CASES NOTED

CIVIL LAW

PERSONS: DISTRIBUTION OF PROPERTY UPON DISSOLUTION OF CONJUGAL PARTNERSHIP; WHERE THE HUSBAND OBTAINED TITLE TO THE LAND DURING THE SECOND MARRIAGE, ALTHOUGH IN FACT HE HAD BEGUN CULTIVATION THEREOF DURING THE FIRST MARRIAGE, THE LAND PERTAINS TO THE SECOND CONJUGAL PARTNERSHIP CREATED BY THE SECOND MARRIAGE RATHER THAN THE FIRST.

This is a dispute over the ownership of a piece of land left by Elias Naval, who died on January 1, 1942. The dispute is between the surviving children of the deceased's first marriage on the one hand and his widow and surviving children of the second marriage on the other.

The children of the first marriage contend that the land belongs to the first conjugal partnership; while the children of the second marriage contend that the land belongs to the second conjugal partnership.

The land in question was acquired during the first marriage. The deceased began cultivation thereof also during the first marriage. But it was nine years after the death of his first wife that Elias Naval applied for a free patent therefor. The application for free patent was approved, a free patent was subsequently issued and, upon said patent being registered, he received the original certificate of title from the register of deeds. By this time he was already married to his second wife.

To settle the question, the surviving children of the first marriage instituted the present action against the widow and the surviving children of the second marriage.

Upon hearing the cause, the lower court decided in favor of defendants, whereupon plaintiffs appealed to the Court of Appeals but the latter indorsed the case to the Supreme Court.[1]

HELD: Mere possession and cultivation of the land do not give the entryman a vested right to it. Occupation and cultivation give the entryman a right only to a free patent; but in order that that right may ripen into a free patent title, it is necessary, among other things, that an application be filed.[2] Without this requisite being fulfilled, no such title can be acquired.[3] So that, therefore, if Elias Naval had never filed his application for free patent, he could have acquired no right of ownership which he might transmit to his heirs.[4]

The land in question, therefore, belongs to the second conjugal partnership, so that one-half of it should pertain to Elias Naval's second wife and the other half to the children of the second marriage.[5] (*Naval et al. v. Jonsay et al., G. R. No. L-7199*, September 30, 1954.)

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[1] Because the questions raised were purely of law. (No. 6, par. 3, Sec. 17, Judiciary Act of 1948).

[2] Section 50, Commonwealth Act No. 691, otherwise known as the *Public Land Act*, as amended by Republic Act No. 63.

[3] Neither can he acquire title to the land by prescription; public lands cannot be acquired by prescription because no prescription runs against the State. There is only one exception to this, and that is, when possession was continuous from July 26, 1894, as provided for in subsection (b), Section 45, Act No. 2874. (Li Seng Giap v. Director of Lands, 59 Phil. 687.)

[4] No person can give what he does not have. "The entryman in fact aquired nothing until the instant he was entitled to everything. If his compliance with the statutory condition fell short in any essential, he had nothing; but the instant he had fully complied with them, the equitable estate burst into full blossom as his property, and simultaneously therewith he acquired the right to a patent." (Petition of S. R. A. Inc., 18 N. W. 2nd, 447, 449.)

[5] "When the wife is divorced after her husband's entry on the land but before the completion of his right to the homestead, she acquires no interest in the property. Where the entry was made before marriage and the patent was issued afterwards, the land is the separate property of the entryman. But where the title was initiated and the patent was issued during the existence of the marriage, the land is community property." (11 Am. Jur. 193, citing McCune v. Essig, 199 U. S. 382.)

PROPERTY: ARTICLE 670, IN CONNECTION WITH ARTICLE 631, No. 1, NEW CIVIL CODE, CONSTRUED; IN ORDER THAT AN EASEMENT MAY BE EXTINGUISHED BY MERGER IN THE SAME PERSON OF THE OWNERSHIP OF THE DOMINANT AND THE SERVIENT ESTATES, SUCH OWNERSHIP MUST BE OF THE WHOLE, AND NOT ONLY OF A PART, OF EITHER ESTATES.

This is an appeal from an order of the Court of First Instance of Ilocos Sur dismissing appellant's complaint, which alleges that defendants, being owners of a lot contiguous to the land of plaintiffs, constructed a building on said lot with balconies and windows less than two meters distant from said land, in violation of Art. 670 of the new Civil Code. Plaintiffs, therefore, pray that the said balcony and windows be ordered closed.[6]

The servient estate was formerly a part of the dominant estate which was held in co-ownership by plaintiffs. Thereafter, two of the co-owners sold their shares to defendants. The latter built the building with windows and balconies which were objected to by the plaintiffs.

The lower court dismissed the complaint on the ground that, with the acquisition by defendants of a share in the land in question, the easement of light and view was extinguished by "merger in the same person of the ownership of the dominant and servient estates." [7]

HELD: The view taken by the lower court is patently erroneous. As defendants have not become sole owners of the servient estate, for they have acquired only a part interest therein, it cannot be said that in this case ownership of the

[6] The non-observance of the distances prescribed in Art. 670, new Civil Code, does not give rise to prescription, according to the last paragraph of the same article. However, prescription may be acquired as a negative easement after a notarial prohibition (Art. 621; Padilla, *Civil Code Annotated, Vol. I, 1953 Edition*, p. 821). But in the case of *Cortes v. Yu-Tibo, 2 Phil. 24*, it was held that the easement of light and view is a negative easement. As a negative easement, therefore, it could be acquired by prescription under the conditions prescribed in Art 621, new Civil Code. Hence, the last paragraph of Art. 670, new Civil Code, should be understood to be applicable only when the requirements of Art. 621 as to negative easements have not been complied with, that is, when there is no notarial prohibition; for when there is a notarial prohibition, prescription begins to run from that moment.

[7] Art. 631, No. 1, new Civil Code.

dominant and the servient estates has been merged in the same person. Manresa observes that under that article,[8] the easement is not extinguished by the acquisition of a share in property held in common.[9] (*Cabacungan et al. v. Corrales & Corrales, G. R. No. L-6629*, September 30, 1954.)

SUCCESSION: ARTICLE 795, NEW CIVIL CODE, APPLIED; THE PROPER LAW TO GOVERN THE FORM OF A WILL IS THE *Lex Loci Celebrationis*, OR THE LAW IN FORCE AT THE TIME OF THE EXECUTION OF THE WILL.[10]

On September 6, 1923, Father Sancho Abadia, parish priest of Talisay, Cebu, executed a document purporting to be his last will and testament. He died on January 14, 1943, leaving properties estimated at ₱8,000 in value. One of the legatees, on October 2, 1946, filed a petition for the probate of said will in the Court of First Instance of Cebu. Some cousins and nephews who would inherit the estate of the deceased if he had left no will, filed opposition.

The lower court found and declared the document to be a holographic will; [11] and that, although at the time it was exec-

[8] Art. 546, No. 1, Spanish Civil Code. The corresponding article in the new Civil Code is Art. 631, No. 1.

[9] "(o) *La adquisición de una parte proindiviso del dominio.* En este caso no se adquiere la propiedad plena indispensable para la extinción de la servidumbre, sino una fracción, porque el dominio se halla representado por todos los comuneros y no por uno solo. Además, no se reune propiamente el dominio en una sola persona, según éxige el núm. 1.° del art. 546. Así en el predio o en la servidumbre que se posee proindiviso, existe un derecho abstracto, indeterminado, mientras que respecto a la servidumbre o al predio que se posee por entero existe un derecho determinado y especial. Así también, el dueño del predio dominante, participe proindiviso del sirviente, puede oponerse a todo acto acordado por los comuneros que tienda a perjudicar la servidumbre, y el dueño del predio sirviente, participe proindiviso del dominante, no puede, por su sola voluntad, perjudicar ni menos extinguir el derecho que, no a él, sino a todos los comuneros corresponde." (*IV Manresa, 6th Edition*, pp. 706-707.)

[10] Padilla, *Civil Code Annotated, Vol. II, 1953 Edition*, p. 113; *In re* Will of Riosa, 39 Phil. 23.

[11] "A person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed." (Art. 810, new Civil Code.)

uted and at the time of the testator's death holographic wills were not permitted by law, still, because at the time of the hearing and at the time the case was to be decided the new Civil Code had already gone into force, which Code permitted the execution of holographic wills, under a liberal view, the lower court admitted the document to probate as the last will and testament of Father Sancho Abadia. The oppositors appealed from that decision.

HELD: The supposed last will and testament in question does not comply with the formalities prescribed by law.[12] Hence, it is void.[13] Of course, there is a view that the intention of the testator should be the ruling and controlling factor and that all adequate remedies and interpretations should be resorted to in order to carry out said intention, and that when statutes passed after the execution of the will and after the death of the testator lessen the formalities required by law for the execution of wills, said subsequent statutes should be applied so as to validate wills effectively executed according to the law in force at the time of execution. However, we should not forget that from the day of the death of the testator, if he leaves a will, the title of the legatees and devisees under it becomes a vested right, protected under the due process clause of the Constitution against a subsequent change in the statute adding new legal requirements of execution of wills which would invalidate such a will. By parity of reasoning, when one executes a will which is invalid for failure to observe and follow the legal requirements at the time of its execution, then upon his death he should be regarded and declared as having died intestate, and his heirs will then inherit by intestate succession, and no subsequent law with more liberal requirements or which dispenses with such requirements as to execution should be allowed to validate a defective will and thereby

[12] Articles 804 and 805, new Civil Code.

[13] ". . . It is not enough that the signatures guaranteeing authenticity should appear upon two folios or leaves; three pages having been written on, the authenticity of all three of them should be guaranteed by the signature of the alleged testatrix and her witnesses." (*In re* Estate of Saguinsin, 41 Phil. 875, 879.)

". . . The noncompliance . . . by the attesting witnesses who omitted to sign with the testator at the left margin of each of the five pages of the document alleged to be the will of Ventura Prieto, is a fatal defect that constitutes an obstacle to its probate." (Aspe v. Prieto, 46 Phil. 700.)

divest the heirs of their vested rights in the estate by intestate succession. The general rule is that the legislature cannot validate void wills.[14] (*In re Will and Testament of Abadia. Enriquez et al. v. Abadia et al.*, G. R. No. L-7188, August 9, 1954.)

OBLIGATIONS AND CONTRACTS: WHERE THE PARTY TO A CONTRACT UNDERTAKES TO DO SOME PARTICULAR ACT, THE PERFORMANCE OF WHICH DEPENDS ENTIRELY ON HIMSELF, THE LAW IMPLIES AN ENGAGEMENT THAT IT SHALL BE EXECUTED WITHIN A REASONABLE TIME, IN THE ABSENCE OF ANYTHING TO SHOW THAT AN IMMEDIATE DELIVERY WAS INTENDED.

In this case Yok Cheng as plaintiff sought to collect from defendant Bonjack Metals (Phil.), Inc., the sum of ₱26,168.06, as cost price of typewriters sold by him to defendant. From a judgment rendered by the Manila court ordering the defendant corporation to pay plaintiff said sum, the former appealed.

Jack J. Chernyk was the president and general manager of the defendant corporation whose principal office was in Manila, which corporation was also associated with the Capco Alloy Steel Co., located at Los Angeles, California, U. S. A., whose president and manager was also Chernyk.

Defendant Chernyk entered into a contract with plaintiff whereby the former engaged to buy a quantity of scrap iron materials consisting of junk typewriters owned by the latter.

The parties subsequently drew up the contract of purchase and sale, and one of the conditions thereof was as follows:

> "The seller will arrange to get the boxes and to pack the typewriters immediately; the time required for the complete export packing shall be about thirty (30) days from the date of this agreement."

Defendant refused to pay for the materials which were shipped by plaintiff to the Capco Alloy Steel Co. in Los Angeles, California. Defendant contended that plaintiff had packed the materials and shipped them against the repeated

[14] 57 Am. Jur., Wills, Sec. 231, pp. 192-193.

demands of the former not to ship said materials until the latter had received instructions from the former, and hence plaintiff was guilty of breach of contract.

HELD: The provision of the contract abovementioned clearly reveals the desire of the parties to terminate the packing at the shortest time practicable, so that the merchandise could be delivered to the ocean carrier. It would be indeed dangerous to adhere to a proposition that the delivery of the typewriters would have to depend upon the sole will of the plaintiff.[15] Well known is the principle that where the party to a contract undertakes to do some particular act, the performance of which depends entirely on himself, the law implies an engagement that it shall be executed within a reasonable time, in the absence of anything to show that an immediate delivery was intended.[16] The act of the plaintiff in packing the typewriters with the least practicable delay was in compliance with this principle.

The contention therefore of defendant that it had ordered plaintiff not to pack until he received instructions, is untenable, for it would be contrary to the stipulation that they should be packed immediately.[17] (*Sian Yok Cheng v. Bonjack Metals (Phil.), Inc., C.A.—G. R. No.* 7907-*R*, August 31, 1954.)

OBLIGATIONS AND CONTRACTS: SALES DISQUALIFICATION; ARTICLE 1646,[18] NEW CIVIL CODE, CONSTRUED; THE DISQUALIFICATION MENTIONED IN PAR. 6, ARTICLE 1491,[19] NEW CIVIL CODE, DOES NOT REFER TO ALL PERSONS IN GENERAL, CITIZENS OR ALIENS, BUT ONLY TO THOSE WHO, BY VIRTUE OF THE SPECIAL RELATIONSHIP WHICH THEY HAVE WITH THE PROPERTY, SHOULD NOT BE ALLOWED TO ACQUIRE IT.

This is a petition for *mandamus* to compel the Register of Deeds of Davao City to register a contract of lease executed by the Atlantic Gulf & Pacific Co. of Manila in favor of the Smith, Bell & Co., Ltd.

On June 9, 1953, the Atlantic Gulf & Pacific Co., a corporation organized under the laws of West Virginia, licensed to do business in the Philippines, leased to Smith, Bell & Co., Ltd., a foreign corporation, a parcel of land situated in Davao, Cadastral Lot No. 1241, for a period of twenty-five years extendible to another twenty-five years. Smith, Bell & Co. sought to register this contract of lease, but the Register of Deeds of Davao refused to register it. The case was referred to the Chief of the General Land Registration Office for *consulta*, and the latter held that the Register of Deeds was justified in refusing to register the lease.

HELD: It is contended by some, on the strength of par. 6 of Art. 1491, in relation to Art. 1646, both of the New Civil Code, that aliens who are prohibited by the Constitution from buying lands,[20] are also prohibited from leasing them.[20a] In

[15] Because "when the fulfillment of a condition depends upon the sole will of the debtor, the conditional obligation shall be void..." (Art. 1182, New Civil Code of the Philippines.)

[16] 55 C. J., 342-343; Smith Bell v. Matti, 44 Phil. 875.

[17] "If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." (Art. 1370, New Civil Code of the Philippines.)

[18] "The persons disqualified to buy referred to in articles 1490 and 1491, are also disqualified to become lessees of the things mentioned therein."

[19] "The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

"(6) Any others specially disqualified by law."

[20] *Krivenko v. Register of Deeds*, 44 *Off. Gaz.* 471, where it was held that aliens may not acquire residential lands if they are prohibited from acquiring public agricultural lands, because residential lands are included in the term "public agricultural lands."

[20a] It is curious to note that on the day prior to the date of this decision, Hon. Pedro Tuason, Secretary of Justice, issued Opinion No. 290, Series of 1954, which had been requested by the Undersecretary of Foreign Affairs. The opinion reads:

> This is in reply to your letter requesting my opinion on the validity of the proposition advanced by the Chinese Embassy "that the constitutional restriction against the disposition of agricultural lands in the Philippines in favor of aliens does not preclude the right of aliens to lease agricultural lands, because the ultimate disposition of the lands still remains in the hands of the Filipino owners whose interests can be safeguarded in the terms of the lease."
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> The Constitution mentions two kinds of agricultural lands, public and private. (*Art.* XIII, *Secs.* 1 *and* 5.)
>
> Public agricultural lands may not be leased to aliens in view of the constitutional provision that "all agricultural lands x x x of the public domain x x x belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations

our opinion, this contention is without merit for various reasons.

The prohibition in the first five paragraphs of Art. 1491 is based on moral principles and the relation of trust between the persons named therein. We believe, then, that par. 6 of Art. 1491 does not refer to all persons and all properties alike, but merely to those persons who, because of a special fiduciary relationship with the property, should not be permitted to buy said property. The statutory construction rule of *ejusdem generis* is properly applied here.

or associations at least sixty *per centum* of the capital of which is owned by such citizens x x x." (*Art.* XIII, *Sec.* 1.)

But we understand the Chinese Embassy's communication to be concerned only with private agricultural lands. Section 5, Article XIII of the Constitution provides that, "save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain."

A lease of private agricultural land is not prohibited by the last-quoted provision because lease does not convey title. In the celebrated case of *Krivenko v. Register of Deeds,* 44 *O. G. No.* 2, *p.* 471, the Court held that "aliens are not completely excluded by the Constitution from the use of lands for residential purposes," and "may be granted temporary rights such as lease which is not forbidden by the Constitution." Within this ruling are comprehended, of course, private agricultural land, since the decision is premised on the assumption that city and town lots are agricultural lands.

As a matter of fact, none would question the right of aliens to hold private agricultural lands by lease. The Department and the Court of First Instance of Manila, Branch IV, themselves have admitted and recognized this right. (*Ops. of the Sec. of Jus. No.* 58, *s.* 1949; *No.* 155, *s.* 1950; *and Nos.* 216 *and* 235, *s.* 1952; *Consulta No.* 136 *of the Reg. of Deeds of Camarines Sur, decided by the Presiding Judge of Branch IV, Court of First Instance of Manila*).

But leases may run, according to the Civil Code, up to 99 years, and a long-term lease may be such as to defeat the constitutional prohibition. Where that be the case, I believe that the courts would be justified in nullifying a contract of lease and the register of deeds in refusing to register it.

In the opinions cited above of this Department, 25 years was fixed as the maximum allowable period. Even this period may be too long, so long as virtually to amount to a transfer of ownership of the property purportedly leased. Pending determination of the reasonable periods by the courts, and in the absence of legislation on the subject, 10 years would, in my opinion, be more in consonance with the spirit of the organic law.

I take this opportunity to suggest the necessity of requesting the Congress to settle this delicate and important question by appropriate enactment. It is my opinion that the Legislative Department has the power to regulate (even prohibit) leases to aliens of agricultural lands, which as stated, included urban lands, by defining the size of land that may be leased, the purpose for which the land may be used, *etc.*

The members of the Code Commission and of Congress were thoroughly familiar with the Constitutional prohibition and the *Krivenko case.* If their intention had been to extend said prohibition to leases by aliens, par. 6 of Art. 1491 would have specifically stated so.

The basis of the prohibition of sale is the necessity of preserving dominion over territories of the Philippines so as to preserve sovereignty and safeguard the security of the nation. An alien therefore who buys land becomes the owner thereof and exercises dominion over it; while one who leases land merely possesses or uses the land but does not exercise dominion over it. And a lease for 50 years does not mean such a possession as will permanently transfer dominion and thereby endanger the security of the territory.

To prohibit aliens from leasing lands in the Philippines would be to deprive the owners thereof of benefits corresponding to them. Over fifty per cent of commercial lots in the cities of the Philippines are held by aliens through lease. It is easy to see the harm that such a prohibition would cause.

If the Constitution does not prohibit the lease of public lands in the Philippines to aliens, why should Congress, through the New Civil Code, prohibit them from leasing privately owned lands? Invariably the lease of such lands results in their development and improvement. The Port Area of Manila as well as that of Cebu, and others, were developed in this manner, without investment of a single centavo by our country, the improvements to belong to the Government after a number of years. Congress was fully aware of these considerations.

The law provides that a lease, to be effective against third persons, must be registered. The Land Registration Law further provides that it is the duty of the Register of Deeds to register such contracts involving real property, including leases. Where the law requires or permits their registration, such duty of the Register of Deeds is ministerial.

The contract of lease subject of this litigation is for a period of twenty-five years, extendible to another twenty-five years; it does not exceed ninety-nine years, the limit provided for by law.[21] This lease is therefore valid and in accordance with law. Hence, *mandamus* will lie to compel

[21] Art. 1643, New Civil Code, provides that "no lease for more than ninety-nine years shall be valid."

the Register of Deeds to register the contract of lease executed by the Atlantic Gulf & Pacific Co. in favor of Smith, Bell & Co., Ltd. (*Smith, Bell & Co., Ltd. v. Register of Deeds, G. R. No. L-7084*, October 27, 1954.)

CRIMINAL LAW

ESTAFA: ART 315, PARAGRAPH 1 (B), REVISED PENAL CODE, CONSTRUED; THE MERE FACT THAT THE ACCUSED HAS RECEIVED MONEY, GOODS, OR ANY OTHER PERSONAL PROPERTY IN TRUST OR ON COMMISSION, OR FOR ADMINISTRATION, OR UNDER ANY OTHER OBLIGATION INVOLVING THE DUTY TO MAKE DELIVERY OF OR TO RETURN THE SAME, WITHOUT ANY EVIDENCE SHOWING CONVERSION OR MISAPPROPRIATION OF SUCH MONEY, GOODS OR ANY OTHER PERSONAL PROPERTY, DOES NOT CONSTITUTE ESTAFA.

This appeal has been brought to reverse a judgment of the Court of First Instance of Manila convicting the appellant of the crime of *estafa* and sentencing him accordingly.

The accused was president and general manager of Commercial Distributors Co., Inc., a domestic corporation engaged in the business of importation and exportation of merchandise. As such he had the power, among others, to execute on behalf of the corporation all contracts and agreements it might enter into.

Sometime in the year 1946, the Division of Purchase and Supply called for sealed bids to supply the Bureau of Printing with 2,000 reams of paper of the kind, class and color specified by the latter. Commercial Distributors took part in the bidding and the contract was finally awarded to it. To fill this order, Commercial Distributors, through the accused, placed with the China American Paper and Pulp Co., Inc., of New York City, an order for 2,000 reams of paper

of the kind, color and size specified by the Bureau of Printing, and to finance this purchase, it filed with the offended party, Philippine National Bank, an application for a commercial letter of credit in favor of that corporation for the sum of $24,500.00. This application was approved upon the filing of a bond of ₱9,900.00. This bond was filed by the Manila Surety and Fidelity Co., Inc.

Shipments of iron-strapped wooden cases of printing paper shipped by the China American Paper and Pulp Co., Inc. and consigned to Commercial Distributors arrived in Manila subsequently. For these shipments, drafts were drawn by the China American Paper and Pulp Co., Inc. against the commercial letter of credit granted Commercial Distributors and were received by the Philippine National Bank together with the bill of lading, commercial invoice, and other shipping papers covering the shipment. The Philippine National Bank submitted the drafts to Commercial Distributors for payment, and the same having been accepted by the latter (which furthermore executed in favor of the former trust receipts under which it agreed to hold the merchandise covered by the shipment in storage as property of the bank, and to sell the same for its account and to deliver the proceeds thereof to the Philippine National Bank to be applied against its account), said bank indorsed the bill of lading, commercial invoice and other papers covering the shipment and delivered the same to the accused. On the strength of these papers, Commercial Distributors succeeded in landing the merchandise and delivering it to the Bureau of Printing.

Of the total value of the drafts above referred to, drawn against the commercial letter of credit granted by the Philippine National Bank in favor of Commercial Distributors for the merchandise covered by the trust receipts mentioned above, which were duly paid by said bank, Commercial Distributors paid to said bank the sum of $23,806.01. The bank also confiscated the indemnity bond in the sum of ₱9,900.00 filed by the Manila Surety and Fidelity Co., Inc. and applied it to that account. On account of the total of said drafts, only $28,751.01 was paid, leaving unpaid a balance of $3,875.34 or ₱7,750.68.

Subsequently, Commercial Distributors executed in favor of the Philippine National Bank a deed of assignment of all its