CASES NOTED

CIVIL LAW

SALES: A CLAUSE IN A CONTRACT OF PURCHASE AND SALE WITH *Pacto De Retro* AND LEASE PROVIDING FOR AUTOMATIC TERMINATION OF THE PERIOD FOR REDEMPTION IN CASE THE VENDOR-LESSEE FAILS TO PAY ANY RENT DUE IS VALID AND BINDING.

On October 30, 1938, Marcelino Amigo executed a deed of sale, with right to repurchase within 18 months, of a parcel of land in favor of one Teves. It was stipulated, among other things, that the vendors would remain in possession as lessees for the whole period within which to repurchase the land in question, that the lessees would pay a semi-annual rent of ₱180.00 and that, in case of failure to pay the rental as agreed upon, the lease would automatically terminate and the right of ownership of the vendee-lessor become absolute. The vendors-lessees failed to pay the rents as stipulated and so on January 8, 1940, the vendee-lessor executed an affidavit of consolidation of title in accordance with the agreement. The next day, the vendors-lessees offered to repurchase the land in question but the vendee-lessor refused. Before the expiration of the period of 18 months, the vendors-lessees brought an action in the lower court to compel the vendee-lessor to execute a deed of reconveyance. The vendors-lessees now appeal by *certiorari* from the decision of the Court of Appeals reversing the judgment of the lower court against the vendee-lessor.

HELD: While the lease convenant may be onerous or may work hardship on the vendors because of the clause providing for automatic termination of the period of redemption, the same is not contrary to law, morals, or public order. Rather than oppressive, it is a clause common in a sale with *pacto de retro* and as such it has received the sanction of the courts. (*Amigo et al. v. Teves, G. R. No. L-6389*, Nov. 29, 1954.)

TRANSITIONAL PROVISIONS: IT SHOULD BE APPARENT, UPON REFLECTION, THAT THE PROHIBITION OF ART. 2254,[1] NEW CIVIL CODE, MUST BE DIRECTED AT THE OFFENDER, NOT THE OFFENDED PARTY WHO IS IN NO WAY RESPONSIBLE FOR THE VIOLATION OF LEGAL DUTY.

Plaintiff and defendant were validly married to each other on March 29, 1941, in Manila. The spouses lived together until 1949, but had no children, nor acquired conjugal property. Sometime in July, 1949, the husband, defendant herein, abandoned his wife, plaintiff herein, and during August and September, 1949, lived maritally with another woman. At the instance of the deserted wife, an information for concubinage was filed on October 3, 1949. The husband was convicted and sentenced to imprisonment on May 25, 1950, by the Court of First Instance of Manila. On July 14, 1950, the wife instituted the present proceedings, praying for a decree of absolute divorce.

The acts of concubinage that gave rise to the action, as well as the judgment of conviction rendered by the Court of First Instance, took place before the repeal of Act 2710 by the New Civil Code which became effective on August 30, 1950.[2] Hence, the court *a quo* dismissed the complaint on the ground that the appellant had acquired no right to a divorce which the court was bound to recognize after the effectivity of the New Civil Code, basing its holding upon the provisions of Art. 2254 of the said code.[3]

HELD: The dismissal of the complaint by the court *a quo* is wrong and the plaintiff should be granted an absolute divorce. It should be apparent, upon reflection, that the prohibition of Art. 2254[4] must be directed at the offender, not the offended party who is in no way responsible for the vio-

1. "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others."
2. Lara et al. v. Del Rosario, 50 O. G. 1975.
3. *Supra.*, note 1.
4. *Id.*

lation of legal duty. The interpretation adopted by the court below results in depriving a victim of any redress because of the very acts that injured her. The protection of vested rights is but a consequence of the constitutional guaranty against deprivation of property without due process, and a violation of law by another can in no way constitute such due process.[5]

It follows that Art. 2254 cannot militate against the right of the plaintiff herein to secure an absolute divorce as a result of the concubinage of her husband. (*Raymundo v. Peñas, G. R. No. L-6705*, Dec. 23, 1954.)

COMMERCIAL LAW

CARRIAGE OF GOODS BY SEA ACT: A PROVISION IN A BILL OF LADING REQUIRING THE SHIPPER TO SERVE NOTICE OF HIS CLAIM FOR LOSS OR DAMAGE UPON THE CARRIER WITHIN THIRTY DAYS AFTER RECEIPT OF NOTICE OF SUCH LOSS OR DAMAGE DOES NOT BAR THE FILING OF A SUIT BY THE FORMER AGAINST THE LATTER WITHIN ONE YEAR AFTER THE DELIVERY OF THE GOODS OR THE DATE WHEN SUCH GOODS SHOULD HAVE BEEN DELIVERED TO THE SHIPPER FOR THE RECOVERY OF THE LOSS OR DAMAGE, WHEN SUCH NOTICE OF THE SHIPPER'S CLAIM FOR LOSS OR DAMAGE WAS NOT GIVEN.

In the month of December, 1945, the goods specified in a bill of lading were shipped on the "S.S. Sea Hydra" of Isthmian Steamship Co., from New York to Manila, and were received by the consignee Udharam Bazar & Co., except one case of vanishing cream valued at ₱159.78. The goods were insured against loss or damage by the Atlantic Mutual Insurance Co. Udharam Bazar & Co. claimed indemnity for the loss from the insurer and was paid by the latter's agent, E.E. Elser Inc., the amount involved, i.e., ₱159.78.

Now E. E. Elser Inc. and the Atlantic Mutual Insurance Co. are claiming the amount of the loss from the Isthmian Steamship Co. and its agent, the International Harvester Co. of the Philippines. The Court of First Instance and Court of Appeals (when the case was appealed to the latter) held that E. E. Elser Inc. and Atlantic Mutual Insurance Co. had already lost their right to press their claim against the Isthmian Steamship Co. and the International Harvester Co. of the Philippines because of their failure to serve notice thereof upon the carrier within thirty days after receipt of the notice of loss or damage as required by clause 18 of the bill of lading which was issued concerning the shipment of the merchandise which had disappeared. On the other hand, E. E. Elser Inc. and the Atlantic Mutual Insurance Co. contend that the finding of the Court of Appeals is erroneous in the light of the provisions of the Carriage of Goods by Sea Act of 1936, which apply to this case, the same having been made an integral part of the covenants agreed upon in the bill of lading.

The question now is: Which should prevail—the provision in the bill of lading, or the provision of the Carriage of Goods by Sea Act?[6]

HELD: Clause 18 of the bill of lading must of necessity yield to the provisions of the Carriage of Goods by Sea Act in view of the proviso contained in the same Act which says: "Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, . . . or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect."[7] This means that a carrier cannot limit its liability in a manner contrary to what is provided for in said Act, and so clause 18 of the bill of lading must of necessity

5. The view that the acts referred to in Art. 2254 are those of the offender and not those of the offended party is supported by the *Report of the Code Commission* (p. 167) submitted to the Legislature in explanation of the motives behind the innovations of the New Civil Code: "It is evident that no one can validly claim any vested or acquired right if the same is founded upon his having violated the law or invaded the rights of others."

6 "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; *Provided*, That if a notice of loss or damage, either apparent or concealed, is not given . . . *that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.*" Par. 4, Subdiv. 6, Sec. 3, Carriage of Goods by Sea Act. Italics supplied.

7 Subdiv. 8, Sec. 3, Carriage of Goods by Sea Act.