RECENT DECISIONS OF THE SUPREME COURT REVIEWED

1. CORPORATION—FORFEITURE OF FRANCHISE—CONSTITUTIONAL LAW.—*The Government of the Philippine Islands vs. El Hogar Filipino*, G. R. No. 26649, JULY 13, 1927.—*Facts*: This is a quo warranto proceeding instituted originally in the Supreme Court by the Government of the Philippine Islands through the Attorney-General against the building and loan association known as "El Hogar Filipino." The complaint was based upon seventeen distinct causes of action; namely, (1) the alleged illegal holding by the respondent of the title to real property for a period in excess of five years after the property had been bought in by the respondent at one of its own foreclosure sales; (2) the owning and holding by the respondent of a business lot, with the structure thereon, in the financial district of the city of Manila in excess of its reasonable requirements and in contravention of subsection 5 of section 13 of the Corporation Law; (3) the engaging by the respondent in activities foreign to the purposes for which the corporation was created and not reasonably necessary for its legitimate ends, such as (a) its administration of the offices in the El Hogar building not used by it and the renting of such offices to the public, (b) itts administration and management of properties belonging to delinquent shareholders of the association, and (c) its management of some parcels of improved real estate situated in Manila not mortgaged to it, but owned by shareholders; (4) the existence of a provision in the by-laws of the respondent, authorizing its board of directors, by an absolute majority vote of its members, to cancel shares and to return to the owner thereof the balance resulting from the liquidation thereof whenever, by reason of their conduct, or for any other motive, the continuation as members of the owners of such shares is not desirable; (5) the failure of the corporation to hold annual meetings of its stockholders for the purpose of filling vacancies in its directorate, thus making its board of directors a permanent and self-perpetuating body composed of wealthy men instead of wage earners and persons of moderate means; (6) the fact that the directors of the respondent, instead of serving without pay, or receiving nominal pay or a fixed salary, have been receiving large compensation, varying in amount from time to time, out of the profits of the respondent; (7) the payment by the respondent to Mr. Antonio Mellan, its founder, of a royalty which is unconscionable, excessive and out of all proportion to the services rendered, besides being contrary and incompatible with the spirit and purpose of building and loan associations; (8) the requirement in Article 70 of the by-laws of the respondent that persons elected to its board of directors must be holders of shares of the paid up value of ₱5,000.00, which shall be held as security for their action, and also in Article 76 that the directors waive their right as shareholders to receive loans from the association, which requirements are inconsistent with the express provisions of law; (9) the issuance by respondent of "special shares" alleged to be illegal and inconsistent with the plan and purposes of building and loan associations; (10) the policy adopted by the respondent of depreciating, at the rate of ten per centum per annum, the value of the real properties acquired by it at its sales, which rate is alleged to be excessive; (11) the maintenance by respondent of excessive reserve funds; (12) the unlawful policy of respondent of paying a straight annual dividend of ten per centum, regardless of losses suffered and profits made by the corporation and in contravention of the requirements of section 188

of the Corporation Law; (13) the granting of loans by the respondent intended by the borrowers for other purposes than the building of homes, to the knowledge of the association's officers; (14) the fact that such loans have been extended in extremely large amounts and to wealthy persons and large companies; (15) the fact that upon the expiration of the franchise of the association through the effluxion of time, or earlier liquidation of its business, the accumulated reserves and other properties will accrue to the founder, or his heirs, and the then directors of the corporation and to those persons who may at that time to be holders of the ordinary and special shares of the corporation; (16) the fact that various loans now outstanding have been made by the respondent to corporations and partnerships, and that these entities have in some instances subscribed to shares in the respondent for the sole purpose of obtaining such loans; and (17) that in disposing of real estate purchased by it in the collection of its loans, the defendant has on various occasions sold some of the said real estate on credit, transferring the title thereto to the purchaser, that the properties sold are then mortgaged to the defendant to secure the payment of the purchase price, said amount being considered as a loan, and carried as such in the books of the defendant, and that several such obligations are still pending. Respondent, in its answer, either denied the foregoing causes of action or controverted them in legal effect by other facts. *Held:* By a vote of five to four, the Court dismissed the complaint, but respondent was enjoined in the future from administering real property not owned by itself, except as may be permitted to it by contract when a borrowing shareholder defaults in his obligation. The following rulings were handed down:

(1) *Corporations; holding of real property for period in excess of that allowed by law; forfeiture of franchise.*—The extreme penalty of the forfeiture of its franchise will not be visited upon a corporation for holding a piece of real property for a period slightly in excess of the time allowed by law, where the conduct of the corporation does not appear to have been characterized by obduracy or pertinacity in contempt of law.

(2) *Id.; Id.; Deduction of period during which corporation is under contract to sell.*—In estimating the period during which a corporation may be allowed to hold property purchased at its own foreclosure sale, deduction should be made of any period during which the corporation was under obligation to sell the land to a particular person by reason of the acceptance by the corporation of his offer to buy, the sale having been made nugatory by virtue of the failure of the purchaser to carry out the contract.

(3) *Id.; Id.; Forfeiture of franchise; discretion of Court.*—In an action of *quo warranto* the courts have a discretion with respect to the infliction of capital punishment upon corporations, and there are certain misdemeanors and misusers of franchises which are insufficient to justify dissolution.

(4) *Id.; Id.; Id.; Effect of section 3 of act 2792.*—Section 3 of Act 2792 has not abrogated the discretion of the courts with respect to the application of the remedy of *quo warranto* to corporations which are alleged to have violated the provisions of the Corporation Law (Act 1459).

(5) *Constitutional Law; Title of Act not expressing subject of Bill.*—The title to Act 2792 is defective for failure to express the subject

matter of section 3 of said Act, with the result that said section 3 is invalid for repugnance to Constitutional requirement.

(6) *Corporations; building and loan association; power to acquire and hold real property; office building.*—A building and loan association may acquire and hold a lot in the financial district of the city where it has its principal place of business and may erect thereon a suitable building as the site of its offices.

(7) *Id.; Id.; Id.; Id.; Leasing of excess office space to public.*—The circumstance that the building so erected by the association has office accomodations in excess of its own needs and that such offices are rented to the public by the association for its benefit and profit does not make the ownership and holding of such office building an *ultra vires act.* Having acquired the property under lawful authority, the corporation is entitled to the full beneficial use thereof.

(8) *Id.; Id.; Power of association to administer mortgaged property for purpose of satisfying obligations of delinquent shareholders.* —When the shareholders of a building and loan association become delinquent in the performance of their obligations, the association may take over the management of the mortgaged property and administer it for the purpose of applying the income to the obligations of the debtor party, provided authority so to do is conferred in the contract of mortgage.

(9) *Id.; Id.; Association without power to undertake management of property in general.*—A building and loan association has no authority to conduct the business of a real estate agent, as by managing and administering the property not mortgaged to it; and the fact that the owner of such property may have become a shareholder of the association for the purpose of supposedly qualifying himself to receive such service from the association does not change the case.

(10) *Id.; Id.; Invalid By-Law; Forfeiture of Franchise.*—The circumstance that one of the provisions contained in the by-laws of a building and loan association is invalid as conflicting with the express provision of statute is not a misdemeanor on the part of the corporation for which the association can be penalized by the forfeiture of its charter.

(11) *Id.; Id.; Failure of shareholders to attend annual meeting.*—The circumstance that the shareholders of a building and loan association do not attend the annual meetings in sufficient number to constitute a quorum does not render the corporation subject to dissolution.

(12) *Id.; Id.; Filling of vacancies in directorate; term of office of directors.*—The directors of a building and loan association may lawfully fill vacancies occurring in the board of directors in conformity with a by-law to this effect. Such officials, as well as the original directors, hold until qualification of their successors.

(13) *Id.; Id.; Compensation of Directors.*—The power to fix the compensation of the directors of a building and loan association pertains to the corporation, to be determined in its by-laws; and where the amount of the compensation to be paid is thus fixed, the court will not concern itself with the question of the propriety and wisdom of the measure of compensation adopted.

(14) *Id.; Id.; Contract for compensation of manager.*—Where a building and loan association makes a contract with its promoter and manager—which contract is expressly ratified in the by-laws of the association,—by which the association concedes to him, in consideration of valuable services rendered and to be rendered, a right to receive five per centum of the net earnings of the association, this court will not, in a *quo warranto* proceeding where there is no allegation that the contract was *ultra vires* or vitiated by fraud, order the dissolution of the corporation for entering into such contract, on the mere ground that the compensation granted is excessive; nor will the court enjoin the association from performing the same.

(15) *Id.; Id.; By-Law Defining Qualifications of Directors; By-Law disabling Directors from receiving Loans.*—The shareholders of a corporation may in the by-laws define the qualifications of directors and require that shares of a specified value shall be put up as security for their action. A provision in the by-laws disabling the directors from receiving loans from the association is also valid.

(16) *Id.; Id.; Validity of special share.*—Severino vs. El Hogar Filipino, G. R. No. 24926, and related cases followed with respect to validity of special shares issued by respondent association.

(17) *Id.; Id.; Id.; Statutory authority for prepayment of dues.*—Under a statutory provision authorizing a building and loan association to receive payment of dues in advance, the association is authorized to issue the two kinds of special shares described in the opinion.

(18) *Id.; Id.; Authority of directorate to allow for depreciation.*—The directorate of a building and loan association has a discretion, in determining the results of the operations of the association for any year, to write off from the assets a reasonable amount for depreciation, with a view to the determination of the real profits.

(19) *Id.; Id.; Authority of directorate to maintain reserves.*—Under the by-laws of the respondent building and loan association, the directorate has the power to maintain a general reserve and the special reserve, whenever in their judgment it is advisable to do so conformably with the by-laws.

(20) *Id.; Id.; Purpose of Loan; Homebuilding.*—While the creation of building and loan associations was intended to serve the beneficent purpose of enabling people to procure homes of their own, and such associations have been fostered with this end in view, nevertheless the lawmaker in this jurisdiction has not limited the activities of building and loan associations to the exclusive function of making loans for the building of homes. Home building is only one of several purposes proposed in the creation of such associations; and a building and loan association cannot be dissolved in a *quo warranto* proceeding on the ground that it has made loans without reference to the purpose for which the money was intended to be used.

(21) *Id.; Id.; Discretion of Board as to Size of Loan.*—The law sets no limit upon the amount of the loans which may be made to particular persons or entities; and a building and loan association cannot be dissolved on the ground that some of its loans have been

made in large amounts. The matter of the size of the loan is confided to the discretion of the board of directors.

(22) *Id.; Id.; Final Distribution of Assets.*—A by-law of a building and loan association declaring that, upon the final liquidation of the association, the funds shall be applied to the repayment of shares and the balance, if any, distributed in the manner established for the distribution of annual profits, is valid.

(23) *Id.; Id.; Loans to Artificial Entities Valid.*—Where the statute says that "any person" may become a stockholder in a building and loan association, a loan made to an artificial entity, such as a corporation or partnership, cannot be declared invalid; nor is the admission of such entity to the status of stockholder an *ultra vires* act, especially in the absence of any allegation that the particular entity so admitted is prohibited by the law of its own organization from entering into such contracts.

(24) *Id.; Id.; Sale of Real Property by Association.*—In making sales of land which has been bought in by the association at its own foreclosure sales, the association may lawfully sell to a purchaser who obligates himself to pay in installments. The law does not require such sales to be made for cash; nor does the purchaser have to be a shareholder of the association.

Mr. Justice Street penned the decision of the majority, concurred in by Chief Justice Avanceña and Justices Johnson, Villamor, and Villa-Real. Mr. Justice Malcolm penned the dissenting decision concurred in by Justices Ostrand and Johns. Mr. Justice Romualdez dissented in a separate opinion. —*Briefed by* A. F. SOLIDUM.

2. VAGRANCY LAW.—*P. P. I. vs. Joaquin Mirabien*, R. G. No. 26391, July 28, 1927. Facts: The accused was on February 20, 1926, and prior thereto, the proprietor of a bar and restaurant in San Pedro Makati, Rizal. His true occupation, however, consisted in maintaining a house of prostitution. The restaurant was merely a means by which the exploitation of women could be carried on. This was the situation discovered when the Constabulary raided the place. *Held*: The keeper of a house of prostitution may be punished under the Vagrancy Law, Act No. 519. (In Banc, per J. Malcolm.) Briefed by A. Sólidum.

3. ALIBI—EVIDENCE.—*P. P. I. vs. Maximo Sescar*, G. R. No. 27011, July 20, 1927.—*Facts:* The accused Maximo Sescar was for sometime prior to May 6, 1926, courting Ana Fallena. On said date he inflicted upon her 6 wounds, as a result of which the victim immediately died. This act was seen by Joaquina Fajanilan, the victim's mother. Joaquina's other daughter appeared on the scene at the time when the accused was trying to attack her mother. The crime took place in the river of the barrio of Mayha, municipality of Odiongan, Province of Romblon, in the afternoon of May 6, 1926.

It further appears that while the accused was in the municipal prison of Odiongan, a certain Alejandro Gregorio, who was at that time also detained in said prison, asked him of what crime he was charged, and that Sescar answered that he happened to kill a woman.

The defense tried to establish an alibi, the accused testifying that on the date in question between 5 and 6:30 p. m. he was in the house of Severino Fajanilan. Marcos Permanejo testified that he heard the voice of

Joaquina Fajanilan crying for help and saying that a certain Anselmo had assaulted her daughter. In the course of his testimony, however, the said Marcos Permanejo said that he did not stop to render any help nor even to make inquiry. *Held:* That the guilt of the accused was established beyond a reasonable doubt by the testimony of the mother and sister of the deceased, the former having been an eyewitness of the crime, and the latter having appeard on the scene at the time when the accused tried to attack her mother, as well as by the testimony of Alejandro Gregorio with regard to his conversation with the accused in the municipal prison of Odiongan. The testimony of Marcos Permanejo is not only improbable but also false, because by not stopping even to make inquiry, his action is contrary to the ordinary conduct of a man in such circumstances. Penalty increased because of the aggravating circumstance of sex (Art. 10, No. 20, Penal Code). (Villareal, J.).—Briefed by J. S. Nava.

4. CONTRACTS—STATUTE OF FRAUDS—JUDICIAL NOTICE. —*Robles vs. Lizarraga Hermanos*, G. R. No. 26173, July 13, 1927.— *Facts:* Action to recover compensation for imporvements made by the plaintiff upon the hacienda "Nahalinan" and the value of implements and farming equipment supplied by the plaintiff, as well as damages for breach of contract. The hacienda "Nahalinan" is a part of the estate left to the plaintiff and two other co-heirs by his deceased parents. Plaintiff leased it from his mother, for six years from May, 1915 to May, 1920, with the stipulation that any permanent improvement thereon was to be at the expense of the lessee without indemnity at the end of the term. Plaintiff made improvements on the hacienda. Before the lease expired, Lizarraga Hermanos offered to buy from the plaintiff and the other two co-heirs all the property belonging to the Robles estate (which included the hacienda "Nahalinan"). Since the lease of the plaintiff still had two years to run, the defendant agreed, in consideration that the plaintiff should surrender the last two years of his lease, to pay the plaintiff the value of all the betterments that he had made on the hacienda and to purchase from him all that personally belonged to him on the hacienda including the crop of 1917-18, valuation to be made after the harvest. The plaintiff agreed; the instrument of conveyance was accordingly executed on November 16, 1917. In this instrument no reference is made to the promise of the defendant to compensate the plaintiff for the improvements and to purchase the existing crop together with the cattle and other things. The defendant denied the existence of this oral agreement; but the trial court, against the objection of the defendant, allowed the plaintiff to prove this oral contract by parol evidence, and rendered judgment for plaintiff in the sum of ₱14,194.42 with costs. *Held:* Judgment affirmed. The case is not one for the reformation of a document on the ground of mistake or fraud in its execution as is permitted under section 285 of the Code of Civil Procedure. The purpose is to enforce an independent or collateral agreement which constituted an inducement to the making of the sale, or part of the consideration therefor. The rule excluding parol evidence to vary or contradict a writing does not extend so far as to preclude the admission of extrinsic evidence to show prior or contemporaneous collateral agreements between the parties but such evidence may be received regardless of whether or not the written agreement contains any reference to such collateral agreement. The rule requiring a writing to prove a contract for the sale of goods and chattels at a price of not less than ₱100.00 is not applicable where the buyer, a

in the present case, receives part of the goods and chattels. The stipulation with respect to the appraisal of the property which the defendant promised to buy from the plaintiff did not create a suspensive condition to the oral agreement. The making of the appraisal of the property in this case is not a condition prerequisite to the liability of the buyer and since the buyer failed to join in the appraisal he is liable for the true value of the things in the contract as the same could be established in the usual course of proof. The court in awarding compensation for the damage caused by the failure of the defendant to take the existing crop of cane from the hacienda at the proper time, may take judicial notice of the fact that protracted delay in the milling of sugar-cane results in loss, and it may have recourse to scientific treatises deaing with the cultivation of cane for the purpose of obtaining information on this point. (Street, J.). Briefed by E. Arevalo.

5. CORPORATIONS — ESTOPPEL—COMPROMISE—WAIVER. — *Henry Herman vs. The Radio Corporation of the Philippines, (Reorganized), Inc.*, G. R. No. 26802, July 15, 1927. *Facts*: Action for recovery of ₱2,050.00 with interest for alleged salary earned by plaintiff from Aug. 1, 1925, to Oct. 22, 1925, while serving the defendant as manager of communications. In the negotiations for the sale to the defendant corporation with other items, the plaintiff attempted to secure the recognition and payment of salary alleged to be due him for services rendered to the corporation. Soriano, representing the defendant corporation, refused to recognize this claim. The plaintiff therefore drew up another offer, Exhibit 3, in which all reference to the salary was omitted; after which the parties proceeded to enter into a contract saying nothing about salary. About a month thereafter plaintiff put in a claim for said salary, which defendant ignored. Plaintiff asserts "that inasmuch as the claim for salary had not been expressly waived in the final agreement, the claim therefor was not affected by such agreement and hence would entitle plaintiff to recover." Defendant contended that by failing to insist on the claim for salary under the circumstances revealed, the plaintiff has in effect waived his right to rely upon the claim and is estopped from asserting it in this action (citing sub-section 1 of sec. 333 C. C. P.). *Held:* "The omission of the plaintiff to include the claim for salary in Exhibit 3 accredits the proposition that the claim for salary was withdrawn for the purpose of enabling the negotiations to proceed." Altho Art. 1815 of the Civil Code declares that a compromise shall include only matters specifically determined therein or which by necessary inference from its wording must be deemed included, the transaction here was more than a compromise, and hence it is not certain that the article is applicable here. The plaintiff having led the defendant to believe that the claim for salary had been waived and to contract on that basis, the plaintiff is now estopped from asserting the claim. "The salutary rule of good faith prescribed in Sub-section 1 of Section 333, C. C. P. must prevail not only because of its greater moral cogency but because it is a later expression of the legislative will than Art. 1815 C. C." Judgment reversed. (In Banc, Street, J.).—Briefed by R. Villanueva.

6. CONTRACTS — ESTOPPEL. — *George Arnold v. International Banking Corporation.*—G. R. No. 27026, July 13, 1927.—*Facts*: By the contract executed on July 31, 1916, plaintiff became the President and manager of Willits and Patterson, Ltd., by the terms of which he was to receive one-half of the profits accruing from all the tran-

sactions of the corporation. On September 7, 1920, the corporation, being heavily indebted to the defendant bank, entered into a contract with it whereby the bank was to furnish financial assistance to Willits and Patterson, Ltd., and the latter was to assign all of its right, title and interest to all sales and its contracts with third persons, to be used and applied by the defendant to pay off all sums advanced by it to the corporation to enable it to continue its business, and the balance, if any, to be applied by the defendant to the liquidation of debt of the croporation to said defendant bank. Pursuant to this contract, plaintiff assigned and delivered to defendant all contracts and sales of Willits & Patterson, Ltd. with third parties, together with the operation, control and supervision of the plant, during all of which time the plaintiff was the manager and superintendent. Certain transactions were subsequently undertaken by Willits & Patterson, Ltd., with the financial aid of the defendant, with resulting profits, which the defendant applied to the payment of the indebtedness of Willits & Patterson, Ltd. When plaintiff severed his connection with Willits & Patterson, Ltd., the defendant paid him ₱30,000. Now plaintiff sues for the balance of the notes collected and for recognition of his one-half interest of all the profits made. *Held*: "The contract of September 7, 1920, between Willits & Patterson, Ltd. and the defendant was not only the result of previous negotiations between the plaintiff and the defendant, but it was made with the full knowledge, consent and approval of the plaintiff who, as president of Willits and Patterson, Ltd., executed it for that corporation and who thereafter, both by his own action and conduct, and his personal and official relations to the parties, in all things and respects ratified and approved the contract with all its terms and provisions." The payment of ₱30,000 by the defendant to plaintiff ought not to be construed as evidence of its liability to account to plaintiff for the one-half of the profits. "That fact is nothing more than evidence of a very liberal compensation which the defendant paid the plaintiff for the services which he rendered under the contract of September 7, 1920, between Willits and Patterson, Ltd., and the defendant." Judgment reversed.—(In Banc, Johns, J.)—Briefed by J. S. Nava and R. Villanueva.