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ATENEO LAW JOURNAL

DIGEST OF 1952 CASES

CIVIL LAW

WAIVER OF RIGHTS

It is settled jurisprudence in this jurisdiction that rights may be renounced except in those few cases in which renunciation is expressly prohibited.

(E. A. DE PARAS *vs.* R. J. YEARSLEY, G. R. No. L-3729, April 28, 1952.)

PERSONS

Property Relations between Husband and Wife. Paraphernal property not liable for personal debts of husband.

FACTS: Plaintiffs sought to hold both defendant-spouses personally liable for several promissory notes executed during the marriage of the latter and signed solely by the husband. Plaintiff also sought to recover the value of several pieces of jewelry owned by them and given to the defendants to be sold. Receipts covering said jewelry were signed solely by the husband. The wife filed a motion to dismiss on the ground that with respect to her, the complaint has failed to state sufficient facts to constitute a cause of action there being no allegation that her husband was acting as her agent nor that the contracts entered into by her husband redounded to the benefit of the family.

HELD: The paraphernal property of the defendant wife is not

liable for the debt personally contracted by the husband where it does not appear that the husband acted as an agent of the wife. The husband by his contract cannot bind the paraphernal property unless its administration has been transferred to him. Although the fruits of the paraphernal property form part of the assets of the conjugal property such fruits cannot be made to answer for the contract of the husband unless it redounded to the benefit of the family. And the creditor had the burden of proof to show that it redounded to the benefit of the family.

(LAPERAL *vs.* KATIGBAK, G. R. No. L-4299, Jan. 31, 1952.)

Exclusive property of each spouse.—

Money received after marriage, as purchase price of land sold *a retrovendendo* before such marriage to one of the spouses is not conjugal property but exclusive property of the spouse from whom said land is repurchased.

(CONSUELO F. LESACA et al. *vs.* JUANA FELIX VDA. DE LESACÁ, G. R. No. L-3605, April 21, 1952.)

Conjugal partnership property; Rents received after death of one spouse but due during marriage; Art. 153 (3).

Where, during his lifetime, the decedent had his land cultivated by one who gave him a certain share of the crop every year by way of rent, the decedent's share of a standing crop of palay planted during the marriage and harvested after his death, are fruits and income within the purview of Article 1401 of the Spanish Civil Code (now, Art. 153, new Civil Code) and, therefore should be considered conjugal property, it being immaterial that the rent was actually received after the dissolution of the marriage through his death.[1]

(CONSUELO F. LESACA et al. *vs.* JUANA FELIX VDA. DE LESACÁ, G. R. No. L-3605, April 21, 1952.)

Money spent on property of spouse presumed conjugal.

FACTS: Defendant inherited swamp and nipa lands which were improved, during marital life, into fishponds. There is no evidence as to the source of the money used in the conversion of the properties

[1] The Supreme Court also stated that "it is the date of accrual that is important" and in this case, "we gather from the findings of the trial court that the decedent's participation in the palay planted by the lessee . . . accrued during coverture" (marriage).

into fishponds. Lower court declared properties to be conjugal and not paraphernal as defendant asserted.

HELD: Properties are conjugal. All money spent during the marriage and paid for property of either spouse are presumed conjugal and in the absence of clear evidence proving that the said money pertains exclusively to either husband or wife. The increase in value of the properties is the amount refundable to the partnership. (FLORENCIA VITUG *vs.* DONATA MONTEMÁYOR, et als., G. R. No. L-4156, May 15, 1952.)

Administration of the conjugal partnership.

Where one spouse alienated property without the consent of the other, said transaction is voidable at the instance of the other spouse or his heirs. Citing: 9 Manresa 531, 3d; 1 Manresa 409-410, 6d. (TALAG *vs.* TANKENGCO ET AL., G. R. No. L-4623, October 24, 1952.)

Paternity and filiation; recognition of natural children; baptismal certificate issued by Civil Registrar is not a record of birth.

FACTS: The administrator of the testate estate of J. J. V. opposed the motion of petitioner T. V. that as acknowledged natural child, she be declared an heir. Basis of opposition: even if T. V. were a natural daughter, she was not recognized. The Old Civil Code speaks of two kinds of acknowledgment of a natural child: (1) voluntary under Art. 131 and (2) compulsory under Art. 135. T.V.'s motion was under Art. 131 because her action to compel recognition under Art. 135 has prescribed. Does her case come under Art. 131 of the Old Civil Code? To support her claim she presented Exhibit "A", a birth certificate issued by the local civil registrar, Exhibit "E" an affidavit of one B. R. claiming to have witnessed the execution of the document acknowledging her and the testimony of her lawyer that J. J. V. acknowledged T. V. but that the document was lost during the war.

HELD: Baptismal certificate issued by a civil registrar is not the record of birth mentioned in Art. 131 which refers to the one provided for in Art. 326 that was never enforced in the Islands and therefore any acknowledgment appearing in said certificate is of no value Neither does Exhibit "A" comply with Sec. 5 of Act 3753 establishing the registry of civil status because it was not jointly signed or sworn to by both parents as was required to produce the acknowledgment she sought. As to the other evidences they are not only

inadmissable but also suspicious. The new Civil Code relaxing the rigidity of the Old Civil Code as to proof of recognition is not applicable because her claim for recognition was passed upon during the effectiveness of the Old Civil Code. Art. 2268 new Civil Code: "The rights to inheritance of a person who died with or without a will before the effectivity of this Code shall be governed by the Civil Code of 1889". (TEOPISTA VIDAURRAZAGA *vs.* COURT OF APPEAL, ET AL., G. R. No. L-3943, June 24, 1952.)

PARENTAL AUTHORITY

Parental authority; father cannot be deprived of parental authority for refusing to consent to daughter's marriage where such refusal is justified.

FACTS: Isabela Dolojan, a girl fifteen years old, had love affairs with Pablo Canto and as a consequence she became pregnant. The lovers desired to marry but could not because Isabela's father refused to give his consent to the marriage. Hence, Dominador Guerrero, at the instance of Isabela, instituted this present guardianship proceedings against Segundo Dolojan, Isabela's father, to divest Segundo of his parental authority over Isabela in order to facilitate the marriage.

ISSUE: May a father be deprived of his parental authority over his minor daughter for refusing to consent to the minors' marriage?

HELD: The refusal of the father to give his consent to the marriage of his minor daughter on the ground that the man with whom his minor daughter would marry had seduced such minor daughter's sister is justifiable. The father cannot be deprived of his parental authority over such minor daughter. (DOMINADOR GUERRERO *vs.* SEGUNDO DOLOJAN, G. R. No. L-4631, February 26, 1952.)

PROPERTY

Classification of property.

HELD: Mere attempt to sell the property with the idea to acquire a better school site does not destroy its nature and convert it into a patrimonial property of the municipality. (MUN. OF BATANGAS vs. CÁNTOS ET ALS., G. R. No. L-4012, June 30, 1952.)

Ownership; action to recover ownership.

Where, in an action for the recovery of ownership of a parcel of land, the plaintiffs claim to have become the owners of the land sought to be recovered for having allegedly bought it from JG, but there is no evidence that JG had title to the land, and it is not even clear that the land alleged to have been purchased from JG is the same land that plaintiffs claim in their complaint, there being a marked discrepancy in the boundaries, since only the boundary in the West may be considered identical, the plaintiffs have failed to prove their case. (VALERIANA SUDECO ET AL. *vs.* ALEJO SANDE, G. R. No. L-4226, April 28, 1952.)

Right of accession; when the rules on builder in good or bad faith not applicable; Article 448.

FACTS: PR (respondent) was the owner of a lot and a house thereon. He sold the lot to VC (petitioner) retaining ownership of the house. Subsequently, VC, the vendee of the lot, brought an action against PR for the main purpose of causing the removal of said house from the lot. The Court of Appeals denied VC's prayer for ejectment and remanded the case to the lower court with instructions to give VC an opportunity to exercise his right of option granted to him by Art. 361 of the old Civil Code (similar to Art. 448 of the New Civil Code).

HELD: Article 361 of the old Civil Code is not applicable in this case, for PR constructed the house on his own land before he sold said land to VC. Article 361 applies only in cases where a person constructs a building on the land of another in good or in bad faith, as the case may be. It does not apply to a case where a person constructs a building on his own land, for then there can be no question as to good or bad faith on the part of the builder.

The decision of the Court of Appeals is modified by ordering PR to remove the house from the lot of VC, without any obligation on the part of the latter to pay any compensation to PR. (VICENTE M. COLEONGCO *vs.* PEDRO F. REGALADO & LEONOR MONTILLA, G. R. No. L-4529, December 29, 1952.)

Nuisance; failure to protect a reservoir of water against accident

does not render its owner liable to victims under the doctrine of "attractive nuisance".

FACTS: Petitioner owned an ice plant factory in whose premises were two water tanks for cooling purposes, neither fenced nor covered. An 8-year old boy was drowned in one of the tanks. Court of First Instance of Laguna and the Court of Appeals held: petitioner maintained an attractive nuisance (the tanks) and for neglect to provide precautions against accidents to persons entering its premises, is liable to a child of tender years who is injured thereby, though the child is technically a trespasser in the premises (65 Corpus Juris Secudum 455). Both courts applied the doctrine of attractive nuisance, of American origin, as held in Taylor *vs.* Manila Electric (16 Phil. 8). Petitioner appealed by certiorari.

HELD: A swimming pool or reservoir of water is not an attractive nuisance. Nature has created streams, lakes, pools which attract children. There's always danger in these waters which children are early instructed to know of. If a property owner creates an artificial pool of water on his property, he merely duplicate nature's work, without adding any new danger, he is not liable for having created an "attractive nuisance". (American decisions applied.) (HIDALGO ENTERPRISES, INC. *vs.* GUILLERMO BÁLANDAN, ET ALS., G. R. No. L-3422, June 13, 1952.)

MODES OF ACQUIRING OWNERSHIP

Donation; distinction between donation mortis causa and inter vivos; test to determine nature of instrument.

FACTS: Appeal involves interpretation of deed of donation. If it is *inter vivos*, it is valid because it is not attested to by three witnesses and has no attestation clause. Deed in question was entitled "Escritura de Donacion Onerosa Mortis Causa" and stated in substance that Manuela Concepcion in consideration of good services rendered to her by her niece Emilia Concepcion and of her affection for said niece was donating to her certain described properties, said donation to produce effect only upon her (the donor's) death. The deed included the acceptance by the donee.

HELD: Even when the donor calls the donation *mortis causa* instead of *inter vivos*, even if he says it is to take effect after his death, when from the body of the instrument of donation it is to be gathered that the main consideration is not the death of the donor but rather services rendered to him, by the donee or his affection for the latter, then the donation should be considered *inter vivos* and when duly accepted, it transfers title immediately to the donee and the condition that the donation is to take effect only after the death of the donor should be interpreted to mean that the possession and enjoyment of the fruits of the property donated should take place only after the donor's death. (CONCEPCION ET AL. *vs.* CUNTIA CONCEPCION, G. R. No. L-4225.)

Donations "mortis causa" must comply with the formalities required for a will.

FACTS: The trial court found that the donation is conditional and onerous, because the donor "continued to be the owner of the properties donated in spite of the donation" and "because the donees were made to pay under their personal responsibility all the debts of the donor incurred by him during his lifetime or illness, and to finance his funeral services upon his death", and held that it is null and void as to the minors who were not duly represented by their legal representatives upon the acceptance of the donation. Hence this appeal.

HELD: Except in the instances expressly provided by law, a donation is irrevocable. If the donor reserves the right to revoke it or if he reserves the right to dispose of all the properties purportedly donated, there is no donation. If the disposition or conveyance or transfer takes effect upon the donor's death, it is not an *inter vivos* but a *mortis causa* donation. The disposition of the properties in favor of the appellants not having been done in accordance with the provisions of section 618 of the Code of Civil Procedure, as amended, there was no lawful and valid transmission thereof to them. (ASTERIA BAUTISTA ET ÁL. *vs.* EPIFANIO SABINIANO ET AL., G. R. No. L-4236, Nov. 18, 1952.)

SUCCESSION

Form of wills; will must be in a language known to testator; effect of failure to prove that language of will known to testator; may be cured by other evidence on record; Article 839 (1).

FACTS: Probate of a will. The trial court disallowed the will for failure of the proponent to prove that the testatrix knew and spoke the language in which the will in question appears to have been written.

HELD: This failure alone does not in itself suffice to conclude that the important requirement of the law has not been complied with, it appearing that there is enough evidence on record which supplies this technical omission. First, we have the undisputed fact that the deceased was *mestiza española,* was married to a Spaniard and made several trips to Spain. Second, we have the very letters submitted as evidence by the oppositor written in Spanish by the deceased in her own handwriting. These facts give rise to the presumption that the testator knew the language in which the testament has been written, which presumption should stand unless the contrary is proven. And finally, we have the very attestation clause of the will which states that the testatrix knew and possessed the Spanish language. It is true that this matter is not required to be stated in the attestation clause, but its inclusion can only mean that the instrumental witnesses wanted to make it of record that the deceased knew the language in which the will was written. (DN. JUAN L. REYES *vs.* DA. DOLORES ZUÑIGA VDA. DE VIDAL, G. R. No. L-2862, April 21, 1952.)

TESTAMENTARY CAPACITY AND INTENT

Where signatures affixed by deceased in the will differ from each other in certain respects; not due to defective mental condition; Article 839 (2).

FACTS: Probate of a will. The lower court disallowed the will on the ground that the testatrix was not of sound and disposing mind when she signed the will and it reached this conclusion, not because of any direct evidence on the matter, but simply because the deceased signed the will in a somewhat varied form.

HELD: The above conclusion is contrary to the statements of the instrumental witnesses that they were of the impression that the deceased was of sound mind at the time she affixed her signatures to the will. These statements had not been contradicted.

While the signatures affixed by the deceased in the will differ

om each other in certain respects, this is only due to her age ıd state of health rather than to a defective mental condition. hese differences or irregularities are common in the writings of d people and, far from showing lack of genuineness, are indicative the age, sickness, or weak condition of the writer. A comparison the three disputed signatures in the will readily give this impression. ON JUAN L. REYES *vs.* DA. DOLORES ZUÑIGA VDA. DE VIDÁL, G. R. o. L-2862, April 21, 1952.)

Probate of wills executed abroad.

The will of an alien executed abroad which might be proved allowed by the laws of the state in which it was made may be oved, allowed and recorded, and produces effect in the Islands.

A fortiori, wills already proved and allowed in a foreign state ay be allowed and recorded and produces effect in the Islands. ec. 1, Rule 78, Rules of Court as corollary of Sec. 653, Code of ivil Procedure, applied. (DALTON *vs.* GIBERSON, G. R. No. L-4113, ne 30, 1952.)

Substantial Compliance with requisites of Attestation Clause.

FACTS: This is an appeal from a decision of the Court of First stance of Ilocos Sur admitting to probate the last will and testaent of the late Leona Singson. Opposition is made alleging among her grounds that the signature of the deceased appearing on the ll is not genuine and that the will has not been executed in cordance with the formalities of the law.

While the attestation clause does not state the number of sheets pages upon which the will is written, however, the last part of e body of the will contains a statement that it is composed of ght pages, which circumstance takes this case out of the rigid le of construction and places it within the realm of similar cases ıere a broad and more liberal view has been adopted to prevent e will of the testator from being defeated by a purely technical nsideration.

The language of the whole attestation clause, taken together, arly shows that the witnesses signed the will and on all the marıs thereof in the presence of the testatrix and of each other.

(*In Re:* PETITION FOR THE PROBATE OF THE WILL OF THE DEASED DA. LEONA SINGSON.
DR. MANUEL SINGSON, petitioner *vs.* EMILIA FLORENTINO, TRI-

NIDAD FLORENTINO DE PAZ, and JOSEFINA FLORENTINO VDA. DE LIM, Oppositors-appellants. G. R. No. L-4603, Oct. 25, 1952.)

Unacknowledged natural child not entitled to inherit under Old Civil Code.

FACTS: Plaintiff, an unacknowledged natural child, is claiming a portion of the inheritance of her deceased mother who died before the effectivity of the New Civil Code. Hence, provisions of the old Civil Code applies. The only question is whether or not a natural child who has not been acknowledged by its mother is entitled to share in her inheritance.

HELD: It is now settled that under the Civil Code of 1889, a natural child not recognized has no right whatsoever. Not having been voluntarily acknowledged as a natural child, what plaintiff should have done was to bring an action to compel recognition. But as plaintiff has instituted no such action during the lifetime of her mother, and the present action—in which she seeks to recover her share of the latter's inheritance—if regarded for compulsory recognition would be barred by statute. (PRIMITIVA CAVALES *vs.* FILOTEO ARROGANTE, ET AL., G. R. No. L-3821, March 17, 1952.)

Collation; allowances which must be collated.[1]

FACTS: Pending the liquidation of the estate of deceased JL, the court granted allowances for support and education to the two legitimate minor children of the deceased. Are such allowances subject to collation and deductible from said minors' share of the inheritance?

HELD: The allowances granted by the court should be deducted from the hereditary portions of the recipients thereof *only in so far as they exceed* what they are entitled to as fruits or income (Art. 1430 of the Spanish Civil Code re-enacted as Art. 188 of the new Civil Code).

Article 1041 (1067 of the new Civil Code) which provides that allowances for support, education, . . . are not subject to collation, is not applicable. This article refers only to property or rights received by donation or gratuitous title "during the lifetime of the decedent," and is based on the philosophy that such donations in no way impoverish the donor or enrich the donee since ordinarily they are not taken from the capital but rather from the fruits thereof

[1] Should not be understood in its strict technical sense.

which would anyway have been consumed or spent during the life of the donor and therefore would form no part of his inheritance. (CONSUELO F. LESACÁ ET AL. *vs.* JUANA FELIX VDA. DE LESACA, G. R. No. L-3605, April 21, 1952.)

PRESCRIPTION

Prescription of ownership; effect of war; Section 41, Act No. 190.

FACTS: Action to recover a parcel of land. Defendant was in default. Plaintiff VS testified that in 1931 (later she said it was in 1935) the land was usurped by defendant. The trial court held that "the defendant had acquired ownership of the land by acquisitive prescription which, according to the express provision of the law, may not be interrupted by the occurrence of war (Sec. 41, Act 190)." Counsel for the plaintiffs claims that the prescriptive period of 10 years was interrupted by the occurrence of war.

HELD: The claim of plaintiffs' counsel is foreign to the question, for the prescription applied by the lower court is what is known as acquisitive prescription and refers to the period of possession and not to the period for bringing suits. What counsel evidently has in mind is prescription of actions or statute of limitations. (VALERIANA SUDECO et al. *vs.* ALEJO SANDE, G. R. No. L-4226, April 28, 1952.)

OBLIGATIONS AND CONTRACTS

OBLIGATIONS

Sources of obligation; seizure of enemy property.

FACTS: During the Japanese regime a Jap corporation T. T. purchased plaintiff's land and warehouse. After liberation the Alien Property Custodian of the U. S. took possession of the property under Trading With Enemy Act, it being enemy property. By virtue of the representations by the Phil. Government, the defendant appellant occupied the property. Now plaintiff wants to recover rentals for the use of its property.

HELD: Liability of the defendant must arise from any of the four

sources of obligation: law, contract or quasi contract, crime or negligence (Spanish Civil Code, Act 1089), Defendant appellant is not guilty of any offense, it occupied the premises with the permission of the Alien Property Administration which had control and administration thereof. The A. P. A. had control not as successor of the enemy corporation T. T. but by express provision of law: Trading With the Enemy Act of the U. S. Neither is it a trustee of the former owner, the plaintiff, but a trustee of the U. S. Government. If defendant-appellant were liable for rentals, these would not accrue to the former owner, the plaintiff-appellee, but to the U. S. government. Furthermore, there was no agreement, express or implied between the A. P. A. and the defendant-appellant to pay rentals. The A. P. A. was neither a trustee of the plaintiff-appellee nor a privy to the obligations of the Taiwan Tekkosho, its title being based by a legal provision on the seizure of enemy property. (SAGRADA ORDEN DE PREDICADORES DEL SANTISIMO ROSARIO DE FILIPINAS *vs.* NATIONAL COCONUT CORPORATION, G. R. No. L-3756, June 30, 1952.)

Conditional obligations; suspensive condition.

Where a perfected contract was subject to the condition that payment would depend on the approval of the vendee's loan application by the RFC and the court's approval of the sale by the vendor administrator, performance may not be demanded from either until the conditions are fulfilled. (ARANETA *vs.* RURAL PROGRESS ADMINISTRATION, G. R. No. L-3645, October 8, 1952.)

Impossible Condition.

FACTS: Prior to the outbreak of war "A" an American citizen, sold to "B" a peace of land and the building built thereon payable in ten installments. To secure payment of the purchase price a deed of mortgage was executed on the same property. Subsequently "B" sold said property and building to E.R. who in turn sold it to Luzon Surety. During the Japanese occupation the Japanese authorities sought to confiscate the property on the ground that since eighty per centum of the purchase price still remained unpaid, the property still belonged to "A", an American citizen. To remedy this, Luzon Surety offered the land for sale. G. Litton, the herein plaintiff proposed a counter-offer together with the conditions that the latter would make a deposit of ₱10,000, in order to bind both parties to the fulfillment of the agreement and provided that the

mortgage be cancelled by "A". This counter-offer was accepted and a contract was thereby drawn. The cancellation contemplated in the contract could not however be effected. And the plaintiff refused to accept the cancellation of the mortgage by the Japanese authorities. So, to save the property from confiscation Luzon Surety through its president, Eulogio Rodriguez borrowed money from the bank and paid to the Japanese authorities the mortgage credit. Whereupon plaintiff filed a complaint for specific performance. The court ruled that defendants were released from their obligation, to sell but ordered them to return the sum of ₱10,000, which was plaintiff's deposit. From this ruling both parties appealed.

HELD: Where plaintiff deposited a sum of money under a contract whereby defendant bound itself to sell the mortgage property free from all lien and encumbrances but the cancellation of the mortgage was impossible during the Japanese occupation, the defendant is released from his warranty to sell the property free from such liens (Art. 1116 Old Civil Code) because impossible conditions shall annul any obligation dependent upon them.

The ₱10,000 delivered by the plaintiff to the defendant being a mere deposit and the contract not having been carried out because of circumstance beyond the control of the parties or for which neither can be blamed, equity requires that said deposit be returned in Philippine currency to be reduced according to the Ballantyne schedule. (LITTON *vs.* LUZON SURETY CO. & E. RODRIGUEZ, G. R. No. L-2603, Feb. 11, 1952.)

Obligations with a period; meaning of the phrase "al plazo de cinco años."

Where a promissory note executed on May 22, 1940, recited that the sum of ₱753.63 was payable "al plazo de cinco años contados desde esta fecha," the expression may mean as well that payment could be made at the end of five years from May 22, 1940, or May 22, 1945, as that the debt could be settled at any time within five years from May 22, 1940. (LAUREANO SIA *vs.* COURT OF APPEAL & NUMERIANO VALENCIA, G. R. No. L-3742, December 23, 1952.)

EXTINGUISHMENT OF OBLIGATIONS

Payment; payment of mortgage in Japanese notes.

HELD: The debtor or his successor in interest had the right to pay the mortgage debt in Japanese money which was the currency in circulation. The payment would have released the mortgage even if it was tendered by the mortgagor personally and had been turned down by the mortgagee, (PEDRO HERNAEZ AND ASUNCION VDA. DE ALUNAN *vs.* HOWARD MCGRATH, defendant-appellant, REPUBLIC OF THE PHILIPPINES, intervenor-appellant, DR. NICANOR JACINTO, intervenor-appellant. G. R. No. L-4044, July 9, 1952.)

Tender of payment; what constitutes valid tender of payment; effect of valid tender.

FACTS: Defendant owed PNB ₱600, but now claims the obligation has already been paid because on June 23, 1949 "he presented himself at the Naga Agency of the plaintiff and tendered payment of the loan out of a check for ₱5,000 issued by the U. S. Treasury in favor of B. Vda. de Rullas who then accompanied said defendant, demanding that her check be cashed." Check was however dishonored at the time because of insufficient identification of the payee. Later, it was honored and cashed by the Legaspi branch of the PNB. The question is whether the tender of payment above described discharged the defendant from his liability.

HELD: No. (1) The promissory note executed by defendant and which was the basis of his obligation, undertook to pay in Philippine currency while the tender was made in check. (2) A tender of payment to be valid must be unconditional. Defendant's tender was not because the condition of the tender was that PNB would have to pay the remainder of the check (₱4,400) to B. Vda. de Rullas. PNB was not obliged to honor and cash the check upon presentment because it had not yet been accepted. The payee of a check unaccepted cannot maintain an action on it against the bank on which it is drawn because there is no privity between the holder and the bank until by certification of the check or acceptance thereof, express or implied or by any other act or conduct, it has made itself directly liable to the holder. (3) Tender of payment, even if valid, does not by itself produce legal payment, unless completed by consignation. (PHILIPPINE NATIONAL BANK *vs.* PEDRO C. RELATIVO ET AL., G. R. No. L-5298, October 7, 1952.)

Effect of defective tender of payment on debtor's liability for interest where tender was refused by creditor on other grounds.

FACTS: In 1943, Vidal refused to accept payment before maturity of a mortgage debt of Tuason who thereupon filed a suit against him and deposited checks in favor of Vidal with the clerk of court. Tuason admits technical defect in tender of payment to Vidal but disclaims liability for interest accrued on debt since such tender.

HELD: Defendant's offer to pay Vidal was in accordance with the parties' contract and terminated the debtor's obligation to pay interest. Technical defects of the offer cannot be adduced to destroy its effects, such as the termination of liability for interest, when the objection to accept payment is based not on such technical defects but on entirely different grounds. Vidal's refusal to accept payment was based on his interpretation of the terms of the contract, not on such technical defects. (GREGORIO ARANETA, INC. *vs.* PAZ TUASON DE PATERNO ET AL., G. R. No. L-2886, August 22, 1952.)

Consignation.

Consignation by means of manager's check is not binding upon the creditor, because *like an ordinary check* it is not legal tender in the Philippines. (COURT OF FIRST INSTANCE OF TARLAC and JUSTA SAMANIEGO *vs.* COURT OF APPEALS and AMADO N. VICENTE, G. R. No. L-4191, April 30, 1952.)

Loss of sum consigned; who bears same.

Where all the requisites for a valid consignation have been complied with, and there can be no reason for disapproving said consignation, the loss of the thing or amount consigned occurring without the fault of the debtor before the acceptance of the consignation by the creditor or its approval by the court, should be for the account of the creditor.[1] (LAUREANO SIA *vs.* COURT OF APPEALS and NUMERIANO VALENCIA, G. R. No. L-3742, December 23, 1952.)

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[1] This case is distinguished from the cases of China Insurance & Surety Co., Inc. *vs.* B. K. Berkenkotter (R-CA—G. R. No. 322) and Padua *vs.* Rizal Surety & Insurance Co., 47 O. G. Sup. No. 12, p. 308, wherein it was held that in order that the debtor may be released from the obligation, there must first be approval of the consignation by the court, in that, here, there is a valid consignation which *may not* be disapproved by the court.

Thus, in the Berkenkotter case the Supreme Court said that "there is no clear proof before us that the essentials of a valid consignation are here present specially the conformity of the proffered payments to the terms of the obligation to be paid." And, in the Padua case, the Court held as a fact that "the ₱10,000 in Japanese war notes deposited do not cover the whole sum of the judgment appealed from which amounts to ₱10,833.82, excluding judicial costs, and for this reason, the appellant did not make a valid consignation" (translated from Spanish).

Deposit in court; Payment by one of several obligors.

FACTS: Plaintiff-appellee deposited with the clerk of Court of First Instance the repurchase price of the land, gave notice to all defendants-appellants, and subsequently petitioned the Court that defendants be notified to receive tender of payment. The important legal issue raised by the defendants-appellants is that deposit in court is considered payment only if made with the requisites of consignation provided in Articles 1176 and 1177 of the Spanish Civil Code.

HELD: Payment was actually made to the defendants-appellants *through the medium of the Court,* because after the deposit plaintiff expressly petitioned the court that defendants be notified to receive tender of payment. Tender of payment of a judgment is not the same as tender of payment of a contractual debt and consignation of the money from a debtor to a creditor and Arts. 1176 and 1177 of the Spanish Civil Code regarding consignation do not apply. The fact that the money deposited belonged to one P. O. did not make the payment inacceptable for a voluntary payment by one of several obligors is a bar to an action against the others for the same debt or obligation. (Del Rosario, et als. *vs.* Sandico, et al., G. R. No. L-867, Dec. 29, 1949.) (IGNACIO ARZAGA *vs.* EMILIO RAMBAOA ET ALS., G. R. No. L-3839, June 26, 1952.)

Loss; effect of loss of generic thing which is subject of contract.

Where the subject matter of a contract did not refer to any specific lot of copra and the vendor was at liberty to acquire copra from any part of the Islands, the thing due is generic. A generic obligation is not extinguished by the loss of a thing belonging to a particular genus. (BUNGE CORPORATION & UNIVERSAL COMMERCIAL AGENCIES *vs.* ELENA CAMENFORTE ET ALS., G. R. No. L-4440, August 29, 1952.)

MORATORIUM LAW

Purpose of Moratorium Law.

A creditor may not demand payment of a prewar debt by virtue of the Moratorium Law the purpose of which is to prevent the worsening of the disrupted economy caused by the war. Ex. Order No. 32, applied. (MORA SANNA ET AL. *vs.* MORA AJIRIA ET AL., G. R. No. L-5187, Oct. 29, 1952.)

Effect of amendment to Moratorium Law on appealed cases.

To prevent a multiplicity of suits, where the payment of a prear debt was demanded of the debtor and pending appeal the Moratorium Law was amended, the case should be remanded to the trial court to allow him the benefits under the amendment. Sec. 2, Republic Act No. 342, applied. (MORA SANNA ET AL. *vs.* MORA AJIRIA ET AL., G. R. No. L-5187, Oct. 29, 1952.)

Effect of Moratorium Law on payment of interest.

The Moratorium Law does not condone payment of interests; it merely suspends payment of principal and interest. (BAÑEZ *vs.* YOUNG, G. R. No. L-4635, October 27, 1952.)

Debt moratorium refers to date monetary obligation was assumed and not to date of its demandability; Financial condition of debtor immaterial.

FACTS: Plaintiff sues defendant alleging that the defendant on Oct. 7, 1944 received from the plaintiff a loan in Japanese money to secure repayment of which the defendant executed a deed of assignment of "my right, title and interests in and whatever salary, bonus, pension, or benefit I may derive or settle as a former officer of the Usaffe." In complete disregard of the assignment, defendant collected in 1947 his salary, backpay and/or allowances as officer of the Usaffe and prevented plaintiff from collecting under the above assignment, and that in spite of repeated demands said defendant failed and refused to settle his monetary obligations. Defendant moved for summary judgment calling attention to his defense of moratorium. The case was dismissed. On appeal, plaintiff contended that the moratorium laws did not apply because (1) defendant's obligation to pay arose only after he had collected his back-pay (in 1947) and (2) having rehabilitated himself with the collection of more than ₱20,000.00 from the Army as back-pay, the defendant is beyond the protection of the spirit of the statute suspending enforcement of debts.

HELD: Both proposition may not be sustained. The duty to pay may have become demandable only in 1947; but the monetary obligation was assumed in 1944. Hence having clearly stated in Uy *vs.* Kalaw (G. R. No. L-1830, prom. Dec., 1949) that Republic Act No. 342 has not lifted the moratorium as to debts contracted during the Japanese regime, we have to approve the trial judge's ruling.

As to the second contention, the application of the Moratorium La does not depend upon the financial condition of the debtor, bu upon the date the obligation was incurred. (LUZ MENDOZA SISO *vs.* CIRIACO MIRASOL, G. R. No. L-4711, Oct. 31, 1952.)

BACKPAY LAW

Sec. 2 of Law merely directory.

FACTS: R.D. sought to compel the R.F.C. to accept payment of his indebtedness with his backpay certificate under Sec. 2 of Republic Act No. 304 or the Backpay Law. The R.F.C. refused. The court ruled a quo that that portion of Sec. 2 of Republic Act 304 which reads: "shall . . . accept . . . such certificates . . ." is merely permissive, not mandatory. Plaintiff appealed after his complaint was dismissed.

HELD: The law in question (Sec. 2, Backpay Law) in so far as the discount and acceptance of backpay certificates are concerned should be interpreted to be directory merely, not mandatory, as claimed by R.D., the same to be construed as a direction for the R.F.C. to discount backpay certificates from time to time in its sound discretion as circumstances and its resources may warrant. (RAMON DIOKNO *vs.* REHABILITATION FINANCE CORPORATION, G. R. No. L-4712, July 11, 1952.)

CONTRACTS

Parties free to stipulate terms; limitations thereon.

In a contract of surety the parties are free to stipulate provided the terms are not contrary to law, morals or public policy. And the contract of surety whereby it is stipulated that the obligation of Visayan Surty expires on March 20, 1949, unless the surety is notified by the plaintiff of the obligation of the principal debtor or unless it is renewed, within 10 days from the said date is not contrary to law, morals or public policy. Consequently failure of the Naric to fulfill the condition precedent within 10 days releases the defendant Surety from its obligation. (NATIONAL RICE AND CORN

RPORATION *vs.* ARSENIO RIVERA ET AL., G. R. No. L-4032, Feb- ıry 29, 1952.)

Leonine stipulation.

One who is heavily indebted is in no condition to execute a docu- ent which manifests a generous disposition and leonine stipulation favor of another. (JAMANDRE *vs.* VDA. DE CUSTODIO, G. R. No. 4650, September 29, 1952.)

Perfection and execution.

Where the vendee agreed to buy property without specifying ıe source of the purchase price, the contract is perfected from the ate of consent and may be the object of a demand for its execution. ARANETA *vs.* RURAL PROGRESS ADMINISTRATION, G. R. No. L-3645, October 8, 1952.)

Force majeure in fulfillment of conditions of contracts; effect of onsummation of contract of absolute sale on prohibition upon vendee o encumber or sell property subject of the sale.

FACTS: In September, 1941 plaintiff was the highest bidder at uction sale by the government of a sublot on Arlegui St. Conditions of the award were that she would start constructions within 18 months from award; that land would not be encumbered or con- veyed without previous consent of the Secretary of Agriculture and Natural Resources. Plaintiff paid 10% down; remainder was pay- able in 10 annual installments but plaintiff had right to pay all remaining installments in full even before they fell due.

On August 1, 1944, plaintiff paid all installments in full. In 1945, she leased said lot to Gaerlan who constructed building thereon. In 1948, after an unlawful detainer suit was filed against her by plaintiff, Gaerlan asked the Secretary of Agriculture for can- cellation of award to plaintiff and for recovery of possession of said lot by Gaerlan. Secretary ordered cancellation of award to plaintiff on ground that she violated conditions of the award.

HELD: Suit condition could not have been fulfilled by the plaintiff due to outbreak of the war and scarcity of building materials. Second ground of cancellation by the Secretary was that plaintiff allowed Gaerlan to occupy the land and build a house therein contrary to condition that land was to be her exclusive benefit. This contention is not tenable. There are three stages in the making of a contract—

the initial stage (generación), when negotiations between parties take place; perfection, when parties reach agreement as to the essential elements of the contract, upon which the obligation arises; and the consummation, when the obligations are fulfilled and the contract is terminated. When plaintiff in 1944, paid the entire purchase price of the lot in question, contract was wholly consummated. Plaintiff was full owner and could insist that the deed of sale be executed, in accordance with Sec. 1279 of the Spanish Civil Code. Leasing the lot to Gaerlan in 1945 was hence merely an act of ownership on part of plaintiff. (JULIANA R. DE SANTOS ET AL. *vs.* SECRETARY OF AGRICULTURE AND NATURAL RESOURCES AND DIRECTOR OF LANDS, G. R. No. L-4321, August 27, 1952.)

CONSENT

Mutual mistake affecting consent.

Where a person heavily indebted misunderstood the conditions of a contract whereby he promised to sell property mortgaged at ₱30,000 for ₱5,000 as free from lien to another who was misled by such terms, there is mutual mistake which vitiates consent. (JAMANDRE *vs.* VDA. DE CUSTODIO, G. R. No. L-4650, September 29, 1952.)

Insanity; presumption of insanity rebuttable.

FACTS: Another ground claimed by the plaintiff for the annulment of the deeds of transfer is lack of mental capacity because at the time of their execution he was under guardianship for insanity. It is contended that mental incapacity as regards contracts particularly those transferring property, involves a *conclusive* presumption.

HELD: The better rule is that even in the execution of contracts, in the absence of a statute to the contrary, the presumption of insanity is only *prima facie* and may be rebutted; and that a person under guardianship for insanity may still enter into a valid contract and even convey property, provided it is proven that at the time of entering into said contract, he was not insane or that his mental defect if mentally deranged did not interfere with or affect his capacity to appreciate the meaning and significance of the transaction entered into by him. PD was mentally sane and capable. (PAULINO DUMAGUIN *vs.* A. I. REYNOLDS ET AL., G. R. No. L-3572, Sept. 30, 1952.)

CONSIDERATION

Lack of consideration.

FACTS: One of the terms of the contract of sale was that Tuason would not hold Araneta liable for the fact that Jose Vidal had refused to accept two certified checks previously issued by Araneta. Araneta knew at the time of the contract that Vidal had not cashed said checks within the 90 days for which they were certified by the President of the drawee bank.

HELD: The stipulation was unconscionable, void and unenforceable in so far as it would stretch defendant's liability for said checks beyond 90 days. The checks having become obsolete, the benefit in exchange for which defendant consented to be responsible, i.e., the cancellation of the mortgage by means of the checks, had vanished. Hence, there was then no consideration. (GREGORIO ARANETA, INC. *vs.* PAZ TUASON DE PATERNO ET AL., G. R. No. L-2886, August 22, 1952.)

VOIDABLE CONTRACTS

When period for bringing action for annulment commences to run.

FACTS: This is an action brought on Nov. 27, 1948 for the annulment of a sale of several parcels of land made by Apolonio Jarder, father of the plaintiff by the first marriage, in favor of the defendants Cornelia Jarder, a child by the second marriage and her husband. The plaintiff alleges that the sale of the lands in September, 1937 was executed while Apolonio Jarder was not in the enjoyment of his full mental faculties and that the lands which at the date of the execution of the deed of sale were worth ₱10,000.00 were sold for only ₱2,000.00. The plaintiff further alleges that none of the purchase price was actually paid to Apolonio Jarder.

In May, 1941, a similar action was brought but was not tried due to the outbreak of the war.

ISSUE: Has the action prescribed?

Where it is alleged that plaintiff seller was defrauded by the defendant-purchaser, the Statute of Limitations within which action may be brought to annul the sale begins to run from the date of

discovery of fraud by the plaintiff. But where it is alleged that the plaintiff and his heirs were defrauded, the period begins to run from the date of discovery of fraud by the plaintiff and his co-heirs. (Secs. 43 and 44, Act 190.)

Plaintiff cannot claim ignorance of the fraud after a complaint similar to or identical with this one was brought by the plaintiff in May, 1941 though not tried due to the outbreak of the war because the case was not reconstituted or reinstated after the record thereof was lost or destroyed in which case for purposes of interrupting the period of limitation, it was as good as if it had never been instituted. (JARDER *vs.* JARDER & ECHAVEZ, G. R. No. L-4626, February 27, 1952.)

UNENFORCEABLE CONTRACTS

Statute of Frauds; agreements made in consideration of marriage, other than a mutual promise to marry.

FACTS: FC and his son G sued the defendants MA and his daughter S to recover damages resulting from defendants refusal to carry out the previously agreed marriage between S and G. Defendants moved to dismiss, arguing that the contract was oral, unenforceable under the Statute of Frauds.

HELD: The understanding between the plaintiffs on one side and the defendants on the other, really involves two kinds of agreement. One, the agreement between FC and the defendants in consideration of the marriage of S and G. Another, the agreement between the two lovers (S and G), as "a mutual promise to marry". For breach of that mutual promise to marry, G may sue S for damages. This is such an action, and evidence of such mutual promise is admissible.

However, FC's action may not prosper, because it is to enforce an agreement in consideration of marriage. Evidently as to FC and MA this action could not be maintained on the theory of "mutual promise to marry". Neither may it be regarded as action by FC against S on a "mutual promise to marry". (FELIPE CABAGUE & GERONIMO CABAGUE *vs.* MATIAS AUXILIO & SOCORRO AUXILIO, G. R. No. L-5028, Nov. 26, 1952.)

Acquiescence and silence as ground for estoppel.

FACTS: A parcel of land covered by Torrens Title was in the name of I.C., "casado con I.C.". After the wife died, I.C., with the cooperation of the eldest daughter sold the land to P.C. to free the same from encumbrance. After the sale I.C. and the petitioners removed themselves from the property. Three years after the death of their father, the petitioners sought to annul the sale, alleging that their father had no right to sell the whole conjugal property, that one-half belonged to their mother.

HELD: Right after the sale the petitioners surrendered the property without protest and they profited by the sale and conjugal or not, it had to be sold to pay the encumbrance which became demandable. The petitioners sanctioned the sale with their acquiescence and their silence for more than three years makes it unfair to allow them to dispute it under the flimsy pretense that their father had no power to sell the whole because it was conjugal. Neither under estoppel nor equity will this claim stand. (INOCENCIO CENENTINA, ET AL. *vs.* TRIBUNAL DE APELACION, ET ALS., G. R .No. L-4295, June 26, 1952.)

SALES

Effect of Promise to Buy and Sell on Subsequent Deed of Sale.

FACTS: Paz Tuason obtained loans from Jose Vidal in 1940 and 1941 and constituted a first mortgage on a tract of residential land belonging to her. In January and April of 1943, she borrowed further sums from Vidal with the same security. Mortgage contract was novated making all the loans payable in four years. A separate written agreement, entitled "Penalidad del Documento de Novación de Esta Fecha" was executed at the same time.

In October, 1943, Tuason entered into a "Promesa de Compra y Venta" with Gregorio Araneta, Inc., with the same property as subject of the agreement to be sold to said Gregorio Araneta, Inc., subject to the preferred right of Vidal and the different lessees of the land who were given the option to buy their leaseholds. ₱190,000.00 was given to Paz Tuason as advance payment on the forthcoming sale, which sum was to be applied by her to pay Vidal. Two months later absolute deed of sale to Araneta of the remaining

lots not purchased by lessees was executed, some of the terms of which varied somewhat from the original "Promesa".

Vidal refused to accept offer of payment by Tuason of her mortgage debt. Suit was filed to compel him to accept but liberation came and records of the case were lost. Tuason then repudiated the deed of sale entered into with Araneta, who now filed this action to compel Tuason to deliver title to land in question. Tuason attacks validity of contract on the ground, among others, that it did not conform to the terms of the "Promesa" because, she claimed, the latter made the execution of the deed of sale dependent on the cancellation of the mortgage to Vidal, which mortgage was never cancelled.

HELD: The contemplated execution of the deed of sale was not contingent on the cancellation of Vidal's mortgage. Besides, whatever the terms of the "Promesa", the plaintiff and the defendants were at liberty to make a new agreement different from and even contrary to the former. The validity of the subsequent sale must depend on what it said and not on the provisions of the promise to buy and sell. (GREGORIO ARANETA, INC. *vs.* PAZ TUASON DE PATERNO ET AL., G. R. No. L-2886, August 22, 1952.)

Vendor need not be absolute owner of property subject of contract for future sale; repurchase price; period of redemption.

FACTS: Respondents by deed Exhibit "E" ceded their property to La P.F. in satisfaction of their ₱8,000 debt with a right to repurchase at the same amount within 60 days. Exhibit "E" was acknowledged Nov. 3, 1941. At the same time La P.F. conveyed the property to the petitioner who drew up Exhibit "D" allowing respondents to repurchase within 60 days from Oct. 31, 1941 at ₱14.000.00. The Court of Appeals voided Exhibit "D" because petitioner signed it before he acquired the property by the cession of the respondents to La P.F. and ruled that the respondent's right to repurchase was in Exhibit "E" and was exercised reasonably. Appeal by petitioner.

HELD: Exhibit "D" is not invalid for the reason that at the time of its execution the petitioner had no title to the property. Goods which at the time of the sale are not owned by the seller cannot be the subject of an executed sale, but maybe the subject of a contract for the future sale and delivery thereof . . ., 55 Corpus Juris 65, . . . it is not necessary that the vendor be the absolute

owner of the property at the time he enters into the agreement of the sale. (55 Am. Jurisprudence 480.) The above principle express the same ideas in Articles 1462 and 1459 of the new Civil Code.

The respondent voluntarily agreed under Exhibit "D" to repurchase at ₱14,000.00, she could not repurchase at any other price. She offered only ₱7,000.00 not ₱8,000 (supposing Exhibit "E" governs.) The fact that she was told that petitioner wanted ₱14,000.00 does not excuse her from offering the full repurchase price to La P.F. Undoubtedly she failed to offer that amount, therefore the option to repurchase had not been asserted at the proper time. (CANUTO MARTIN *vs.* MARIA REYES and PEDRO REVILLA, G. R. No. L-4402, July 28, 1952.)

Effect of vendee's deposit of purchase price on vendor's right to rescind.

FACTS: This is an action for specific performance of a contract of sale. Plaintiff bought two parcels of land located in Pasay City from defendant during the Japanese occupation payable in three installments. The first two installments were paid by plaintiff within the time stipulated. The final installment was payable within 12 months from April 3, 1944. On January 8, 1945, plaintiff deposited the balance of the purchase price with the Philippine National Bank in the name of the defendant-vendor because the latter was then in Baguio and the conditions at the time were such as to preclude, even with the exercise of reasonable diligence, the plaintiff from actually contacting the defendant-vendor. In an action to compel the defendant to surrender the certificate of title covering the two parcels of land, defendant alleged that the final installment has never been paid on account of which he rescinded the contract of sale. After trial, the lower court rendered a decision ordering the plaintiff to pay the final installment and the defendant, upon payment of said amount, to execute in favor of plaintiff a deed of sale of the two lots in question. From this decision defendant appealed.

HELD: The lower court considered the uncontroverted deposit made by plaintiff with the PNB in the name of defendant, as being in good faith and as having produced the effect of at least allowing the plaintiff-appellee to pay the balance of the purchase price. In other words, the trial court considered the sum deposited as still outstanding, although the appellees cannot be deemed as having so

defaulted in their obligation under the contract of sale as to entitle the defendant to rescind it. We are constrained to agree with the trial court. The appellee, in depositing the sum in question with the PNB on January 8, 1945, in the name and to the credit of defendant-appellant, may be held to have acted in good faith to the extent at least of allowing their contract of sale to subsist. (ARCACHE *vs.* LIZARES & Co., INC., G. R. No. L-4333, Prom. May 23, 1952.)

Capacity to buy and sell; "Agent" within the meaning of Art. 1459 *of Spanish Civil Code.*

FACTS: Defendant claims that Jose Araneta acted as her agent in the sale of her property while at the same time being identified, as President, with the purchaser Gregorio Araneta, Inc., in violation of par. 2, Art. 1459 of the Spanish Civil Code to the effect that no agent may take by purchase any property of which the management or sale may have been entrusted to him.

HELD: The ban of par. 2 of Art. 1459 connotes the idea of trust and confidence. Where the relationship does not involve considerations of good faith and integrity the prohibition does not apply. Jose Araneta was a mere go-between or middleman between the defendant and the purchaser. He was not an agent within the meaning of Act 1459. He was not authorized to make a binding contract for the defendant nor to fix the price of the sale nor to order terms of payment, nor to exercise any discretion which he could abuse to his advantage and to the owner's prejudice. (GREGORIO ARANETA, INC. *vs.* PAZ TUASON DE PATERNO ET AL., G. R. No. L-2886, August 22, 1952.)

Redemption; amount of repurchase price.

Where the vendor sold property for which the law or the contract provides for the right to repurchase, he is not obliged to pay, in order to repurchase, an amount in excess of what he received in the original sale (Art. 1518, Spanish Civil Code, Art. 1616, New Civil Code). (PETRA VILLAFLOR *vs.* SATURNINO BARRETO ET ALS., G. R. No. L-5045, Nov. 26, 1952.)

Period of conventional redemption; Article 1606.

FACTS: On January 8, 1935, petitioner JT sold a parcel of land to respondent FA with right of repurchase. On March 19, 1944,

respondent received from petitioner the sum of ₱1,000 in Japanese war notes for the repurchase of the property. The issue involved in this proceeding is whether or not the right of repurchase was exercised by the petitioner within the proper time. Petitioner contends that there being an agreement on the *period* of redemption, the right of repurchase may be exercised for an unlimited time. Respondent contends that no period has been fixed for redemption. The parties stipulated that the vendor and her heirs shall have the right to redeem the land from the vendee and his heirs.

HELD: The agreement fixes an unlimited period. When the parties stipulated that the vendor and her heirs shall have the right to make the repurchase, they meant that they shall have the right to do so any time. We have here, therefore, not a case where *no period* at all has been agreed upon, but one with a period which shall continue without limitation. However, pursuant to par. 2 of Art. 1508 of the Civil Code (Art. 1606, New Civil Code), the exercise of the right can be made only within ten years from the date of the contract. It follows, therefore, that the redemption, which was made in the year 1944, was effected within the period of time authorized by law (10 years). (JULIA TUMANENG *vs.* FRANCISCO ABAD, G. R. No. L-4592, September 17, 1952.)

LEASE

Rental Law; waiver of benefits of law.

Where the lessee paid without objection the monthly rental stipulated in the contract despite provisions of law for his protection he is deemed to have waived his right to recover the payment of the amount in excess of that provided by law. Sec. 3, Commonwealth Act No. 689, as amended by Republic Act No. 86, applies (E. A. DE PARAS *vs.* R. J. YEARSLEY, G. R. No. L-3729, Apr 28, 1952).

COMPROMISES

Effects of compromises.

HELD: Art. 1816, Spanish Civil Code: "A compromise sha

have, with respect to the parties, the same authority as res adjudicata;" although "only a compromise made in court may be enforced by execution". These articles with a variation had been incorporated into the new Civil Code as Articles 2028 and 2037, respectively. We are of the opinion therefore, that the present action is concluded by the compromise agreement set up by the defendant. (DOMINGA SALAZAR ET AL. *vs.* FAUSTO JARABE, G. R. No. L-4659, July 11, 1952.)

QUASI DELICTS

HELD: Defendant S.V.O. Co., was guilty of negligent acts. There was no need for plaintiff to reserve her right to file a separate civil action because the same is not necessary when the civil action contemplated is not derived from the criminal liability but one based on culpa aquiliana under the old Civil Code (Arts. 1902-1910). (ANITA TAN *vs.* STANDARD VACUUM OIL CO., JULITA STO. DOMINGO, IGMIDIO RICO and RURAL TRANSIT CO., G. R. No. L-4160, July 29, 1952.)

DAMAGES

Moral damages; amount.

FACTS: The respondent Brilliantes is the owner of a public utility truck. Due to the negligence of the driver, the petitioner Layda, a passenger, was thrown out of the truck. He suffered internal hemorrhage and some broken ribs. He was confined in a hospital for two weeks and received medical treatment for some time afterwards, although the pains continued for six months. Petitioner sued respondent Brillantes and was granted only ₱500 as moral damages. He now petitions this court to increase said amount.

HELD: In the Lilius case, a beautiful woman was granted ₱10,000 as moral damages for facial and leg injuries. In the case of Gutierrez *vs.* Gutierrez, the plaintiff was awarded ₱5,000 as moral damages, although he was not thrown out of his taxicab nor did he suffer hemorrhage as did this petitioner. (ENRIQUE LAYDA *vs.* COURT OF APPEALS and ALFREDO BRILLANTES, G. R. No. L-4487, January 29, 1952.)

FACTS: Plaintiff entered into contract Exhibit "I" with the defendant: the latter to lease the former's land and build on it a cinehouse, conditioned that if plaintiff needs the site, it could cancel the contract anytime and the lessees must remove the building. Later, another contract Exhibit "B" was executed: the lessee to remove the building. Action for specific performance upon failure of the lessees to remove the building. The lessees filed a motion to dismiss contending that the case is one of unlawful detainer, therefore, within the jurisdiction of the justice of the peace court. Prior to the motion to dismiss, lessees set up a counter-claim: that the cross-defs., through Resolution 24 declared lease Exhibit "I" null and void because public property cannot be the subject of a private contract (Cavite v. Roxas, 20 Phil. 603), so that defendants were only forced to execute Exhibit "B". Since they executed Exhibit "B" through fraud, they refused performance, so plaintiff ordered the police to occupy the theater. Defendants claim Resolution 24 (annulling Exhibit "I") was null and void because the plaintiff planned to abandon the land as school site, therefore, the property became patrimonial and lease contract Exhibit "I" was valid while Exhibit "B" was void. "B" being void, there was no contract to enforce.

HELD: The case is not one of unlawful detainer. The complaint exacted fulfillment of Exhibit "B" whereby defendants bound themselves to vacate the land and remove the building. By Exhibit "I" plaintiff's right to terminate the lease anytime it needs the site is undisputed. Exhibit "B" is valid, it was entered into voluntarily, fraud was not proven. (MUN. OF BATANGAS *vs.* CANTOS ET AL., G. R. No. L-4012, June 30, 1952.)