CONSIGNATION AND THE PREVIOUS NOTICE

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TENDER OF PAYMENT AND CONSIGNATION

UNDER our law on obligations, delay in the performance of one's obligation can be committed not only by the obligor but also by the obligee. This point is typically illustrated in pecuniary obligations, where delay can be incurred not only by the debtor in his failure to pay when the time for payment comes (*mora solvendi*) but also by the creditor in his failure to receive the payment from the debtor when the debt matures and the latter tenders to him the money due (*mora accipiendi*).[1]

When the creditor is guilty of *mora accipiendi*, it would certainly be unjust to impose upon the debtor the burden of carrying his debt, despite the fact that he is willing and able to pay it. In order to free him from the whims of his capricious creditor who might want to subject him to the heavy weight of his debt, the law provides the debtor with a proper remedy: *consignation*. By this means, if the creditor unjustly refuses to accept a valid tender of payment by the debtor,[2] the latter shall be released from his obligation by depositing the things due at the disposal of judicial authority.[3]

Requisites of a valid consignation. However, not every deposit of the things due is a valid consignation. Just as injustice might result to the debtor if the creditor were allowed to refuse the payment with impunity, so also injustice might result to the creditor if the debtor were allowed at every opportunity to make a consignation should he choose to do so. In order that a consignation may be valid and affective against a creditor, there should be (1) tender of payment and refusal to accept without reasons; (2) previous notice of the consignation to the persons interested in the performance of the obligations; and (3) after the consignation has been

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[1] 8 MANRESA, COMMENTARIOUS AL CODIGO CIVIL ESPAÑOL 57-58 (4th ed. 1931) (hereinafter cited as MANRESA).

[2] Art. 1256 of the New Civil Code states: "If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due."

[3] "Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases." Art. 1258 NEW CIVIL CODE.

made, the persons interested shall also be notified thereof.[4] Thus our Supreme Court, in the case of *Limkako v. De Teodoro*,[5] stated:

> Under article 1176 of the Civil Code, if the creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of the liability by the consignation of the thing due. "In order that the consignation of the thing due may release the obligor, previous notice thereof must be given to the persons interested in the performance of the obligation." (Art. 1177). "Consignation shall be made by the delivery of the things due to the court, accompanied by proof of tender, when required, and of notice of the consignation in other cases. After the consignation has been made the persons interested shall also be notified thereof." (Art. 1178).

In a decided case, the debtor, even before making or attempting to make any tender of the price or notice of the consignation to the creditors, went directly to the clerk of court and deposited the amount in the intestate proceedings. The money deposited depreciated in value. The first actual notice of the deposit was given when the debtor met the creditor after liberation and told the latter of it; but by then the Japanese military notes had become worthless as legal tender. The Court of Appeals, in ruling that the notice would no longer protect the interest of the intended payee as sought by article 1178 of the Old Civil Code, said that: "This is not conformable to the law on the matter. The plaintiff's failure to exert due diligence and take the necessary measures to give notice to the buyers *a retro* of the consignation made by him operated to the prejudice of the defendants, because the latter were thereby deprived of the opportunity to withdraw the sum consigned and to make timely use of it, when the military scrip deposited was losing value everyday. We have no other alternative but to rule that the repurchase was not duly made."[6]

Thus it seems that the remedy of consignation is a double-edged sword, which is both a thrust against the side of the wicked or dilatory creditor who would bind his debtor under the perpetual bondage of his debt, as well as against that of the malicious debtor who would prejudice his creditor by an unannounced consignation to the surprise of his unsuspecting creditor.

Tender of payment. Concerning the tender of payment, of which we shall deal only in passing, there is very little dispute. It consists in the "declaration of intention directed to the creditor, by virtue of which the debtor manifests his firm decision to comply with his obligation."[7] By the very terms of article 1256, paragraph 1, of the New Civil Code, the tender of payment must precede the consignation. It must not only be unconditional,[8] but must also include the principal debt as well as the in-

[4] Agsaway v. de Dios, (CA) 45 O.G. 923 (1957).

[5] 74 Phil. 313 (1943).

[6] Lagonera v. Macalalag, (CA) 49 O.G. 569 (1952).

[7] 2 CASTAN, DERECHO CIVIL ESPAÑOL, COMUN Y FORAL 521 (6th ed. 1943) (hereinafter cited as CASTAN).

[8] PNB v. Relativo, G.R. No. L-5298, Oct. 29, 1952.

terests due.[9] The offer of a check in payment of a debt is not valid tender[10] and its consignation does not constitute a valid payment.[11] However, it has been held that the tender of a check is valid when it is accepted,[12] and also when no objection is made on this ground.[13] It is not sufficient for the vendor *a retro* to intimate or state to the vendee that the former desires to redeem the thing sold, but he must immediately tender the reimbursement price.[14] Generally, a letter alone[15] or a mere lip offer without an actual tender of the money due is ineffectual,[16] but under certain circumstances, an offer in writing may be considered as equivalent to a valid tender of payment.[17] There are cases when a tender or payment may be excused,[18] as in the case of *Kapisanan Banahaw Inc. v. Dejarme,* where the Supreme Court said that "the making of such tender was excused when the plaintiff (the creditor) peremptorily informed the defendant (the debtor) that payment would not be received. A debtor does not incur in default by failing to make a fruitless tender after notification from the creditor that the money will not be received."[19]

Refusal to accept. The New Civil Code uses the phrase "refuses without just cause" in article 1256, as if to imply that the debtor must first prove that the refusal was unjust before the clerk of court will receive the deposit of the thing due. Manresa qualifies this by saying that: "This does not mean that it would be necessary for the courts, for the purpose of admitting the consignation, to examine whether the refusal of the creditor to accept the same was with or without cause, inasmuch as that question would have to be decided by a subsequent judgment; consequently, in order to make consignation of a thing or quantity, the refusal of the creditor to accept the same would be sufficient, without any necessity of considering the basis of such refusal, and resolving whether the consignation made would be effective or not against the opposition of the creditor."[20] However, where the creditor refused to accept the payment tendered, even if the debtor performs all the requisites necessary for a valid consignation, all these would be ineffective in releasing his liability if the court should later find out that there was a valid and legal ground for the refusal of the creditor, as where the judgment was no longer enforceable or executory by motion or writ of execution when the tender of payment and the consignation were made.[21]

Consignation. Article 1258 of the New Civil Code states that "consignaton shall be made by depositing the things due at the disposal of judicial authority..." Manresa believes that "this does not mean that the debtor may by himself determine how and to whom the deposit shall be made with the effect that he prejudices the interests of the creditor, but that such deposit should be made in accordance with the disposition of the judicial authority, and the rules of procedure established for the courts with respect to their character in this case as depositary, in accordance with the nature of the thing delivered, although the debtor in such cases has the right to intervene as an interested party."[22]

Article 1257, paragraph 1, also provides that "the consignation shall be ineffective if it is not made in consonance with the provisions which regulate payment." Thus, if there is a stipulation to that effect, consignation may be made even by a third person who has no interest in the fulfillment of the obligation. If the consignation is subject to a condition or term, it cannot be performed until the happening of the event or the termination of the term.[23]

It must be noted that since the remedy of consignation is a right and not an obligation, a privilege and not a duty, the debtor is not bound to make it even upon the maturity of the debt. In this case his obligation is not extinguished and he shall be liable for any liabilities or other consequences, should there be any. As a matter of fact, the law allows the debtor to withdraw the thing or sum deposited before the creditor has accepted the consignation or before a judicial declaration that the consignation has been properly made, thus allowing the obligation to remain in force.[24]

Double notice of consignation. It is evident from the provisions of art.

[9] Fiege & Brown v. Smith, Bell & Co., 43 Phil. 113 (1922); De la Fuente v. Palino, (CA) 47 O.G. 4734 (1949).
[10] Belisario v. Natividad, 60 Phil. 156 (1934).
[11] Villanueva v. Santos, 67 Phil. 684 (1939); Cuaycong v. Rius, 47 O.G. 6125 (1950).
[12] Gutierrez v. Carpio, 53 Phil. 334 (1929).
[13] De Eduque v. Ocampo, 47 O.G. 6155 (1950).
[14] Angao v. Clavano, 17 Phil. 152 (1910).
[15] Agsaway v. De Dios, (CA) 45 O.G. 823 (1947); Fructo v. Fuentes, 15 Phil. 362 (1910); Angao v. Clavano, 17 Phil. 152 (1910).
[16] Martin v. Manuel, (CA) 47 O.G. 768 (1949).
[17] "The written offer made by the vendor a retro to repurchase the land in question was equivalent to an actual tender of payment, pursuant to sec. 24, Rule 123 of the Rules of Court, since it was improperly refused, because the vendee a retro insisted on an additional sum for alleged expenses to which he has not proved to be entitled." Pacis v. Castro, (CA) 43 O.G. 5118 (1947).
"If a portion of a community is sold by some co-owners, and there is an offer by the remaining co-owners in writing to redeem it, there is no need for said remaining co-owners to make an actual tender of the money because the offer in writing is equivalent to said tender (sec. 24, Rule 123, Rules of Court)." Santos v. Fernando, (CA) 47 O.G. 4694 (1949).
[18] "It is true that, as a general rule, an offer or tender of the redemption price is necessary to preserve the option. But this rule cannot with justice be applied where, as in the instant case, the redemption price is yet to be fixed in an accounting to be rendered by the person from which the repurchase is to be made." Gonzaga v. Go, 69 Phil. 678 (1940); see Basco v. Puzon, 69 Phil. 706 (1940); Catalan v. Rivera, (CA) 45 O.G. 4538 (1948).
[19] 55 Phil. 338 (1930).

[20] 8 MANRESA 296.
[21] Salvante v. Cruz, G.R. No. L-2531, Feb. 28, 1951.
[22] 8 MANRESA 303.
[23] *Id.* at 299-300.
[24] Art. 1260 NEW CIVIL CODE.

1257, par. 1,[25] and art. 1258, par. 2,[26] that there must be two notices given to the interested parties, namely, a previous announcement (before consignation) and a subsequent notice (after consignation). Thus, the Court of Appeals, thru Justice J. B. L. Reyes, now of the Supreme Court, in deciding the case of *Tiaoqui v. China Insurance and Surety Co.*,[27] stated: "Art. 1177 of the same Code provides that the consignation should be *previously* (it is said, *before making* the deposit) announced to the creditor and to the persons interested; while art. 1178, issues as a precept that the consignation having been made, notice thereof must be given *also* (it is said, *again*) to those interested." Nevertheless, there are certain cases wherein because of the circumstances, the failure to give or the absence of double notice of the consignation may be excused. As was held in another Court of Appeals case:

> The only question to be decided is as to whether the deposit made by the defendant in the office of the municipal treasurer, through and in accordance with the advice of the justice of the peace, without previous notice of the intent to make said deposit or any notice subsequent thereto, as provided in art. 1177 and 1178 of the Civil Code, was a valid deposit or consignation to take the place of actual payment and to produce the effect of repurchasing the land in question. According to paragraph 2 of art. 1176 of the Civil Code, notice of the intent to consign the amount due need not be made in the absence of the creditor. As to the notice which should be made after consignation, efforts were exerted to serve the one issued by the clerk of the municipal treasurer on the husband of one of the purchasers, but for some reasons service was not accomplished. Since the defendants had done all in their power to substantially comply with the legal provisions governing consignation, and under the doctrine laid down in *Rates vs. Suelto* (20 Phil. 394), such consignation has produced the effect of paying the price of the repurchase agreed upon between the parties. The vendor *a retro* was, therefore, relieved of the obligation in favor of the vendees and was entitled to the possession of the land repurchased by him.[28]

With the previous announcement, which is the main topic of this Note, we shall deal more in detail later. As to the subsequent notice, it has been held that the service of summons together with a copy of the complaint is a sufficient compliance.[29] This was further corroborated by a later decision, wherein it was held:

> After the rejection by the creditor of the valid tender made by the debtor, the latter filed the corresponding complaint in court accompanying the filing of the suit with the consignation of the money in court and alleging and mentioning said consignation in the complaint. That step may be considered as sufficient notice to said creditor of the consignation of the amount due so that if they wanted to receive that money from the court they could have done so.[30]

The Supreme Court firmly affirmed this when it said that the usual method whereby the second or subsequent notice is to be effected is, when the consignation is followed by the filing of a suit, through service to the defendant of the summons accompanied by a copy of the complaint.[31]

Manresa[32] comments that after the parties interested are notified, the subsequent character of the proceedings are determined. The parties notified may adopt three attitudes and thus three different situations might arise: the interested party may accept the consignation and thus end the case, having received the payment; or he may contest the validity of the consignation, thus giving rise to a litigation to determine the propriety of the consignation made; or, lastly, the interested party might actually be disinterested or he might not be known, in which cases the debtor may ask the court to order the cancellation of the obligation.[33]

The Previous Notice of Consignation

One of the essential requisites for the validity of any consignation is that it must be previously announced to all the persons interested in the fulfillment of the obligation. Article 1257, paragraph 1, expressly states the rule.[34]

The issue. Despite the fact that this previous announcement to consign, because it is an essential element of a valid consignation, is of paramount importance, the Civil Code just provides a general rule without in the least manner specifying nor even implying the particulars which such an announcement must contain. It provides that "it (the consignation) must first be announced" without saying what is to be announced and how it is to be announced. This lack of specification has been the root of the doubt and confusion which now exists regarding the previous announcement, which made the Court of Appeals cry out: "...there seems to be a misconception on the part of practising attorneys and some courts in this jurisdiction regarding the true nature and purpose of the previous notice. Seemingly they believe that it is sufficient for the creditor [should be debtor] to state in the notice that he would deposit or consign in court the amount of payment offered, should it be refused by the debtor [should be creditor]."[35]

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[25] "In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation."

[26] "The consignation having been made, the interested parties shall also be notified thereof."

[27] (CA) 45 O.G. 2558 (1948).

[28] Abad v. Jumamil, (CA) 47 O.G. 5214 (1949).

[29] Limkako v. De Teodoro, 74 Phil. 313 (1943).

[30] Andres v. CA, 47 O.G. 2876 (1949); see Valenzuela v. Bakani, 49 O.G. 4836 (1953).

[31] Duñgao v. Roque, G.R. No. L-4140, Dec. 29, 1951.

[32] 8 Manresa 303-04.

[33] Art. 1260 of the New Civil Code states: "Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation."

[34] See note 25 *supra*.

[35] Ochoa v. Lopez, (CA) 50 O.G. 5878 (1954).

Previous announcement distinguished from tender of payment. There are some who, noting that both these are made before the actual consignation and that both are a sort of communication to the creditor, confuse the one with the other. They might even reason out that since after the tender of payment has been refused by the creditor the only reasonable recourse of the debtor would be to make a consignation, by the very act of the tender of payment plus the subsequent refusal of the creditor, said creditor should be presumed to know and to have been informed that consignation will be made. Manresa[36] with his usual clarity qualifies this by saying that the tender of payment is clearly distinguishable from the previous announcement to consign. The two are different not only in concepts but even in the separate manners in which they are made and the different names by which they are called. Tender of payment is nothing more than a friendly gesture and a private act while the announcement is a more formal act and of a more serious nature. Tender of payment must be made only to the creditor and is limited in scope to the refusal of the creditor, while announcement must be made to all persons interested in the fulfillment of the obligation and must be made in most cases because it extends not only to the creditor but also to other persons. There are cases where tender of payment need not be made, while the announcement must always be made.

Purpose of the announcement. The evident purpose of the previous announcement to the creditor being to prevent certain adverse effects which might fall upon him by virtue of the consignation, it would be proper for the better understanding of such a purpose to determine what these adverse effects are. Upon the making of a valid consignation, the debtor is freed from all responsibility to the creditor[37] and he may forthwith petition the proper court for the cancellation of his obligation.[38] The consignation having been necessitated by the unjust refusal of the creditor, all the expenses incurred by virtue of that consignation shall be borne by him,[39] including the commission of the amount deposited to the paid to the Clerk of Court, etc.[40] When there is a judgment declaring that the consignation has been made in accordance with law, this shall retroact to the date when the consignation was made[41] and from that day the creditor loses the interests which his principal should rightfully earn. Furthermore, the principal obligation

[36] 8 MANRESA 303.
[37] Art. 1256 NEW CIVIL CODE.
[38] Art. 1926 *id.*
[39] Art. 1259 *id.*
[40] Ochoa v. Lopez, (CA) 50 O.G. 5871 (1954).
[41] 2 CASTAN 253.

being cancelled, all the accessory ones are also deemed cancelled[42] on the principle that the accessory follows the principal, and the creditor loses the benefits of the subsidiary obligations which may have been given to guaranty the fulfillment of the principal debt. And the most serious effect is that from the time the consignation was validly made, the loss of the thing without any fault on the part of the debtor shall be for the account of the creditor[43] since from the time the consignation was made, the ownership of the thing duly consigned is transferred to him and the rule is *res perit domino.*

The purpose therefore of the previous notice is to prevent any or all of these effects from befalling the creditor and thus reasonably allow him to protect his interests. In the words of the Court of Appeals, thru Justice Gutierrez David:

> Thus the purpose of the notice is to give the creditor, — upon receiving formal notice that consignation would be made, — a chance to reflect on his refusal to accept payment in view of the adverse consequences that such consignation might work against him, such as the release of the debtor from his liability, the risk of loss of the thing consigned and the payment by him of the expenses of the consignation which includes the commission of the amount deposited to be paid to the Clerk of Court, etc.[44]

There are numerous decided cases wherein because of the failure of the debtor to give the proper previous announcement to the creditor of his intention to consign, the consignation was rendered null and void. In the case of *Panganiban v. Cuevas,*[45] the debtor without tender of payment to the creditor nor any previous notice of his intent to deposit the sum he owed, went to court and there made a consignation of the amount. Chief Justice Arellano, speaking for the Supreme Court, said that "there being no evidence of anything except the consignation and the plaintiff not being either absent or incapacitated so that consignation alone could have produced the effect of releasing the debtor, it follows that the consignation made by the defedant did not produce the effect which it would have produced had

[42] "The cancellation of the obligation effected by the judge shall extend not only to the principal obligation but also to the accessory ones, and among these is the mortgage which serves to guarantee the fulfillment of the obligation. This is apparent from the absolute terms of the article, from the subordination in law of accessory juridical relations to principal ones and also from the mortgage law which recognizes such fact, and furthermore, from the resolution of the Direccion on August 20, 1894, which declares: 'that by virtue of articles 1176, 1177, and 1180 now art. 1256, 1257 and 1260 N.N.C. of the Civil Code, we must mitigate the rigor of the doctrine which declares that the mortgage subsists independently of the fulfillment of the principal obligations guaranteed by said mortgage, because the same legislator has believed that it is but just and right that once the consignation is duly made (and certainly, such consignation is equivalent to payment if properly made), the cancellation of the obligation already becomes a right of the debtor.'" 8 MANRESA 308-09.
[43] Haw Pia v. Jose, 44 O.G. 2704 (1947); China Insurance & Surety Co., v. Berkenkotter, 46 O.G. 5466 (1949); Padua v. Rizal Surety, 47 O.G. (12s) 308 (1950); Sia v. CA 48 O.G. 5259 (1952).
[44] Ochoa v. Lopez, (CA) 50 O.G. 5871 (1954).
[45] 7 Phil. 477 (1907).

it been made as provided in the code." In another case,[46] the Court again held that "it does not appear that petitioner gave previous notice of the deposit to respondent and the deposit was not accompanied by proof of such notice . . . The consignation of payment, not having been made in accordance with law, was not valid and binding against the creditor." The more recent case of *Lagonera v. Macalalag* dealt mort explicitly about the purpose of the previous notice. The debtor in this case, without having made nor even attempting to make any tender of the price or notice of consignation, went directly to the clerk of court and deposited the amount in the intestate proceedings. The Court of Appeals, through Justice J. B. L. Reyes said:

> This is not conformable to the law on the matter. The plaintiff's failure to exert due diligence and take the necessary measures to give notice to the vendors *a retro* of the consignation made by him operated to the prejudice of the defendants, because the latter were deprived of the opportunity to withdraw the sum consigned and to make timely use of it, when the military scrip deposited was losing value everyday. We have no other alternative but to rule that the repurchase was not duly made.[47]

However, there is a case when the previous notice is excused or dispensed with, and that is when it would be useless to give notice or when the giving becomes a mere technicality. In a case decided by the Court of Appeals, the vendees *a retro* contested the validity of a repurchase by the vendors *a retro* on the ground that they were not given any previous notice of the intent to consign the redemption price. Through the same Justice, J. B. L. Reyes, it was held that:

> The absence of the notice being caused by the payee's own actions and since any attempt to give it would have been fruitless, the lack of notice is a mere technicality that should not be allowed to bar the enforcement of the right of the vendor *a retro*. Plainly, the payee cannot prevent a valid consignation by moving to parts unknown or beyond the payor's reach.[48]

Contents of the announcement. About this, there is not much controversy. It must contain such facts as are sufficient to inform the creditor of whatever action shall be taken against him and thereby to protect his interests. It must contain such particulars as are essential in all announcements. In criminal cases, the accused is given notice in the following tenor: "You are hereby directed to appear personally for arraignment and trial before the Court of First Instance of Manila, Branch III, on the 8th day of June, 1945, at 8:30 a.m., and to be present at the trial of the above numbered case."[49] Even in auction sales, the notice should invariably contain the same particulars. Thus in a case, the Provincial Treasurer issued notices of the sale of real estate properties for the payment of delinquent taxes to be held at the main entrance of the municipal building of the municipality on the 4th of September, 1941, at 10:00 a.m. The auction sale took place on said date but it was voided not because of insufficiency in the contents of the notice but because it was not duly served on the proper parties.[50] It would seem therefore that the essential elements of the notice or announcemnt are the *date,* the *time,* and the *place.*[51]

[46] Albea v. Inquimboy, 47 O.G. (12s) 131 (1950).
[47] (CA) 49 O.G. 569 (1952).
[48] Pacis v. Castro, (CA) 43 O.G. 5119 (1947).
[49] Elago v. People, 47 O.G. 1185 (1949).

The same is true as regards the previous announcement of consignation. In the same case of *Ochoa v. Lopez,* Justice Gutierrez David said:

> Such being the object of the previous notice, it stands to reason that the same should not contain a mere warning that the deposit of the thing tendered would be made in court but it should fix the date and hour of the consignation and the name of the court where the same would be made.
>
> It is but logical that the notice should mention the date and place of the consignation, otherwise its purpose of giving the creditor an opportunity to reconsider his position would be rendered nugatory. If the debtor files the complaint and makes consignation at any time he chooses, without informing the creditor beforehand of its date, the latter loses forever his chance to avoid the adverse effects of the consignation, the payment of expenses thereof plus the costs of suit.

The Supreme Court however seems to add another element to these requisites: the particular purpose and intent for which the consignation is to be made. This seems wise because a deposit may be made for a number of purposes and it does not necessarily mean a cancellation of the debtor's liability to the creditor when the deposit was made not for the purpose of satisfying the debt, the payment of which was refused. A case might be imagined to illustrate this point. Suppose *A* owes *B* a sum of money by virtue of a judgment or court decree. It also happens that in a certain obligation of *C* to the same person *B*, it was stipulated that *A* can make the payment on *C*'s behalf.[52] With respect to *B* therefore, *A* can consign a sum of money in court either in satisfaction of the court decree or as payment of the obligation of *C* by virtue of the stipulation. If in fact he does consign the sum of money, to which of the two obligations will it be applied? It is obvious that the determination of this question will result in two completely different and all-important sets of juridical effects. Thus in a case,[53] it was held that "tender of payment of judgment into court is not the same as tender of payment of a contractual debt and consignation of the money due from a debtor to a creditor." Therefore, it is also necessary for the debtor, in notifying the creditor of the consignation to be made, to inform him of the particular purpose and intent for which the consignation will be made. The Supreme Court seems to imply this in the case of *Bellis v. Imperial,* [54] where it stated:

[50] Vda. de Laico v. Calupitan, (CA) 47 O.G. 5726 (1949).
[51] *Cf.* Sola v. Mogate, (CA) 47 O.G. 6269 (1949).
[52] See art. 1236 NEW CIVIL CODE.
[53] Del Rosario v. Sandico, 47 O.G. 2866 (1949). *Cf.* Salvante v. Cruz, G.R. No. L-2531, Feb. 28, 1951.
[54] 52 Phil. 530 (1928).

There is no evidence, claim or pretense that Bellis was ever notified of the making of such deposits and the *purpose for which they were made*, or that in the aggregate they were sufficient to satisfy the amount of the judgment. To stop the payment of interest, it was the duty of the city not only to make a tender for the full amount of the judgment, but in addition thereto, it should have notified Bellis of the making of such deposit and *the purpose and intent for which it was made*, and he would then be in a position to either accept the tender as made and draw down the money or reject it. That was not done in this case, and for such reasons the city continued to remained liable for the payment of the interest specified in the first judgment of this court. [Italics ours]

Thus, in a contract of lease, where the rents in arrears were deposited in court by a person other than the lessee, the Court of Appeals ruled that the deposit was valid inasmuch as it was specifically made for the purpose of securing and paying the rents then in arrears and nothing else.[55]

Form of the announcement. As stated before, the Civil Code states the making of the previous notice in just about the most general of terms and does not even give a hint as to the form in which it must be made. It seems that no special form for the notification is required by the Code.[56] This inevitably gives rise to certain questions. Should the notice be in writing or would an oral notice be sufficient? If the former, should the writing be in public instrument or would a private writing be enough? There being neither law nor jurisprudence nor commentaries on the matter, we shall proceed on the basis of pure deduction and reasoning.

Hitherto, the terms "announcement" and "notice," "announced" and "notified" have been used interchangeably, as if the two were identical. But this is not the case. If we are to look at the original provisions of the Old Civil Code or the Spanish Civil Code from which our New Civil Code was taken, we will find that the said Code, in dealing with both previous and subsequent notices, uses the terms "notice" and "notified," whereas the New Civil Code uses the terms "announced" and "notified." Regarding the subsequent notice of consignation, there is no controversy inasmuch as both the Old and the New Civil Code use the term "notified" and as to whether this notice must be in writing or merely oral is not the subject of this Note and Comment. However, with respect to the previous notice, the New Civil Code poses a problem. Article 1257, paragraph 1, of the New Civil Code, provides that: "In order that the consignation of the thing due may release the obligor, it must first be *announced* to the persons interested in the fulfillment of the obligation," while article 1177, paragraph 1, of the Old Civil Code, from which it was taken, states that: "In order that the deposit of the thing due may release the obligor, previous *notice* thereof must be given to the persons interested in the perfomance of the obligation." The Old Civil Code required *notice* but the New Civil Code merely requires

[55] See Chua Hong v. Peña, 8 App. Ct. 353 (1947).
[56] 8 MANRESA 298-99; 2 CASTAN 522.

announcement. Whatever was the reason for the change, the Code Commission does not state in its Report. But reason there must be, for it would be absurd to change a provision unless there be a sufficient and valid reason for the change. Since the reason is not to be found in the said Report of the Code Commission, we shall look for it elsewhere.

It is a recognized principle of statutory construction that the same words used in the same law must be given similar meanings, unless there is an express provision stating that it must be given a different interpretation or there is a clearly valid reason for giving it another construction. The same words in the same law must be given uniform construction. There is a presumption in favor of unformity of interpretation.

There is a similar provision of the New Civil Code which uses both the words "announcement" and "notice," and from this we may infer what the Code Commissioners intended to mean when they used these terms in the provisions regarding consignation. Article 1476 of the New Civil Code provides:

In case of sale by auction:

. . . .

(2) A sale by auction is perfected when the auctioneer *announces* its perfection by the fall of the hammer, or in other customary manner.

. . . .

(4) Where *notice* has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf or for the auctioneer, to employ or to induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

It appears from this provision that an announcement need not be in writing inasmuch as when the auctioneer announces that any bid has been accepted, there is no need for him to make any written acceptance for the perfection of the sale. There can be no doubt but that, when the auctioneer accepts the bid accompanied by the fall of the hammer, the whole act is purely oral in nature. But the notice as herein required, obviously is a written notice, otherwise the article could just have followed the wording of the previous paragraph to provide: "Where the auctioneer has not announced that a sale by auction is subject to a right to bid on behalf of the seller . . . " In this provision announcement may be oral while notice should be written. If we are to apply a uniform construction, similarly the previous announcement in consignation may be oral although the subsequent notice must be written. However, this by no means precludes a previous notice from being valid simply because it is in writing. As a matter of fact, a written previous notice is advisable for then, no controversy will arise.[57]

[57] See Andres v. CA, 47 O.G. 2876 (1949); Valenzuela v. Bakani, 49 O.G. 4836 (1953).

Furthermore, where the law requires a certain formality for the validity of an act, it so expressly provides. An essential requisite is not to be read where none is stated. An indispensable element is not to be presumed. Where the law requires that an act must be in writing in order to be valid, it says so. It is safe to assume that where the law does not expressly require writing, writing is not an essential element for the validity of the act. Thus, in cases of donations of real property, of partnerships where the contributions are more than three thousand pesos or where real property is contributed, in marriage settlements, and many others, the law requires writing and it positively states so. But in consignation, the law does not say that the previous notice must be in writing. Would it be right for us to assume that it must be so made? The law is the law as it is written and presumptions are not to be favored. Furthermore, where the law does not distinguish, we have no right to distinguish. *Ubi lex non distinguit, nec nos distinguere debemus.* In the face of all these principles, it may reasonably be inferred that an oral previous announcement would be sufficient.

The previous announcement is required to protect the interests of the creditor and was not intended by the law to be used by the latter as an instrument to prejudice the debtor. Where an oral announcement, complete in all the substantial requirements, is given to the creditor, it is for him to take such steps as are necessary to protect himself. He cannot just ignore it to the detriment of his debtor. Previous announcement is essential to give the creditor an opportunity to reconsider his refusal to accept the tender of payment before consignation is actually made. An oral previous announcement gives him this opportunity. Previous announcement is necessary to give the creditor a chance to prevent certain adverse effects from befalling him. An oral previous announcement gives him this chance. Previous announcement is important to assure the creditor that his interests are reasonably safeguarded. And an oral previous anouncement gives him this assurance. His deliberate refusal to take cognizance of the oral announcement will constitute bad faith on his part and he must suffer the consequences. Any other interpretation would, in effect, "penalize the prompt and the vigilant and place a premium on delay and bad faith."

Conclusion

The law as well as jurisprudence has established the undeniable fact that in order that a consignation may be valid, there must be a previous announcement of such consignation to the creditor to give him an opportunity to protect his interests and prevent certain adverse effects which may accrue to him. The announcement must contain the date and the hour during which the consignation will be made, the name of the court before which

it will be made, and the particular intention of the debtor in making the consignation. This previous announcement being for the creditor's benefit need not be in writing inasmuch as an oral announcement would suffice just as well in protecting the creditor's interests. However, this does not in any way mean that debtors should always give their notices of making a consignation by mere word of mouth for this just fulfills the minimum requirement. Why content ourselves in reaching the bare minimum when the maximum is within reach? Why hitch our wagon to a car when we can hitch it to a star? If an ounce of prevention is worth a pound of cure, then let us exert a pound of prevention so there will be nothing more to cure. A written previous announcement is just about the best means of safeguarding the interests of the debtor without at the same time jeopardizing those of the creditor.