the obscurity (Article 1288, Old Civil Code.)

5. One of the documents turned over by Sauco to defendant Gonzales Lloret is Exhibit D-1 which represents the resale by the plaintiff to the latter of one of the parcels of land originally included in the sale contained in the document Exhibit D, and, according to Sauco, said document Exhibit D-1 was delivered to defendant Gonzales Lloret for ratification before a notary public. An examination of said document Exhibit D-1 will reveal that it contains many blank spaces intended to be filled out later on, and the same does not bear the signature of the plaintiff. This indicates that said document Exhibit D-1 was but a mere draft and corroborates the statement of Gonzales Lloret that it was given to him, together with the document Exhibit D, merely for his perusal and possible amendment or alteration. And

6. It should be noted that the lands subject of negotiation were owned *pro-indiviso* by Maria Lloret and the estate of Francisco A. Gonzales, and in that negotiation defendant Gonzales Lloret was merely acting in his capacity as judicial administrator. Being a co-owner of the lands, the consent of Maria Lloret to the terms of the sale is evidently indispensable, and yet there is nothing in the evidence to show that she has ever been contacted in connection with the sale, nor is there any proof that Gonzales Lloret had been authorized to conduct negotiations in her behalf. What the record shows was that Gonzales Lloret would take up the matter with Maria Lloret on the date subsequent to that when the two documents were delivered by Sauco to him (June 17, 1944), but this never materialized because of the unexpected sickness of Teofilo Sauco.

Let us now examine the terms of the authorization given by the court relative to the sale of the lands in question, and see if the same had been observed in the preparation of the deed of sale Exhibit D. Let us note, at the outset, that the authorization of the court refers to the sale of certain parcels of land of an area of 20 hectares situated in the *barrio of Sabang*, municipality of Baliuag, province of Bulacan, for a price of not less than ₱100,000, with the express condition that the encumbrance affecting those lands would first be paid. Analyzing now the terms appearing in the document Exhibit D, we find that among the lands included in the sale are lands situated in the *barrio of San Roque*. This is a variation of the terms of the judicial authorization. The document Exhibit D also stipulates that the sale would be free from any encumbrance, with the exception of the sum of ₱30,000 which is indebted to Ambrosio Valero, but said document likewise stipulates that the possession of the lands sold should be delivered to the purchaser sometime in March of the next year and that if this could not be done the lands would be substituted by others of the same area and value, belonging to the estate of Francisco A. Gonzales. This is an onerous condition which does not appear in the authorization of the court. Of course, this is an eventuality which the plaintiff wanted to forestall in view of the fact that the lands subject of the sale were then pending litigation between the estate and Ambrosio Valero, but this is no justification for departing from the precise terms contained in the authorization of the court. And we find, finally, that the authorization calls for the sale of six parcels of land belonging to the estate, but in the document as drawn up by Sauco it appears that only five parcels would be sold to the plaintiff, and the other parcel to Ricardo Gonzales Lloret. Undoubtedly, this cannot legally be done for, as we know, the law prohibits that a land subject of administration be sold to its judicial administrator.

The foregoing discrepancies between the conditions appearing in the document Exhibit D and the terms contained in the authorization of the court, plus the incongruencies and unexplained circumstances we have pointed out above, clearly give an idea that all that had taken place between Sauco and defendant Gonzales Lloret was but mere planning or negotiation to be threshed out between them in the conference they expected to have on June 19, 1944 but which unfortunately was not carried out in view of the illness of Teofilo Sauco. Such being the case, it logically follows that action of the plaintiff has no legal basis.

Before closing, one circumstance which should be mentioned here is that which refers to the delivery by Sauco to Gonzales Lloret of the check in the amount of ₱100,000 drawn against the Philippine National Bank which Lloret deposited in his current account with that institution. According to the evidence, when the transaction was called off because of the failure of Sauco to appear on the date set for his last conference with Lloret, the latter attempted to return the said amount to Sauco on August 2, 1944 who declined to accept it on the pretext that he had another buyer who was willing to purchase the lands for the sum of ₱300,000 and that if that sale were carried out Lloret could just deduct that amount from the purchase price. That offer to return, in our opinion, cannot have the effect of relieving Lloret from liability. His duty was to consign it in court as required by law. His failure to do so makes him answerable therefor to the plaintiff which he is now on duty bound to pay subject to adjustment under the Ballentyne Scale of Values.

Wherefore, the decision appealed from is reversed, without pronouncement as to costs. Defendant Ricardo Gonzales Lloret is ordered to pay to the plaintiff the sum of ₱100,000 which should be adjusted in accordance with the Ballentyne Scale of Values.

Parás, Pablo, Bengzon, Montemayor, Reyes, Jugo, Labrador and *Concepcion, J.J.* concur.

VI

Martina Quizana, Plaintiff and Appellee, vs. Gaudencio Rodugerio and Josefa Postrado, Defendants and Appellants, G. R. No. L-6220, May 7, 1954, Labrador, J.

1. OBLIGATION AND CONTRACTS; ACTIONABLE DOCUMENT; ABSENCE OF LEGAL PROVISION GOVERNING IT. — An agreement whereby the obligors bound themselves to pay their indebtedness on a day stipulated, and to deliver a mortgage on a property of theirs in case they failed to pay the debt on the day fixed, is valid and binding and effective upon the parties. It is not contrary to law or public policy, and notwithstanding the absence of any legal provision at the time it was entered into governing it, as the parties had freely and voluntarily entered into it, there is no ground or reason why it should not be given effect.

2. ID.: FACULTATIVE OBLIGATION, ENFORCEABLE IMMEDIATELY. — The obligations entered into by the parties is what is known as a facultative obligation. It is not provided by the old Spanish Civil Code; it is a new right which should be declared effective at once, in consonance with the provisions of article 2253 of the Civil Code of the Philippines.

Samson and *Amante* for the defendants and appellants.
Sabino Palomares for the plaintiff and appellee.

DECISION

LABRADOR, *J.*:

This is an appeal to this Court from a decision rendered by the Court of First Instance of Marinduque, wherein the defendants-appellants are ordered to pay the plaintiff-appellee the sum of ₱550.00, with interest from the time of the filing of the complaint, and from an order of the same court denying a motion of the defendants-appellants for the reconsideration of the judgment on the ground that they were deprived of their day in court.

The action was originally instituted in the justice of the peace court of Sta. Cruz, Marinduque, and the same is based on an actionable document attached to the complaint, signed by the defendants-appellants on October 4, 1948 and containing the following pertinent provisions:

> Na alang-alang sa aming mahigpit na pangangailangan ay kaming magasawa ay lumapit kay Ginang Martina Quizana, balo, at naninirahan sa Hupi, Sta. Cruz, Marinduque, at kami ay umutang sa kanya ng halagang Limang Daan at Limang Pung Piso (₱550.00), Salaping umiiral dito sa Filipinas na aming tinanggap na husto at walang kulang sa kanya sa condicion

na ang halagang aming inutang ay ibabalik o babayaran namin sa kanya sa katapusan ng buwan ng Enero, taong 1949.

Pinagkasunduan din naming magasawa na sakaling hindi kami makabayad sa taning na panahon ay aming ipifrenda o isasangla sa kanya ang isa naming palagay na niogan sa lugar nang Cororocho, barrio ng Balogo, municipio ng Santa Cruz, lalawigang Marinduque, kapuluang Filipinas at ito ay nalilibot ng mga kahanganang sumusunod:

Sa Norte — Dalmacio Constantino
Sa Este — Catalina Reforma
Sa Sur — Dionisio Ariola
Sa Weste — Reodoro Ricamora

na natatala sa gobierno sa ilalim ng Declaracion No. ..... na nasa pangalan ko, Josefa Postrado.

The defendants-appellants admit the execution of the document, but claim, as special defense, that since the 31st of January, 1949 they offered to pledge the land specified in the agreement and transfer possession thereof to the plaintiff-appellee, but that the latter refused said offer. Judgment having been rendered by the justice of the peace court of Sta. Cruz, the defendants-appellants appealed to the Court of First Instance. In that court they reiterated the defense that they presented in the justice of the peace court. The case was set for hearing in the Court of First Instance on August 16, 1951. As early as July 30 counsel for the defendants-appellants presented an "Urgent Motion for Continuance," alleging that on the day set for the hearing (August 16, 1951), they would appear in the hearing of two criminal cases previously set for trial before they received notice of the hearing on the aforesaid date. The motion was submitted on August 2, and was set for hearing on August 4. This motion was not acted upon until the day of the trial. On the date of the trial the court denied the defendants-appellants' motion for continuance, and after hearing the evidence for the plaintiff, in the absence of the defendants-appellants and their counsel, rendered the decision appealed from. Defendants-appellants, upon receiving copy of the decision, filed a motion for reconsideration, praying that the decision be set aside on the ground that sufficient time in advance was given to the court to pass upon their motion for continuance, but that the same was not passed upon. This motion for reconsideration was denied.

The main question raised in this appeal is the nature and effect of the actionable document mentioned above. The trial court evidently ignored the second part of defendants-appellants's written obligation, and enforced its last first part, which fixed payment on January 31, 1949. The plaintiff-appellee, for his part, claims that this part of the written obligation is not binding upon him for the reason that he did not sign the agreement, and that even if it were so the defendants-appellants did not execute the document as agreed upon, but, according to their answer, demanded the plaintiff-appellee to do so. This last contention of the plaintiff-appellee is due to a loose language in the answer filed with the Court of First Instance. But upon careful scrutiny, it will be seen that what the defendants-appellants wanted to allege is that they themselves had offered to execute the document of mortgage and deliver the same to the plaintiff-appellee, but that the latter refused to have it executed unless an additional security was furnished. Thus the answer reads:

> 5. That immediately after the due date of the loan Annex "A" of the complaint, *the defendants made efforts to execute the necessary documents of mortgage and to deliver the same to the plaintiff, in compliance with the terms and conditions thereof*, but the plaintiff refused to execute the proper documents and insisted on another portion of defendants' land as additional security for the said loan; (Underscoring ours)

In our opinion it is not true that defendants-appellants had not offered to execute the dead of mortgage.

The other reason adduced by the plaintiff-appellee for claiming that the agreement was not binding upon him also deserves scant consideration. When plaintiff-appellee received the document, without any objection on his part to the paragraph thereof in which the obligors offered to deliver a mortgage on a property of theirs in case they failed to pay the debt on the day stipulated, he thereby accepted the said condition of the agreement. The acceptance by him of the written obligation without objection and protest, and the fact that he kept it and based his action thereon, are concrete and positive proof that he agreed and consented to all its terms, including the paragraph on the constitution of the mortgage.

The decisive question at issue, therefore, is whether the second part of the written obligation, in which the obligors agreed and promised to deliver a mortgage over the parcel of land described therein, upon their failure to pay the debt on a date specified in the preceding paragraph, is valid and binding and effective upon the plaintiff-appellee, the creditor. This second part of the obligation in question is what is known in law as a facultative obligation, defined in Article 1206 of the Civil Code of the Philippines, which provides:

> Art. 1206. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.

This is a new provision and is not found in the old Spanish Civil Code, which was the one in force at the time of the execution of the agreement.

There is nothing in the agreement which would argue against its enforcement It is not contrary to law or public morals or public policy, and notwithstanding the absence of any legal provision at the time it was entered into governing it, as the parties had freely and voluntarily entered into it, there is no ground or reason why it should not be given effect. It is a new right which should be declared effective at once, in consonance with the provisions of Article 2253 of the Civil Code of the Philippines, thus:

> Art. 2253. x x x. But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin.

In view of our favorable resolution on the important question raised by the defendants-appellants on this appeal, it becomes unnecessary to consider the other question of procedure raised by them.

For the foregoing considerations, the judgment appealed from is hereby reversed, and in accordance with the provisions of the written obligation, the case is hereby remanded to the Court of First Instance, in which court the defendants-appellants shall present a duly executed deed of mortgage over the property described in the written obligation, with a period of payment to be agreed upon by the parties with the approval of the court. Without costs.

Paras, Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo and *Concepcion, J.J.*, concur.

VII

Clotilde Mejia Vda. de Alfafara, Petitioner-Appellant, vs. Placido Mapa, in his capacity as Secretary of Agriculture and Natural Resources, Benita Compana, et al., Respondents-Appellees. G. R. No. L-7042, May 28, 1954, Bautista Angelo, J.

1. PUBLIC LAND LAW, DISPOSITION OF PUBLIC LANDS; DIRECTOR OF LANDS CAN NOT DISPOSE LAND WITHIN THE FOREST ZONE. — Where the land covered by the homestead application of petitioner was still within the forest zone or under the jurisdiction of the Bureau of Forestry, the Director of Lands had no jurisdiction to dispose of said land under the provisions of the Public Land Law and the petitioner acquired no right to the land.

2. ID.; ID.; EFFECT OF CONTRACT OF LANDLORD AND TENANT EXECUTED IN GOOD FAITH. — Even if the permit granted to petitioner's deceased husband by the Bureau of