Article 549 of the Civil Code on luxury expenditures.

Article 549. ... The expenses incurred in improvements for pure luxury or mere pleasure shall not be refunded to the possessor in bad

[16] 27 AM. JUR. 2d, Equity, 645 (1966).
[17] Go v. Anti-Chinese League, 84 Phil. 468 (1949).
[18] Quintos v. Lacson, 97 Phil. 290 (1955).
[19] G.R. No. 29972, January 26, 1976, 69 SCRA 99 (1976).

faith; but he may remove the objects for which such expenses have been incurred, provided that the thing suffers no injury thereby. and that the lawful possessor does not prefer to retain them by paying the value they may have at the time he enters into possession.

The ruling appears to have ignored altogether the express provisions of Article 449 of the Code that explicitly states that one who builds, plants or sows *in bad faith* on the land of another loses what is built, planted or sown *without right to indemity*. There being an express statutory provision applicable, resort to equity was unwarranted, for it directly contradicted the policy of the law that a possessor in bad faith should not be allowed to improve the owner out of his property. Here equity was allowed to override the law instead of following it.

Legarda Hermanos v. Saldaña.[20] In two separate contracts for sale of two subdivision lots to the same buyer, at ₱1,500.00 per lot, the buyer, after paying ₱1,682.28 on account of both (₱841.14 on each), defaulted on both contracts. The seller's suit for resolution of both contracts was rejected and because the partial payments on *both* lots (₱1,682.28) covered the price of one lot, the seller was ordered "in the interest of justice and equity" to execute one absolute deed of sale to cover one lot, relying on Article 1234 of the Civil Code that "if the obligation has been substantially performed in good faith the obligor may recover as if there had been strict and complete fulfillment, less damages suffered by the obligee." No doubt there have been abusive practices by subdivision sellers, but was a payment of ₱814.14 on each lot a substantial performance on a price of ₱1,500.00? And did equity authorize ignoring the specific terms of a sale of *two* lots, and its *novation* into a contract for *only one* lot, accumulating all the payments on account of two lots into payments on account of one lot? Did equity warrant ignoring or altering the terms of the contract which is the law between the parties? If the buyer was entitled to equity, was not the seller entitled to equity also? The equitable maxim is that "equity is equality."

A third case is *J. M. Tuason & Co., Inc. v. Court of Appeals and De Leon.*[21] In this case De Leon purchased from J. M. Tuason & Co. a certain lot in Sta. Mesa Heights. At the time part of the lot was actually occupied by Ramona Rivera and that fact was known to De Leon. An ejectment suit was filed against Rivera but the suit was dismissed by the Court on the ground that Tuason had validly engaged to sell to Rivera the part he occupied. In view of this result, De Leon sued Tuason & Co. for damages, seeking to enforce the warranty against eviction implicit in the sale to him. The Supreme Court declared that since De Leon knew, when he bought the lot, that part of it was occupied by Rivera, De Leon was a purchaser *in bad faith* and was not entitled to enforce the warranty against eviction

[20] G.R. No. 26578, January 28, 1974, 55 SCRA 324 (1974).
[21] G.R. No. 41233, November 21, 1979, 94 SCRA 413 (1979).

or to recover damages. However, the Court said, "for justice and equity's sake, and in accordance with the salutary principle of non-enrichment at another's expense,"[22] Tuason & Co. was ordered to reimburse De Leon the value of the land sold to Rivera. The decision would appear to be correct, were it not for the fact that under Article 1554 of the Civil Code loss of the warranty for eviction requires that the buyer should have waived or renounced the right to the warranty, and no such waiver by De Leon appears on record.

> Article 1554. If the vendee has *renounced* the right to warranty in case of eviction, and eviction should take place, the vendor shall only pay the value which the thing sold had at the time of the eviction. Should the vendee *have made the waiver* with knowledge of the risks of eviction and assumed its consequences, the vendor shall not be liable. (Emphasis supplied.)

Under the terms of the article, mere knowledge by the buyer of the risk of eviction does not relieve the seller from the warranty, unless *the buyer waived or renounced* the warranty—and in the case it nowhere appears that any such waiver was made.

Not only this: if the buyer De Leon was in bad faith, the basic rule is that when both parties are in bad faith they should be treated as equally in good faith—and therefore, the seller should be liable on the warranty. Consequently, neither equity nor unjust enrichment entered in the transaction at all—if the Court had not misinterpreted Article 1554 of the Civil Code.

Caram v. Laureta[23] was another case of double sale. The owner of the land in question, Maros Mata, sold it first to Claro Laureta in 1945, and the latter entered into possession, without recording the sale in his favor. Two years later, the seller again sold the same land to Caram, through the latter's agent. Because Laureta (the first vendee) was already in possession, and Caram's agent knew it but made no inquiries, the Supreme Court, as in the Tuason & Co. case previously discussed, held Laureta entitled to priority because Caram was a buyer in bad faith and the registration of his sale was also done in bad faith.

So far, so good. The trouble is that the Court went further, and declared that the purchase by Caram *in bad faith,* was not merely voidable but *totally void,* reasoning as follows:

> Article 1544 specifically provides who shall be the owner in case of double sale of an immovable property. To give full effect to this provision the status of the two contracts must be determined and clarified. One contract must be declared valid so that one vendee may exercise all the rights of an owner, while the other contract must be *declared void to cut off all*

[22] *Id.* at 423.
[23] G.R. No. 28740, February 24, 1981, 103 SCRA 7 (1981).

> *rights* which may arise from said contract. Otherwise, Article 1544 will be meaningless. (Emphasis supplied.)[24]

It is most respectfully submitted that this paragraph of the decision cannot be legally justified. Article 1544 of the Civil Code (paragraphs 2 and 3) clearly specifies that in case of a double sale of immovable property, ownership shall belong to the acquirer in good faith who first records his purchase, or in default of registration, to the one who in good faith enters into possession. This statutory pronouncement is self-operating, and vests ownership without going into the validity or nullity of the other sale. Why then declare void and cut off all rights of the other buyer? As discussed in the preceding case of *Tuason & Co. v. De Leon,* the buyer *even in bad faith* preserves his right to enforce his warranty against eviction unless he renounced it with knowledge of the risk involved. Plainly, the ruling of the Supreme Court that the contract second in registration is void protects the party who sold his property twice—the vendor who precisely acted in bad faith throughout. Is this equity? Is it justice?

In connection with the last two cases, *Tuason v. De Leon* and *Caram v. Laureta,* a nice point of law crops up: does the mere knowledge of a prior sale of the same immovable indicate bad faith in the second buyer? Could he not have purchased the property in the understanding that the seller would reacquire the property from the preceding buyer? Let us not forget that a contract of sale can be executory—and that conveyance of title may, and usually does, come after the agreement to sell and buy. Ownership in our law does not pass by agreement but by delivery: *"non nudis pactis sed traditione dominia rerum transferentur."*

In matters of money payments, a case demanding attention is that of *New Pacific Timber & Supply Co. v. Judge Seneris.*[25] Here, the Judge had issued a writ of execution for ₱63,130.00 against the properties of the petitioner Timber Co., and pursuant thereto, the Sheriff levied upon certain personal property, and set a date for their sale. Before the date of the sale, the execution debtor paid the sheriff ₱60,000.00 in a cashier's check of the Equitable Bank and the balance in cash.

The execution creditor refused to accept the check, and the issue brought to the Supreme Court was whether the creditor had the right to refuse the cashier's check for ₱60,000.00 and whether there was a valid payment that discharged the execution and levy. The Court ruled that there was, and that the creditor had no right to refuse the check.

There is no denying that the law[26] prescribes that payment of debts in money shall be made in *currency that is legal tender* in the Philippines,

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[24] *Id.* at 19.
[25] G.R. No. 41764, December 29, 1980, 101 SCRA 686 (1980).
[26] CIVIL CODE, Art. 1249.

and that the delivery of mercantile documents (which could include checks) shall produce the effect of payment only when they have been cashed, or when they have been impaired through the creditor's fault. In other words, checks are not legal tender. Nevertheless, the Supreme Court held that the execution creditor should have accepted the cashier's certified check as cash, on the ground that the object of certifying a check, as regards parties, is to enable the payee to use it as cash; that certification of a check operates as an assignment of funds to the payee, citing Section 63 of the Central Bank Act[27] that a check *cleared and credited* to the account of the creditor shal be equivalent to delivery in cash.

The trouble with this reasoning is that it begs the question. Obviously, for a check to be *cleared and credited* to the account of the creditor, as required by Section 63 of the Central Bank Act, it is essential that the check be first accepted by the creditor and deposited by him in a bank. Otherwise, how can it be *cleared and credited* to the payee? But, the creditor here had refused to accept or deposit the check, so the check could not be an equivalent to delivery of cash. Was the creditor legally compellable to accept the check? In *Cuaycong v. Rius,*[28] the same Supreme Court categorically stated that a manager's check, like an ordinary check, *is not legal tender* in the Philippines.

It is true that the certification of a check operates in law as an *assignment* of a part of the funds to the creditor. But will the assignment so operate if the creditor does not agree to the assignment in his favor? It might, *if* the payee of the certified check had an account in his name in the certifying Bank; for then it could be plausibly argued that the certification operated by itself as a substantial delivery of cash to the creditor's account. But there was no showing that the creditor had an account in the Equitable Bank. Could he be compelled to open such an account in that bank? Clearly not, for a person cannot be coerced to loan money to a bank, and opening a checking account is in fact such a loan.

It is also true that, as stated in the opinion, it is an accepted practice in the business sector that a cashier's check is deemed as cash. But does it thereby become legal tender? Note that our Civil Code, Article 7, is to the effect that laws are repealed *only by subsequent laws,* and their violation or non-observance *shall not be excused* by disuse or *custom or practice to the contrary*. Hence, when Article 1249 demands that payment should be made in currency that is *legal tender in the Philippines,* mercantile usage or practice may not introduce exceptions to that rule. Only the law-making power can do that.

The doctrine of the decision in *New Pacific Timber & Supply Co. v. Judge Seneris,* just discussed, was recently reaffirmed in the case of *Leticia*

[27] Rep. Act No. 265 (1948).
[28] 86 Phil. 170 (1950).

Co v. Philippine National Bank,[29] upholding a tender of a redemption price in a manager's check, on the ground that objection to the payment by check was waived when in its letter of rejection, the creditor Bank did not invoke the objection. But the Supreme Court went beyond that justification by saying that "this Court has already sanctioned redemption by check" citing *Javellana v. Mirasol*[30] without adverting that in that Mirasol decision the same Court had expressly adverted that "it goes without saying that if he had seen fit to do so, the officer could have required payment to be made in lawful money."[31] The law as it stands now, would seem to be that the creditor still can insist on payment being made in legal tender, as provided by the Civil Code, but must insist on rejecting payment by check at the first opportunity.

Another aspect in this case of *Co v. Philippine National Bank* that deserves attention is its application of the unjust enrichment doctrine. Here, the PNB had extended credit for three and one third million pesos and foreclosed extrajudicially on its mortgage of the property of the debtor, and purchased it at the sheriff's sale on a bid of only ₱1,363,000.00. The debtor-mortgagor, thru its assignee, exercised the right of redemption within the year allowed by Act 3135 and tendered the amount of the bid made by the PNB. The latter refused to accept unless the total amount be satisfied. The Supreme Court, after finding that the amount tendered (₱1,363,000.00) was correct, nevertheless sustained the Bank saying:

> However, it is rather unconscionable that by a literal application of the law, and perhaps due to a mistake in the amount of bid made by the PNB—it is said that the property was worth more than ₱3 million—the bank would not get full satisfaction of its credit. It would be unjust enrichment on the part of the debtor-mortgagor in such an eventuality. Our sense of justice cannot permit such iniquitous advantage. It is but just and proper under Articles 27 and 242 of the Civil Code for the PNB to be paid the full amount of ₱3,366,546.42.[32]

We find it difficult to justify the Court's reasoning. In the first place, there was no competent evidence that the mortgaged property was worth more than the amount originally bid by PNB—the Court itself used the phrase *"it is said* that the property was worth ₱3 million," and in the absence of other competent evidence, the value of a piece of property is normally what it sells for. If it was really worth ₱3 million, why would the PNB bid only ₱1 and 1/3 million for it? Secondly, assuming that the true value was over three million, it is clear that the low bid by the PNB was due to its desire to maximize its profits, by making a low bid for the property mortgaged and later seeking satisfaction of the balance from other assets of the debtor. It is a very common practice of creditors. Should such

29 G.R. No. 51767, June 29, 1982, 114 SCRA 842 (1982).
30 40 Phil. 761 (1920).
31 *Id.* at 770.
32 Leticia Co v. Philippine National Bank, note 27 at 863-864.

greediness be protected? In other words, was the debtor's enrichment truly unjust?

The next decision to be discussed is that of *Overseas Bank v. Court of Appeals and Tapia.*[33] The Overseas Bank of Manila received from Tapia the sum of ₱100,000.00 as a time deposit, earning interest at 4% per annum. Subsequently, by a resolution of the Central Bank (subsequently declared by the Supreme Court to be in abuse of discretion), operations of the Overseas Bank were suspended from 1964 to 1981. The issue was whether under such suspension Overseas Bank continued to be liable for the payment of the stipulated interest. The Supreme Court ruled it was not liable for the interest accrued from and after the time its operations were suspended by the Central Bank, declaring that it is a matter of judicial notice that what enables a bank to pay stipulated interest on its deposits is that through its operations it is able to generate funds to cover the payment of such interest; that all who deposit money in banks are aware of such a simple economic proposition. Hence, the Court ruled, it should be considered as read into every contract of deposit with a bank that the obligation to pay interest on deposit ceases the moment the operation of the bank is completely suspended by the duly constituted authority, the Central Bank. And the Court added, "If such a situation can not, strictly speaking, be legally denominated as *force majeure,* . . . we hold it as a matter of simple equity that it be treated as such."[34]

It is argued against this decision that it ignores the fact that an obligation to pay money is an obligation to deliver a generic thing, and that in law *"genus nunquam perit,"* the kind never perishes; so that neither fortuitous event *nor force majeure* can excuse nonperformance of a generic obligation to pay money.[35]

Further, critics argue, supposing the bank owns surplus property, like say a picture collection, or acquires non-operational assets, like an unconditional donation, or legacy, or subsidy, why should it not, in equity and justice, realize upon such resources and apply them to the discharge of its obligations including payment of stipulated interest?

Moreover, why should banks be the only entities covered by the rule and not other debtors? If any debtor, individual or corporate, be likewise impeded from operating, as when all its assets are levied upon, or when an individual debtor is arrested or jailed and thus prevented from earning, should not such a debtor be likewise accorded a suspension of its obligation to pay interest?

[33] G.R. No. 49353, June 11, 1981, 105 SCRA 49 (1981).
[34] *Id.* at 58.
[35] Ramirez v. Court of Appeals, 98 Phil. 225 (1956); Gunge Corp. v. Elena Camenforte & Company, 91 Phil. 861 (1956).

The Supreme Court touched here the fringes of the *"rebus sic stantibus"* theory, posited by Bartolus in the Middle Ages, and lately revived by the *jus naturalists* like Windscheid and Oertmann, and condensed by the American Law Institute in Section 288 of the Restatement of the Law of Contracts (the so-called Doctrine of Frustration of Enterprise), that I discussed at length in a 1979 seminar on Civil Law Revisited III, here in the Law Center. The doctrine is expressed by the U.S. Supreme Court in *Texas Co. v. Hogarth Shipping Co.*[36] as follows:

> [W]here parties enter into a contract on the assumption that some particular thing essential to its performance will continue to exist and be available for the purpose, and neither agrees to be responsible for its continued existence and availability, the contract must be regarded as subject to an implied condition that if, before the time for performance and without default of either party, the particular thing ceases to exist, or be available for the purpose, the contract shall be dissolved and the parties excused from performing it.

In the *Overseas Bank* case, the Supreme Court was proceeding on the assumption that the parties to the loan took it for granted as a condition (but without saying so) that the Overseas Bank would continue to operate for the period of the loan; and that upon suspension of its operations the Bank was discharged of the duty to pay interest during the suspension.

We now come to the case of *Elcano v. Hill.*[37] You will recall that in said case, it was held that the father was civilly responsible under Article 2180, paragraph 2, of our Civil Code for the consequences of the negligence of his minor child, even though the latter had been emancipated by marriage prior to the tort committed by the child, so long as the child lived in the father's company. The ruling is evidently predicated on the literal terms of the second paragraph of Article 2180, reading as follows: "The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company."

Assuming that the ruling was technically correct, though there is considerable opinion to the contrary, it is curious that the conclusion of the decision was to the following effect:

> Accordingly, in Our considered view, Article 2180 applies to Atty. Hill, notwithstanding the emancipation by marriage of Reginald. However, inasmuch as it is evident that Reginald is now of age, *as a matter of equity*, the liability of Atty. Hill has become merely subsidiary to that of his son. (Emphasis supplied.)[38]

This conclusion of the Court is not only curious but downright anomalous: for it has been uniformly ruled that the liability of a parent or

[36] 256 U.S. 619, 629-630 (1920).
[37] G.R. No. 24803, May 26, 1977, 77 SCRA 98 (1977).
[38] *Id.* at 109.

employer under Article 2180 is principal and direct, not subsidiary.[39] It is based on the fact that the parent is himself negligent in the vigilance of his son, since the same Article 2180 in its last paragraph specifies that, "The responsibility treated in this article shall cease when the persons herein mentioned prove, that they observed all the diligence of a good father of a family to prevent damage."

Clearly then, the liability of the parent for the negligent acts of the son has a different and independent source from the son's liability. The latter answers for his own tortious acts; the parent responds for his own carelessness in the training or vigilance of the son. How then could the Court declare that the parent's liability became *subsidiary*, and not principal, just because the son subsequently became of age? The liability of the parent accrued as of the time the son committed his negligent act while still a minor, and his becoming of age later on, could in no way affect his parent's responsibility that had been previously set. Where does equity here come in? How can the Court amend the rule of the positive law through application of equity?

Manifestly, excessive reliance upon equity in solving legal problems possesses certain disadvantages: for one, legal principles become eroded and uncertain in their operation; for another, the application of equity depends on the individual sense of justice of the Courts and becomes variable according to the membership of the Tribunals. In the case of the Supreme Court, especially, it dilutes its essential mission of settling uncertainties of the law through its decisions, and makes difficult to foresee the direction of future awards. Every judgment on the basis of equity becomes an *ad hoc* adjudication, unusable for other cases, so that previous awards do not serve as a guide; a variability that adversely affects the people's quest for justice, since situations basically similar can lead to different solutions. Hence, equity as a legal tool demands circumspection, and realization of the fact that, unless carefully controlled, its tendency is to make the Judiciary assume legislative power.

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[39] Cangco v. Manila Railroad Co., 38 Phil. 768 (1918); Standard Vacuum Oil Co. v. Tan, 107 Phil. 109 (1960); Cuadra v. Monfort, G.R. No. 24101, September 30, 1970, 35 SCRA 160 (1970).