third parties. He was a mere employee hired to perform a certain specific task or duty, that of acting as a special guard and staying at the main entrance of the moviehouse to stop gate crashers and to maintain peace and order within the premises.

The question posed by this appeal is whether an employee or servant who, in line of duty and while in the performance of the task assigned to him, performs an act which eventually results in his incurring expenses, caused not directly by his master or employee or his fellow servants or by reason of performance of his duty but rather by a third party or stranger not in the employ of his employer, may recover damages against his employer.

We confess that we are not aware of any law or judicial authority that is directly applicable to the present case, and realizing the importance and far-reaching effect of a ruling on the subject matter, we have searched though vainly for judicial authorities and enlightenment. All the laws and principles we have found, as regards master and servant, or employer and employee, refer to cases of physical injuries, slight or serious, resulting in loss of a member of the body or of any one of the senses, or permanent physical disability or even death, suffered in line of duty and in the course of the performance of the duties assigned to the servant or employee; and these cases are mainly governed by the Employer's Liability Act and Workmen's Compensation Act. But a case involving damages caused to an employee by a stranger or outsider while said employee was in the performance of his duties, presents a novel question which, under present legislation, we are neither able nor prepared to decide in favor of the employee.

The giving of legal assistance by the employer to their employees is not a legal obligation. While it might yet and possibly be regarded as a moral obligation, it does not at present count with the sanction of man-made laws. If the employer is not legally obliged to give legal assistance to its employee, naturally said employee may not recover from the employer the amount the employee may have paid a lawyer hired by him. (*Domingo de la Cruz v. Northern Theatrical Enterprises et al., G. R. No. L-7089*, August 31, 1954.)

LAND REGISTRATION

REPURCHASE OF HOMESTEAD: WHERE THE OWNER OF A HOMESTEAD SOLD THE LAND TO ANOTHER WITH A RIGHT OF REPURCHASE WITHIN FIVE YEARS FROM DATE OF EXECUTION OF THE DEED, HIS FAILURE TO REDEEM THE PROPERTY WITHIN SAID PERIOD MAKES THE SALE ABSOLUTE, AS UNDER SEC. 50 OF ACT 496 AND SEC. 119 OF COM. ACT 141, THE OWNER IS NEITHER PROHIBITED NOR PRECLUDED FROM BINDING HIMSELF TO SUCH AN AGREEMENT.

Plaintiff Juan Galanza owned a parcel of land covered by original certificate of title issued on July 23, 1934, which land he had acquired as a homestead. On September 7, 1940, he sold said land to the defendant Sotero N. Nuesa with a right of repurchase within five years from the date of execution of the deed of sale. The original certificate of title in favor of plaintiff was not canceled until July 17, 1947, when a transfer certificate of title was issued in the name of defendant. On May 19, 1951, plaintiff instituted in the Court of First Instance of Isabela, a complaint against defendant, praying that the latter be ordered to reconvey the land to the plaintiff in accordance with Sec. 119 [33] of Commonwealth Act 141. Defendant in his answer set up the special defense that plaintiff had failed to exercise his right of redemption within the period stipulated in the deed of sale executed on September 7, 1940, and that therefore the title to the property had already been consolidated in the defendant.

The lower Court ordered defendant to convey to plaintiff the land in question upon payment by the latter to the former of the repurchase price; the Court further ordered the Register of Deeds of Isabela to cancel the transfer certificate of title, and to issue another in the name of plaintiff, after the proper

[33] "Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance."

deed of reconveynace will have been presented for registration. From this decision, defendant appealed.

The question at issue is whether the period to repurchase the land in question shall be counted from the execution of the deed of sale with right to repurchase or from the issuance of the transfer certificate of title to the herein defendant.

HELD: Appellant's title had already become absolute because of failure of appellee to redeem the land within five years from September 7, 1940. Under both Sec. 50 of the Land Registration Law[34] and Sec. 119 of Com. Act 141, the owner of a piece of land is neither prohibited nor precluded from binding himself to an agreement whereby his right of repurchase is for a certain period, starting from the date of the deed of sale. Indeed Sec. 50 of the Land Registration Law provides that, even without the act of registration, a deed purporting to convey or affect registered land shall operate as a contract between the parties. The registration is intended to protect the buyer against claims of third parties and is certainly not necessary to give effect, as between the parties, to their deed of sale.

While we admit that the sale has not been registered in the office of the register of deeds, nor annotated on the Torrens title covering it, such technical deficiency does not render the transaction ineffective nor does it convert it into a mere monetary obligation, but simply renders it ineffective against third persons. Such transaction is however valid and binding against the parties.[35]

The appealed decision is reversed. (*Juan Galanza v. Sotero N. Nuesa, G. R. No. L-6628, August 31, 1954.*)

SECTIONS 72 AND 110 OF ACT 496, CONSTRUED: PURPOSE OF REGISTERING ADVERSE CLAIM; INVALIDITY OF A CONTRACT OF LEASE NOT A VALID EXCUSE FOR DENYING ITS REGISTRATION.

This is an action by the Register of Deeds of Manila to compel respondents to surrender to the former the owner's

[34] Act 496.
[35] Carillo vs. Salak, G. R. No. L-4133, May 13, 1952.

duplicate certificates of title in order that a memorandum of the notice of an adverse claim in connection with the sublease contract executed in favor of Juanita Lirio may be annotated thereon.

Juanita Lirio filed for registration with the office of the Register of Deeds of Manila a contract of lease in her favor; the deed was entered in the day book; but as she did not surrender the owner's duplicate certificates of title for the parcels of land leased by her, the registration was not accomplished. For that reason, she filed with the Register of Deeds of Manila an adverse claim based on the lease contract. The registrar required the owners to surrender the corresponding duplicate certificates of title to the land leased by Juanita Lirio. As the owners refused to surrender the certificates of title, the register reported the matter to the CFI. After hearing, the Court ordered the respondent owners to surrender the duplicate certificates of title in question for annotation of the adverse claim, from which order the respondents appealed. The opposition of the respondents was grounded upon the invalidity or ineffectivity of the contract of lease.

HELD: Sections 72 and 110 of the Land Registration Act vest the court with authority to direct that an adverse claim be registered and to compel the holder of a certificate of title to produce it for the purpose of registering or annotating the adverse claim. The supposed invalidity of contracts of lease is no valid objection to their registration, because invalidity is no proof of their non-existence nor a valid excuse for denying their registration. If the purpose of the registration is merely to give notice, then questions regarding the effect or invalidity of instruments are expected to be decided *after, not before,* registration. It must follow as a necessary consequence that registration must first be allowed, and validity or effect litigated afterwards.[36]

The remedy of the owner of registered land if the claim be adjudged invalid is to have it canceled, and if found by the court to be frivolous or vexatious, the court may tax the

[36] Gurban Singh Pabla & Co. *et al.* v. Reyes *et al.*, 48 O. G. pp. 4365, 4368, 4370.

adverse claimant double or treble costs in its discretion.[37] (*Register of Deeds of Manila v. Tinoco Vda. de Cruz et al.*, *G. R. No. L-6711*, September 20, 1954.)

REMEDIAL LAW

PROVISIONAL REMEDIES: ATTACHMENT; AN APPLICATION TO CLAIM FOR DAMAGES ON PLAINTIFF'S BOND ON ACCOUNT OF ILLEGAL ATTACHMENT MUST BE FILED BEFORE THE TRIAL OR, AT THE LATEST, BEFORE THE ENTRY OF THE FINAL JUDGMENT; OTHERWISE, THE CLAIM IS BARRED.[38]

This is an appeal from an order of the Court of First Instance of Manila refusing to entertain appellant's application to require the Alto Surety and Insurance Co., Inc., to show cause why execution should not issue against its attachment bond filed in said case.

Domingo del Rosario had instituted an ejectment case against Gonzalo P. Nava in the Municipal Court of Manila, and on January 30, 1948, he secured a writ of attachment upon due application and the filing of an attachment bond for ₱5,000, with the Alto Surety and Insurance Co., Inc., as surety.[39] Attachment was levied. The case was tried and judgment rendered against defendant Nava. The latter appealed to the Court of First Instance of Manila. In the latter court, defendant filed a new answer with counterclaim alleging that the writ of attachment was obtained maliciously, wrongfully and without sufficient cause.[40] No notice was given to the Alto Surety and Insurance Co., Inc.

[37] Section 110, Land Registration Act.

[38] Section 20, Rule 59, Rules of Court.

[39] Subsection (c), Section 1 and Section 4, Rule 59, Rules of Court. "Section 20, Rule 59, is a corollary of the principle contained in the last proviso of Sec. 4, Rule 59, to the effect that plaintiff is liable for damages arising from the attachment if the court shall finally adjudge him not entitled to such attachment." (Moran, Comments on the Rules of Court, 2nd Edition, Revised, Vol. II, p. 45).

[40] "The application may be made before trial, in the answer, by way of counterclaim." (Moran, Comments on the Rules of Court, 2nd Edition, Revised, 1947, Vol. II, p. 46, citing Ganaway v. Fidelity and Surety Co., 45 Phil. 406, and Medina v. Maderera del Norte de Catanduanes, 51 Phil. 240.)

By decision of July 21, 1950, the Court of First Instance found that the attachment was improperly obtained, and awarded ₱5,000 as damages and costs to defendant Nava. The judgment became final, and a writ of execution was issued, but was returned unsatisfied on January 19, 1951, because no leviable property of plaintiff Del Rosario could be found. On November 7, 1951, defendant filed a motion setting forth the facts and praying that the Alto Surety and Insurance Co., Inc., be required to show cause why it should not respond for damages adjudged in favor of defendant and against plaintiff.

The surety company filed a written opposition on the ground that the application was filed out of time, it being claimed that the application and notice to the surety should be made before the trial or, at least, before the entry of final judgment.[41]

The Court of First Instance, on December 5, 1951, issued the order appealed from, rejecting defendant's motion on the ground that it was filed out of time.

HELD: While the prevailing party may apply for an award of damages against the surety even after award has been already obtained against the principal (plaintiff in this case),[42] still, the application and notice against the surety must be made before the judgment against the principal becomes final and executory, so that all awards for damages may be included in the final judgment. The requirements of the law[43] are designed to avoid multiplicity of suits. (*Del Rosario v. Nava and Alto Surety and Insurance Co., Inc., G. R. No. L-5513*, August 18, 1954.)

[41] Section 20, Rule 59, Rules of Court. "Damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application should be filed in the same action, otherwise, it is barred." (Moran, Comments on the Rules of Court, 2nd Edition, Revised, 1947, Vol. II, p. 46, citing Tan Suyco v. Javier, 21 Phil. 82, and Nueva-España v. Montelibano, 58 Phil. 807.)

[42] Visayan Surety and Insurance Corporation v. Pascual, G. R. No. L-3694, March 23, 1950.

[43] Section 20, Rule 59, Rules of Court.