ATENEO LAW JOURNAL

DIGEST OF 1954 CASES

CIVIL LAW

EFFECT AND APPLICATION OF LAWS

Circulars And Regulations, Issued For The Implementation Of The Law Authorizing Its Issuance, Take Effect, In The Absence Of Special Provision, 15 Days After Their Publication In The Official Gazette.

FACTS: Po Lay was charged and convicted of violating Circular No. 20 of the Central Bank which compelled those in possession of foreign exchange to sell the same to the Central Bank. In this appeal, Po Lay alleges that as the circular was not published in the O.G. before the act charged was committed, said circular had no force and effect.

HELD: Sec. 11, Rev. Adm. Code, and Art. 2, N.C.C., provides that statutes passed by Congress shall, in the absence of special provision, take effect at the beginning of the 15th day after the completion of their publication in the Official Gazette. Although Circular 20 is not a statute or law, yet, being issued for the implementation of a law authorizing its issuance, it has the force and effect of law according to settled jurisprudence. Moreover, on general principles, regulations containing penal provisions should be published before becoming effective. (PEOPLE *v.* QUE PO LAY, G. R. No. L-6791, March 29, 1954.)

Foreign Divorce Granted On A Ground Not A Cause For Divorce Under PI Laws Cannot Be Enforced.

FACTS: Alfredo and Salud, both Filipinos, were married in the PI in 1932. Alfredo left for the U.S., and there secured a divorce on April 9, 1941 on the ground of abandonment. In resisting this action, Alfredo claims that the foreign divorce dissolved the marriage.

HELD: Art. 11, Old Civil Code, (now Art. 17) provides that prohibitive laws shall not be rendered ineffective by a foreign judgment. Under our divorce law, Act. 2710, divorce cannot be granted except on the ground of adultery by the wife or concubinage by the husband. The divorce decree in question, having been granted on the ground of desertion, clearly not a cause for divorce under our laws, cannot therefore be enforced in this jurisdiction. (SALUD ARCA *v.* ALFREDO JAVIER, G. R. No. L-6768, July 31, 1954.)

HUMAN RELATIONS

In An Action For Damages Under Art. 27, New Civil Code, It Must Appear That The Refusal Or Neglect Of The Public Employee Is Without Just Cause.

FACTS: Upon receipt of a letter from the City Assessor informing him of his delinquency in paying realty taxes, plaintiff filed an action for moral damages, relying on Art. 27 of the Civil Code, and alleging that the defendant failed or refused to make the proper entries in his favor. The CFI dismissed the complaint on the ground that it did not state a cause of action; hence this appeal.

HELD: Art. 27 contemplates of a refusal or neglect without just cause, by a public employee, to perform his official duty. Thus, the facts pleaded in the complaint do not constitute a cause of action since there is no allegation that plaintiff has paid the amount due for realty tax. (BAGALAY *v.* URUSAL, G. R. No. L. 6445, July 29, 1954.)

PERSONS

MARRIAGE

Marriage Contracted During Existence Of First Marriage Is Void "Ab Initio"; Judicial Decree Not Needed To Establish Its Invalidity.

FACTS: In 1936, Mendoza married Jovita. In 1941, during the subsistence of the first marriage, Mendoza married Olga. In 1943, Jovita died. In 1949, Mendoza married Carmencita. Mendoza was accused of bigamy for having married Carmencita in 1949 while his 1941 marriage to Olga was still subsisting. Mendoza claims that his 1941 marriage, having been contracted while his first marriage was in effect, was void and hence his 1949 marriage, which took place after the death of his first wife, was not bigamous. The prosecution contends that, as its invalidity had not been judicially declared, the 1941 marriage can be the basis of a charge for bigamy.

HELD: According to Sec. 29 of Act 3613 (now Art. 83, N. C.C. with slight modifications) a second marriage contracted during the lifetime of the first spouse "shall be illegal and void from its performance," and no judicial decree is necessary to establish its invalidity, as distinguished from mere annulable marriages. Thus, the 1941 marriage, void for having been contracted during the existence of the first (1936) marriage, cannot be the basis of a prosecution for bigamy. (PEOPLE *v.* MENDOZA, G. R. No. L-5877, September 28, 1954. Reyes, J., dissenting.)

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal Property, Sold On Execution, Which Is Redeemed By the Wife With Separate Funds Becomes Paraphernal; Art. 1396, Old Civil Code, (Now Art. 148) applied.

FACTS: Following the conviction of plaintiff's husband, 4 parcels of land belonging to the conjugal partnership were sold, to satisfy the civil liability of the accused, for ₱1,385 leaving an unsatisfied balance of ₱793. 2 of said parcels were redeemed by plaintiff with money obtained from her father. Later,

pursuant to an alias execution to satisfy the balance, the redeemed properties were levied and sold on execution. Plaintiff seeks to annul the sale.

HELD: Plaintiff redeemed the property not in behalf of her husband but as successor in interest in the property. Having been acquired by her by right of redemption with money belonging exclusively to her, the property, according to Art. 1396 of the Old Civil Code, belongs exclusively to her. It has therefore ceased to be property of the judgment debtor and can no longer be subject of execution under a judgment exclusively affecting the personal liability of the latter. (ROSETE *v.* PROVINCIAL SHERIFF OF ZAMBALES, G. R. No. L-6335, July 31, 1954.)

PATERNITY AND FILIATION

Persons with Legitimate Children are Disqualified to Adopt; Purpose of Adoption.

FACTS: Plaintiffs filed a petition to adopt Marcial Resaba, a minor, with the written consent of the latter's legitimate parents. The Solicitor General opposes on the ground that the petitioners have two legitimate children and are disqualified under the New Civil Code.

HELD: The purpose of adoption is to afford to persons who have no children of their own the consolation of having one by creating through legal fiction the relation of paternity and filiation. The purpose rejects the idea of adoption by persons who have children of their own. (YÑIGO *v.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-6294, June 28, 1954)

CIVIL REGISTER

Correction Of Material Errors In Civil Register Cannot Be Obtained In Summary Proceedings But In An Appropriate Action; Scope Of Art. 412, New Civil Code, Limited.

FACTS: Relying on Art. 412, N.C.C., Tin petitions to correct certain mistakes appearing in the civil register, alleging that, while he is really a Filipino citizen, the attending physician had caused it to appear in the birth certificate of his children that he (Tin) was a Chinese. The petition having been granted, the government appeals.

HELD: Where the petition does not merely call for a correction of a clerical error in the Civil Register, but involves a matter which concerns the status of nationality or citizenship of a party, it is a matter which cannot and should not be threshed out in a summary proceeding under Art. 412, N.C.C., but in an appropriate action. (TIN *v.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-5609, February 5, 1954.)

MODES OF ACQUIRING OWNERSHIP

DONATION

Characteristics Of Donation Mortis Causa.

FACTS: The deceased Bonsato executed a deed of donation during his lifetime, whereby he reserved to himself the owner's share of the fruits of the land donated. Respondents questioned the validity of the deed, contending that, as the donation was a donation *mortis causa*, it failed to comply with the legal requisites. The CFI upheld the validity of the donation, declaring it to be *inter vivos*. On appeal, the CA declared the donation void for failure to comply with the formalities of donations *mortis causa*. The case was then elevated to the S. Ct.

HELD: A donation *mortis causa* has 3 characteristics: (1) it conveys no title or ownership to the donee before the death of the donor; the donor retains full or naked ownerhip and control of the property while he is alive; (2) before the donor's death, the transfer should be revocable at will, ad nutum; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the property; (3) the transfer should be void if the donor survives the donee. None of these characteristics is present in the donation in question. The donor only reserved for himself the owner's share of the fruits, a reservation which would be unnecessary if the ownership remained with the donor. (BONSATO *v.* COURT OF APPEALS, G. R. No. L-6600, July 30, 1954.)

To Be Valid, A Donation Of Movable Property Which Is Made In Writing Must Be Accepted In The Same Form.

FACTS: Dipusoy executed an affidavit giving ½ of her collectible war damage claims to Caoibes and ½ to Basa. Later, Dipusoy died leaving a will duly probated whereby she distributed her credits to the children of Ramos. Subsequently, Caoibes collected the war damage claims and retained ½ of it, giving the other half to Basa in accordance with the donation. Ramos, as administratrix, now seeks to recover the amount of the claims. Caoibes relies on the donation.

HELD: The alleged document of donation of personal property was made in writing, but it has not been accepted in the same form and consequently has no validity. (RAMOS *v.* CAOIBES, G. R. No. L-5142, February 26, 1954.)

SUCCESSION

Validity of Will as to Form Depends Upon Law In Force At Time of Execution; Art. 795, New Civil Code, Applied.

FACTS: In 1923, Sancho Abadia executed a holographic will. At the time of its execution, holographic wills were not permitted by law and certain essential requirments imposed by the law then applicable were not observed in the will. The will was presented for probate in 1946. In 1952, the will was allowed by the probate court on the ground that, at the time the case was to be decided, the New Civil Code, permitting holographic wills under a liberal view, was already in force and is the law to be applied.

HELD: Art. 795 states, in effect, that the validity of a will is to be judged not by the law in force at the time of the testator's death or at the time the supposed will is presented in court for probate or when the petition is decided by the court but at the time the instrument was executed. One reason therefor is that though the will operates after the testator's death, yet his wishes are given expression at the time of execution and the legacies then become completed acts. (VDA. DE ENRIQUEZ ET AL., *v.* MIGUEL ABADIA ET AL., G. R. No. L-7188, August 9, 1954.)

A Legatee Who Violates a Trust Imposed by the Testator and Renounces His Rights Under It is Barred from Enforcing the Same.

FACTS: Dionisio Ynza left a will in which Julia, Jose and Maria were named legatees to properties in Iloilo and Negros. Par. 5 of the will also provided that in case of the death of any of them, without issue, his share shall pass to the others. Soon after, Maria sold her share to Julia and Jose; Jose, in turn, sold his share in the properties in Iloilo to Julia. Later Julia died without issue, leaving a will in which Jose was only given a part of the properties. With the conformity of Jose, a project of partition was approved by the court and the properties distributed among the several legatees. Jose brings this action to declare himself absolute owner of all properties left by Julia by virtue of Par. 5 of the will of Dionisio Ynza.

HELD: Par 5 of the will may be considered as establishing a trust limiting the disposition of the shares of the legatees. The right under the trust may be enforced by the legatees who survive. But the legatee who from the very beginning not only had violated the trust, but had renounced his right to it cannot enforce the same. To give effect to the trust, none of the legatees should have disposed of his share. By purchasing the share of Maria, Jose not only violated the wishes of the testator but also renounced his right to inherit Maria's share should she die without issue. His assent to the project of partition of Julia's properties also constituted a renunciation of his rights under the trust. (JOSE YNZA *v.* HUGO P. RODRIGUEZ, G.R. No. L-6395, June 30, 1954.)

Only Acknowledged Natural Brothers And Sisters Of the Deceased Can Succeed To The Latter's Estate; Art. 945, Old Civil Code, Construed.

FACTS: The decedent Gabriel in his will devised a parcel of land to Soledad, Obdulia and Lucia, with the proviso that should any of them die without heirs, the share of the dead legatee shall pass to the others. Soledad and Obdulia died without legitimate heirs. Relying on the proviso, Lucia asked

that the shares of her co-legatees be adjudicated to her. The petition was opposed by Mercedes, an unacknowledged natural sister of Soledad, who claimed the right to succeed to the latter's share in the legacy, by virtue of Art. 945, Old Civil Code.

HELD: Art. 945 speaks of succession of natural brothers and sisters. Although it does not mention acknowledgment, such a requirement is understood. Not having been acknowledged, Mercedes cannot succeed to Soledad's share. (MISE *v.* RODRIGUEZ, G. R. No. L-6087, July 14, 1954.)

When Accretion under the Civil Code Takes Place; Art. 982, Spanish Civil Code Construed.

FACTS: Dionisio Ynza left a will naming Julio, Jose and Maria Ynza as legatees and providing that, should any of them die without issue, his share shall accrue to the surviving legatees. Julia died without issue, leaving a will whereby she bequeathed the properties, received by her as inheritance, to several persons and giving only a part thereof to Jose. Jose instituted this action to declare himself absolute owner of the properties left by Julia, by virtue of the right of accretion provided for in the will of Dionisio Ynza.

HELD: Under the old Civil Code, there is a right of accretion where one of several legatees or heirs predecease the testator or renounces his inheritance or is incapable of receiving it. None of said circumstances has occurred in the present case. However, the condition in the will of Dionisio may be regarded as a charge or trust limiting the disposition of the share alloted to the legatees. (JOSE YNZA *v.* HUGO P. RODRIGUEZ, G. R. No. L-6395, June 30, 1954.)

OBLIGATIONS AND CONTRACTS

OBLIGATIONS

Even In The Absence Of Provision Governing It, An Obligation Not Contrary To Law, Public Morals Or Policy May Be Given Effect.

FACTS: In 1949, in consideration of a loan of ₱550, defend-

ants executed a document promising to pay to plaintiff said sum and, further, on their failure to do so, to execute a mortgage over their properties in plaintiff's favor. The debt not having been paid, plaintiff seeks to compel the execution of the mortgage as agreed upon. Defendants claim, however, that, as there was no law governing facultative obligations at the time the obligation was contracted, said obligation cannot be enforced.

HELD: Notwithstanding the absence of any legal provisions at the time the contract was entered into governing facultative of a party, it is a matter which cannot and should not be given effect, considering that the obligation is not contrary to law, public morals or public policy and that the parties have freely and voluntarily entered into it. (QUIZANA *v.* REDUGERIO, ET AL., G. R. No. L-6220, May 7, 1954.)

Obligation To Execute Mortgage In Creditor's Favor On Debtor's Failure To Pay The Debt Is Facultative Obligation.

FACTS: Defendants executed a document wherein they acknowledged their indebtedness to plaintiff and promised to pay the same and, further, that if they failed to do so they would execute a mortgage over their properties in favor of plaintiff. The court, in its judgment, ruled that the obligation was a facultative obligation.

HELD: Where the obligors agreed and promised to deliver a mortgage over the parcel of land described in the contract, on their failure to pay the debt on a specified date, the obligation is known in law as a facultative obligation, defined in Art. 1206 of the Civil Code. (QUIZANA *v.* REDUGERIO, ET AL., G. R. No. L-6220, May 7, 1954.)

Benefit Of Period Lost By Failure To Give Promised Security; Art. 1198, New Civil Code, Applied; Upon Debtor's Loss Of Right To Period, Obligation Becomes Pure And Immediately Demandable.

FACTS: In 1950, Ponce executed a mortgage on certain lands in favor of plaintiff, to secure a loan payable within 6 years with interest. On March 10, 1951, Ponce presented the deed for registration but was advised to cure certain

defects and to furnish other data. Instead of doing so, Ponce withdrew the deed and mortgaged the same property to the RFC. In 1952, plaintiff brought suit to collect the loan. Judgment having been rendered against her, Ponce appeals and invokes the period agreed on in the obligation.

HELD: Although the loan was payable within 6 years from 1950, and so did not become due until 1956, under Art. 1198, N. C. C., the debtor lost the benefit of the period by reason of her failure to give the security in the form of the deed of mortgage and to register them, including her act in withdrawing the deed from the register of deeds and then mortgaging the property to the RFC, and so the obligation became pure and without any condition and consequently, the loan became due and immediately demandable. (DAGOHOY ENTERPRISES, INC. *v.* PONCE, G. R. No. L-6515, October 18, 1954.)

Deposit Of The Loan In Another Action Is Not Payment; Debtor Is Not Relieved From Payment Of Interest.

FACTS: The wife of Ponce, manager of plaintiff, obtained a loan from plaintiff with 12 % annual interest. Later, Gapol, on behalf of plaintiff, brought suit against Ponce for an accounting for the loan and other sums. Ponce deposited with the court the amount of the loan with interest up to that date. Because of Ponce's opposition, however, a petition of Gapol to withdraw the amount deposited was denied. Subsequently, in this later action by plaintifff, judgment was rendered ordering Ponce to pay the amount of the loan with interest from 1950 until full payment. Ponce appeals, claiming that his deposit in the suit by Gapol relieved him from payment of interest from that time, since the deposit amounts to payment of the loan.

HELD: The case by Gapol is separate and different from that filed by plaintiff. The parties are different. Moreover, because of Ponce's opposition, Gapol's petition to withdraw the deposit was denied with the result that the plaintiff could not take possession and dispose of said amount. In other words, the loan is not yet paid. (DAGUHOY ENTERPRISES, INC. *v.* PONCE, G. R. No. L-6515, October 18, 1954.)

CONTRACTS

In An Action For Damages Arising From Breach Of Contract Of Carriage, Dismissal Of The Criminal Action Against The Driver Does Not Exempt The Carrier From Liability For Said Damages.

FACTS: Plaintiff, a passenger in a bus owned by S.P.B.L. Co., suffered injuries when said bus collided with another vehicle. In this action for damages by plaintiff, the Co. contends that it is exempt from civil liability because the criminal action against its driver of the bus involved was dismissed.

HELD: This action was not based on tort or quasi-delict but was one for breach of a carrier's contract, there being a clear distinction between *culpa* as a source of obligations (aquiliana) and *culpa* in the performance of an already existing obligation (contractual). In actions for breach of carriage contract, it is sufficient if the contract of carriage is proven; it is not necessary to prove the fault or negligence of the driver of the vehicle. (SAN PEDRO BUS LINE ET AL. *v.* NAVARRO, G. R. No. L-6291, April 29, 1954.)

SALES

Consummated Sales Cannot Be Rescinded Except Upon Legal Grounds.

FACTS: Defendants assigned to Jose a sugar cane mill which Jose sold to Flores. 2 days later, the same mill was sold by defendants to Andres who took possession of the same. Flores then filed action to be declared owner and obtained judgment in his favor. Andres appealed to the Court of Appeals. During the pendency of the appeal, Andres also filed an action for the rescission of the sale. The Court of Appeals finally rendered decision declaring Andres the lawful owner. In their answer to the action for rescission, defendants alleged that the validity of the sale was already *res judicata* by virtue of the Court of Appeals decision and that the assignment made to Jose was ineffective because it was made over the objection of defendants' father. The rescission being denied, Andres appeals.

HELD: The assignment to Jose was void because of the objection of defendants' father who was co-owner of the mill. The sale to Andres, being valid and having been consummated, cannot be resolved but only upon certain grounds provided for by law. (ACHONDOA *v.* ROTEA, G. R. No. L-5340, August 31, 1954.)

The Rights Of A Vendee Of A Parcel Of Land Is Not Prejudiced By A Subsequent Partition Whereby The Same Parcel Is Adjudicated To The Vendor, Who Was No Longer Owner Thereof.

FACTS: Felipa sold the land in question to Ramoran who in turn sold it to Vea. Subsequently, Felipa and some other persons executed a deed of partition whereby the land in question was adjudicated to Felipa. Upon Felipa's death, Acoba claimed the land as heir of Felipa. Opposing Vea's right to the land, Acoba relies on the deed of partition.

HELD: When the deed of partition, whereby the land was adjudicated to Felipa, was executed, Felipa had no longer any right to execute such partition because she had ceased to have any title to the property, having previously alienated it to Vea. (VEA *v.* ACOBA, G. R. No. L-5973, March 20, 1954.)

In "Pacto De Retro" Sales, A Penal Clause Providing For Automatic Termination Of The Period Of Redemption, On Failure Of The Vendor-Lessee To Pay Rentals, Is Valid.

FACTS: Macario sold the land in question to defendant subject to repurchase within 18 months with the further agreement that the vendor was to remain in possession as lessee and that in case of the vendor-lessee's failure to pay any rental, title to the property would become consolidated in the defendant. Upon Macario's failure to pay rent, defendant executed an "affidavit of consolidation" which he registered. Plaintiffs, children of Macario, brought this suit to compel reconveyance, claiming that the penal clause in the sale, by virtue of which defendant consolidated title in himself, was void.

HELD: While the lease covenant may be onerous because of its penal clause, the same is not contrary to law, morals, or public order, which may serve as basis for its nullification.

Rather than obnoxious or oppressive, it is a clause common in a sale *con pacto de retro*, and as such it received the sanction of our courts. (AMIGO *v.* TEVES, G. R. No. L-6389, November 29, 1954.)

Agreement That Title To Property, Given As Security, Shall Pass To Creditor Upon Debtor's Failure to "Redeem" It By paying Amount Of the Loan Is A Mortgage, Not a Sale Con Pacto De Retro.

FACTS: To secure a loan of ₱5,000, Catabona executed, in Yñigo's favor, a mortgage "with conditional sale" on a piece of land with a clause providing that he reserved the right to "redeem" the property after 5 years after the date of execution and that on his failure to do so, "title thereto shall pass to and become vested" in Yñigo. The mortgage was registered. Later, Catabona sold ½ of the same land to Guerrero. In an action by Guerrero, the CFI adjudged him owner of ½ of the land. On appeal, however, the CA reversed the judgment and declared that, as the parcel of land was sold with *pacto de retro* and the deed of sale was executed and registered prior to Guerroro's purchase, Yñigo had a better right.

HELD: The clause is conclusive proof that it is a mortgage and not a sale with *pacto de retro* because if it were the latter, title to the parcel of land would pass to the vendee upon the execution of the sale and not later as stipulated that "title thereto shall pass to and become vested" in Yñigo on the failure of Catabona to exercise his right to redeem the property. (GUERRERO *v.* YÑIGO, G. R. No. L-5572, October 26, 1954.)

LEASE

Aliens May Lease Private Lands For A Period Not Exceeding 99 Years.

FACTS: S.B. & Co., an alien leased a piece of land for a period of 25 years, renewable for another 25, and presented the lease for registration. The Register, relying on Art. 1646, N.C.C. (which provides that "persons disqualified to buy referred to in Arts. 1490 & 91" cannot be lessees of the things mentioned therein) and Art. 1491, no. 6 (which prohibits, from

buying, "any others specially disqualified by law"), refused to register the lease claiming that, as aliens—like the S.B. & Co.—are disqualified by the Constitution from buying private lands, they may not be lessees of the same, according to Art. 1646.

HELD: We believe that Art. 1491, no. 6, does not refer to all persons in general but only to those who, because of some special relation which they have to the property, should not be allowed to buy the same. Moreover, the constitution does not prohibit aliens from leasing public lands; why, then, should Congress prohibit them, by means of the N.C.C., from leasing private lands. The constitution merely prohibits aliens from exercising ownership over PI lands so as not to endanger the integrity of the nation; but a lease of 50 years does not grant permanent possession which would endanger the national security. However, leases to aliens are still subject to Art. 1643, N.C.C. limiting the duration of leases to 99 years. (SMITH, BELL & Co., LTD. *v.* REGISTER OF DEEDS, G. R. No. L-7084, October 27, 1954.)

Failure To Clear Surrounding Area Of Competitors Does Not Constitute A Breach Of The Lessor's Obligation To maintain The Lessee In Peaceful Enjoyment Of The Leased Premises.

FACTS: The City of Naga leased to Sales a market stall for ₱80 monthly. Upon Sales' failure to pay rentals, the City brought action. Sales in his answer filed a counterclaim for damages representing unrealized profits caused by the City's failure to maintain him in peaceful enjoyment of the stall by its failure to clear the sidewalks surrounding said stall of vendors.

HELD: Presence of vendors around the stall does not constitute a breach of the lessor's obligation to maintain the lessee in the peaceful enjoyment of the stall. The lessee has not been disturbed in his physical and material possession of his stall. The competition offered by the vendors at most was an act of trespass by third persons, the prevention of which is not included in the lessor's obligation to maintain the lessee in peaceful enjoyment. (CITY OF NAGA *v.* COURT OF APPEALS *et al.*, G. R. No. L-5944, November 26, 1954.)

Bond Requirement In Act 3959 Is Merely Directory; Contractor's Affidavit Of Payment Sufficient To Relieve Builder; Bond And Affidavit Requirements Do Not Curtail Freedom To Contract.

FACTS: For the building of a gas station, the S-V O Co. hired Cabigao as contractor, who, in turn, hired plaintiffs as artisans. Although Cabigao was paid in full by the Co. for the station, Cabigao did not pay plaintiffs. In this action against Cabigao and the Co., plaintiffs rely on Act 3959 which provides: that the builder shall require a bond from the contractor in a sum equal to the labor cost; that the builder shall not pay the contractor in full until the latter executes an affidavit of payment to the laborers; and that the builder who pays a contractor in full before receiving said affidavit shall be solidarily liable with the contractor for the laborer's wages. The Co. claims that said Act is unconstitutional as it restrains the builders freedom to contract.

HELD: The bond requirement is not mandatory but directory for the benefit of the builder. The builder's solidary liability arises only on his failure to require an affidavit of payment from the contractor. Thus the bond requirement does not impair freedom of contract since the builder may contract without requiring the bond. The affidavit does not also affect such freedom for it is required after completion of the work. But even if said requirements curtail such freedom, still such curtailment being reasonable is a valid exercise of police power for the pomotion of general welfare. (DAVID ET AL. *v.* CABIGAO, G. R. No. L-5538, November 27, 1954.)

MORTGAGE

A Mortgage Executed By An Impostor Without The owner's Authority Is Null And Void.

FACTS: Plaintiff, owner of a registered parcel of land, entrusted the certificate of title thereof to Ordoñez. Ordoñez, in conspiracy with others, approached the PNB and with one Oliver, posing as plaintiff, presented said certificate and mortgaged the land to secure a loan. The loan not having been paid, the PNB foreclosed the mortgage and purchased the land

in the foreclosure sale. Plaintiff now seeks to annul the mortgage.

HELD: One of the essential requisites of a valid mortgage is that the thing pledged or mortgagd be owned by the person who pledges or mortgages it. And it is a basic principle that a mortgage executed by an impostor without the owner's authority is a nullity. Since there is no question that Oliver is not the owner but a mere impostor, the mortgage in favor of the PNB is void. (PARQUI *v.* PHILIPPINE NATIONAL BANK, G. R. No. L-6310, November 26, 1954.)

EXTRA-CONTRACTUAL OBLIGATIONS

Liability of Master for Damages caused by Employee, Primary and Direct; Liability of Employer under the Revised Penal Code is Subsidiary.

FACTS: In an action by the Republic of the Philippines against the Ex-Meralco Employees Transportation (Petitioner-Appellant herein) for the recovery of damages suffered by a Government truck as a result of a collision with petitioner's bus, petitioner moved for dismissal on the ground that there was no cause of action since its driver had not yet been adjudged liable for damages. The motion was denied; subsequently, petitioner's petition for certiorari with the CFI was also denied. Hence, this present petition.

HELD: A previous criminal action against the employee is not required before an action for damages against the master can be maintained for the reason that the liability of a master for damages caused by his employee or agent is primary and direct. Subsidiary liability of the employer takes place only when the action is brought under the Revised Penal Code. (EX-MERALCO EMPLOYEES TRANSPORTATION CO., INC. *v.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-5953, May 26, 1954.)

DAMAGES

Action For Recovery of Moral Damages Can Be Maintained Only By The Person Wronged Or Injured.

FACTS: Strebel's complaint states: that the defendant, Figueras, by the use of his political influence was able to secure the transfer from the Bureau of Immigration to the Bureau of Prisons, one Dr. Hernandez, the husband of plaintiff's daughter; and that it was only after plaintiff had consented to sign an "agreement to forget his past differences" with Figueras that said Dr. Hernandez was returned to his former post; that through said acts, defendant caused moral and mental suffering to plaintiff, for which plaintiff prays for damages.

HELD: Assuming the act complained of to be wrong, the right of action hypothetically arising therefrom would have accrued in favor of Dr. Hernandez and not the plaintiff herein. For "as a general rule, the right of recovery for mental suffering resulting from bodily injuries is restricted to the person who has suffered the bodily hurt and there can be no recovery for distress caused by sympathy for another's suffering." Morever, it should be noted that plaintiff is not even related to Dr. Hernandez. (STREBEL *v.* FIGUERAS, G. R. No. L-4722, December 29, 1954.)

Moral Damages Arising From Tort Cannot Be Recovered In The Absence of Physical Injuries Suffered.

FACTS: Figueras, as Sec. of Labor, brought a criminal action Against Strebel for alleged violation of the 8-hour labor law; the case was dismisssed by the CFI for failure of the prosecution to "establish even a prima facie case." Strebel brings this action for recovery of moral damages suffered by virtue of Figueras' "misconduct or malfeasance arising from an action ex delicto or a tortious act."

HELD: The damages prayed for cannot be granted. By specific mandate of Art. 2219, N.C.C., moral damages may not be recovered in cases of crime or tort, unless either results or causes "physical injuries," which are lacking in the case at bar. (STREBEL *v.* FIGUERAS, G. R. No. L-4722, December 29, 1954.)

TRANSITIONAL PROVISIONS

In Cases Arising Before New Civil Code, Lien Of A Furnisher Of Materials Is Governed By Old Civil Code And Is Subordinate To A Registered Mortgage Lien; Art. 2252, N. C. C., Applied.

FACTS: Quiambao mortgaged, in 1949, 3 lots to the RFC to secure a loan for building a house. The mortgage was registered. Later, the RFC foreclosed and bought the lots and house at auction. The LLH Co., furnishers of the materials used in 1949, sued Quiambao and the RFC for unpaid balance due it. The court, applying Art. 2242, pars. 4 & 5, giving the furnisher of materials preference over a mortgagee, rendered judgment against Quiambao and the RFC. The RFC appeals.

HELD: Art. 2252, N.C.C., provides that the old code shall govern cases arising under its regime but that rights declared for the first time in the N.C.C. are to take effect at once. Thus, a condition required before Art. 2242, pars. 4 & 5, may be applied to this case arising before the N.C.C. is that the right granted therein should be one declared for the first time. However, the rights therein are not new rights but rights already provided for in Art. 1923, pars 3 & 5, Old Civil Code, according to which a registered mortgage credit is preferred over an unregistered refection credit. (LUZON LUMBER & HARDWARE CO., INC. *v.* QUIAMBAO, G. R. No. L-5638, March 30, 1954.)

Change From Absolute Divorce To Legal Separation Did Not Affect Cases For Absolute Divorce Pending When The New Civil Code Took Effect And Does Not Bar A Divorce Decree Therein.

FACTS: Raymundo and Peñas were married in 1941. In 1949, Peñas abandoned his wife and lived maritally with another. Peñas was charged with concubinage and convicted. On July 14, 1950, Raymundo instituted an action for absolute divorce against Peñas. The trial court denied the divorce, claiming that under the N.C.C. the most that may be granted is legal separation.

HELD: The act of concubinage, the conviction of the husband, and the wife's filing of the action for divorce took place before the New Code took effect on Aug. 30, 1950. The New Code did not intend the change from absolute divorce to legal separation to affect cases of this kind of which the courts had already taken cognizance at the time of the reform. Art. 2258, N.C.C., plainly indicates that actions and rights which existed but were not exercised before its effectivity should be governed by prior legislation. Its Art. 4 provides that "laws shall have no retroactive effect unless the contrary is provided," and Art. 2267 did not include the new provisions on legal separation among those which it intended to have retroactive effect. All these provisions imply that the Code did not intend its provision on legal separation to apply retroactively. The decree of absolute divorce is granted. (RAYMUNDO *v.* PEÑAS, G. R. No. L-6705, December 23, 1954.)

The Prohibition In Art. 2254, N.C.C., Against The Enforcement of Rights Based On Acts Or Omissions Against The Law Or Infringing On Others' Rights Is Directed At The Offender, Not The Offended Party.

FACTS: On plaintiff's instance, an information for concubinage was filed against her husband, and a judgment of conviction was rendered. Plaintiff then filed an action for absolute divorce on July 14, 1950; however, the action was dismissed on the ground that the New Civil Code had in the meantime taken effect on Aug. 30, 1950, and that, as plaintiff's right to divorce was based on the crime of concubinage, the court was not bound to recognize such right pursuant to Art. 2254, N.C.C., which provides that: "No vested or acquired right can rise from acts or omissions which are against the law or which infringe upon the rights of others." Hence, this appeal.

HELD: Art. 2254's prohibition is directed at the offender, not the offended party who is in no way responsible for the violation of legal duty. The interpretation adopted by the court below would deprive a victim of any redress because of the very acts that injured him. It follows that Art. 2254 cannot militate against the right of the wife to secure an absolute divorce as a result of the concubinage of her husband. (RAYMUNDO *v.* PEÑAS, G. R. No. L-6705, December 23, 1954.)