Notes and Comments

DECISIONAL RULES ON THE VALIDITY OF PAYMENTS IN JAPANESE MILITARY NOTES

The Japanese Fiat.—One of the first acts of the Commander-in-Chief of the Imperial Japanese Army upon entering Philippine territory, was to issue on January 3, 1942, a proclamation the pertinent parts of which follow:

> "The Imperial Japanese Army in the occupied area will use the war notes (military pass-money) endorsed and issued by the Imperial Japanese Government. All people residing within the concerned area should be aware of the following:
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> 1. The war notes (military pass-money) have been issued by the Imperial Japanese Government and said Government takes full responsibility for their use having the correct amount to back them up.* Circulate the war notes (military pass-money) on their face value with no fear of any sort.
> 2. Those who hold the war notes will be able to use them in making payments of all kinds.
> 3. If anyone attempts to interfere with the circulation of the war-notes (such deed as rejection of payment, forgery, or spreading the untrue nature of news concerning the war-notes of any kind) his act will be considered as hostile and will be punished accordingly..."[1]

Military Notes were Legal Tender.—The question then inevitably arises: Was this proclamation sufficient to make the Japanese military notes legal tender? Resort should first be had to international law before an answer can be given. And the answer will be—Yes. For under the accepted and recognized rules of public international law, the occupying power may decree certain laws, rules, and regulations for the government of the country during the period of occupation.[2] The power of the Military Governments established in occupied enemy territory to issue military currency in the exercise of their governmental power has never been seriously questioned. Such power is based not only on the occupant's general power to maintain law and order recognized in article 43 of the Hague Regulations, but on military necessity

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* Senate Bill No. 168, passed by the Upper House but still unacted upon by the House of Representatives proposes the registration and deposit of Japanese war notes for the purpose of compelling the Japanese Government to make good its word by redeeming said currency.

[1] O. T. IMA, Vol. I, pp. 39-40.

[2] Co Kim Cham v. Valdez, et al., O.G. No. 8, p. 79.

as shown by the history of the use of money or currency in wars.[3] Considering that although the military occupant is enjoined to respect and continue in force, unless absolutely prevented by military demands, those laws that enforce public order and regulate the social and commercial life of the country, he has, nevertheless, all the powers of a *de facto* government and may at his pleasure, either change the existing laws or make new ones when the exigencies of the military service demand such action.[4]

Intrinsic Value of the War Currency.—The belligerent occupant issued its military currency as fast as its printing presses could turn them out. These notes were issued at par with the Philippine peso by the military occupant which had blatantly proclaimed that it "takes full responsibility for their use having the correct amount to back them up."[5] The first issues were of small denominations (the largest being ten-peso notes) and were as of 1942, admittedly of about the same value as Philippine pesos. As events showed, however, the only backing the currency had was the word of an irresponsible promissor, its armed might—and nothing else. By the time the country was liberated, vast amounts of Japanese pesos of large (the largest being one-thousand peso notes) and small denominations had already flooded it. The total amount, a conservative estimate shows, is pegged at 7,959,642,000.00.[6] It was therefore not surprising that the wartime currency should have so depreciated in its intrinsic acquisitive power that it had become practically worthless. And it was inevitable that enterprising debtors, should seize upon this opportunity to exercise their primordial right to pay and demand the cancellation of their obligations.

Validity of Payments.—Having established that the Japanese fiat currency was legal tender, it necessarily follows that, in the main, payments made or loans contracted with such currency are valid and effective. With this proposition, we believe, there can be no dissent.[7] "The fact that the money with which the debts have been paid were Japanese war notes does not affect the validity of the payments."[8] "The Japanese notes being the medium of exchange, defendant may not be heard to object to the payment in Japanese notes;"[9] "Payment ...

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[3] Feilchenfeld, International Economic Law of Belligerents, cited in Haw Pia v. China Banking Corp., G.R. No. L-554, April 9, 1948.

[4] Laurel v. Misa, G.R. No. L-400.

[5] See Text of Proclamation of Jan 3, 1942, supra.

[6] Bulletin of Philippine Statistics, Dec. 1945, Vol. I, p. 1.

[7] In Borlongan v. Pascual (G.R. No. 131-R, July 12, 1947), the Court of Appeals, however, in effect justified the refusal by a mortgagee of a tender of payment in Japanese currency for a pre-war obligation. But the justification was premised not on legal grounds, as the court admitted that the tender "was made in accordance with condition obtaining on that date," but on those of equity.

[8] Haw Pia v. China Bank, supra.

[9] Colemar v. Cosca, G.R. No. L-345, April 30, 1948.

of obligations in military notes issued by the Japanese conqueror and military occupant can not be considered ineffective for it was at the time the only currency of legal tender then in circulation;" [10] "Whatever might have been the intrinsic or extrinsic worth of the Japanese military notes is of no consequence. x x x The Japanese war notes were issued as legal tender at par with the Philippine peso." [11]

War-Time Payments of Pre-War Obligations

Peso for Peso Enforced.—In the Haw Pia v. China Bank case, the Supreme Court held that the payment made in the same amount with military notes of a pre-war obligation to the creditor-bank, extinguished the indebtedness. And it reasoned out: "The fact that the money with which the debts have been paid were Japanese war notes does not affect the validity of payment. The provision of article 1170 of our Civil Code to the effect that 'payment of debts of money must be made in the specie stipulated and if it is not possible to deliver such specie, in silver or gold coins which is legal tender' is not applicable in the present case, because the contract between the parties was to pay Philippine pesos and not some specifically defined species of money. x x x The obligation of contract to pay money is to pay that which the law shall recognize as money when the payment is to be made." A similar holding was laid down in a subsequent case the facts of which stood four square with the Haw Pia controversy.[12]

The Supreme Court likewise validated a payment made in Japanese currency notwithstanding the stipulation in the contract that the consideration was for "$125,000.00, U. S. currency", of which only a fraction had been paid when war broke out. The creditor's allegation that the payment during the enemy regime was null and void, because the debt was payable in dollars or its equivalent at his option, was brushed aside as untenable. In the language of the decision, "This (the allegation) is immaterial, because both the Philippine peso and the American dollar at the rate of one dollar for every two pesos, were the legal tender in the Philippines in accordance with section 1612 of the Revised Administrative Code. x x x The Japanese war notes were issued as legal tender at par with the Philippine Peso. x x x Now that the outcome of the war has turned against Japan, (the creditor) has the right to demand from Japan . payments or compensation in Philippine peso or U.S. dollars for the loss or damage inflicted . . by the emergency war measure taken by the enemy."[13]

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[10] Carlos v. Fidelity and Surety Co., G.R. No. 18-R, May 13, 1947.
[11] Gibbs v. Rodriguez and Luzon Surety, G.R. No. L-1444, Aug. 3, 1949.
[12] Hongkong and Shanghai Bank v. Samanillo, G.R. No. L-1345, Nov. 10, 1948.
[13] Gibbs v. Rodriguez, supra.

In another case,[14] the creditor alleged the nullity of the payment to him of ₱3,000.00 in Japanese fiat money for the balance of a sale by installment entered into before the war. The court decreed that "the contract can not be invalidated only because its consideration has been paid in Japanese military notes."

In the Mata v. Pichay case,[15] the Court of Appeals held as valid the deposit in court of ₱5,500.00, "Mickey Mouse" money which had been previously refused by the defendant-creditor when offered as payment of a loan for the same amount The Court's answer to the creditor's plea that to impress validity on the consignation would work an injustice against him, follows: "Investments are always subject to ups and downs, and if a man loses in a transaction because of a change in the law which he could not foresee, that is his misfortune, which may be compensated by other more successful operations. x x x Time is frequently an essential element in many transactions and their validity should be judged according to the circumstances prevailing at the time they took place and not according to the present conditions, which should not be given a retroactive effect."

The consignation of ₱880.00 in Japanese fiat money in payment of a pre-war indebtedness for the same amount was valid and effective, according to a decision [16] of the Supreme Court, which also termed the lower court's ruling that the payment should have been in Commonwealth currency as "bereft of reason and justice, and is not the law." The payment in May, 1944, of ₱3,683.60 in Japanese currency of a pre-war debt, was likewise validated by the Court.[17]

Only the Equivalent Paid.—The Court of Appeals refused to hold the debtor liable, peso for peso, in a case [18] where ₱4,100.00 in Japanese notes was tendered and upon refusal, consigned in court to pay a pre-war mortgage for the same amount. The Court's reasoning was, however, predicated on grounds of equity. For as it explained: "Although the tender of the redemption money in payment of an obligation contracted before the war, was made in accordance with the legal tender prevalent during the occupation, yet, for reasons of equity," the vendee a retro "should be paid in money equivalent to the genuine Philippine currency, computed in accordance with the generally accepted Ballantyne scale of values as of the date of the deposit of such amount with the Clerk."

In a subsequent case,[19] the same Court held that the payment in war notes of salaries and bonuses due to the employee before the war, did

14 De Asis v. Martinez, G.R. No. 156-R, June 14, 1947.
15 G.R. No. 156-R, June 14, 1947.
16 Cunanan v. Amparo, G.R. No. L-1313, Feb. 16, 1948.
17 Phil. Trust v. Araneta, G.R. No. L-2734, March 17, 1949.
18 Borlongan v. Pascuaul, supra.
19 Garrido v. North Camarines Co., G.R. No. 786-R, Oct. 24, 1947.

not suffice to extinguish the company's liability. Again invoking reasons of equity to justify its decision, the Court said: "The payment was of little or no benefit to the employee or his family for we may take judicial notice of the fact that by 1944, the amount paid could not, at most, even buy a half cavan of rice. In this situation, where the court is positive that some benefit has been received by the appellee's family but no certain or definite gauge thereof has been presented by either party, the Court may well take as basis of value . the Ballantyne scale of values."

The Supreme Court held the plaintiff-debtor bound by the provision of the contract of loan that repayment should be made "either in Philippine currency or British currency, at the creditor's option." It is a serious question whether defendant who was a special creditor having the right to insist on his option to receive payment in British currency or the equivalent of British currency "could be compelled to receive Japanese money especially at par. x x x His refusal to take the Japanese notes could have no other significance than his election to be paid in British currency, or at least, in Philippine currency at the right valuation." [20]

Post-War Payments of War-Time Contracts

Revaluation is General Rule.—The accepted view seems to be that all obligations incurred during the enemy regime by contracts stipulating for, or executing judgments of the courts ordering, payment of money presumably in Japanese military notes, including payment of the repurchase price in *pactos de retro* and sales, shall be paid or satisfied after the liberation of the Philippines on the basis of the relative value of the said notes in Philippine currency. The revaluation shall be made as of the date the obligation was originally incurred. This is the general rule, in the absence of any stipulation to the contrary by the contracting parties.

The Ballantyne Scale.—A memorandum submitted by the former bank adviser to the then President Sergio Osmeña embodied the recommendations now known as the Ballantyne Formula. Although the Formula failed to become law in the Philippines, it has nevertheless, been adopted by the Courts in the absence of a "certain or definite gauge" for revaluation.[21] The pertinent paragraph of the said recommendations, reads:

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[20] Tambunting v. Carrascoso, G.R. No. L-331, Aug. 31, 1948.

[21] On this point, the Court of Appeals said: "True that up to the present there is no legislative enactment which expressly confers on courts power to hear and determine the value of Japanese military notes in relations to Philippine pesos, but it is no less true that courts of justice are bound to pass upon and decide all matters submitted to their determination. Article 6, par. 2 of the Civil Code provides—when there is no statute exactly applicable to the point in controversy, the custom of the place shall be applied, and in the absence thereof, the general principles of law."—Gomez v. Tabia, CA—G.R. No. 541-R, Act. 23, 1947.

Debts Incurred During the Occupation and Still Outstanding

> In determining the present liability of debtors in Commonwealth peso with respect to debts incurred during the occupation and still outstanding in whole or in part, the unpaid portion of the debt might be revalued on a basis of ratio that the Japanese war notes bore to the Commonwealth peso on the date the debt was originally incurred. It is not believed, however, that the debts incurred during the occupation which specifically provide for repayment in consideration other than currency, should be affected by the provisions of any legislative enactment."

Thus, "contracts stipulating for payments presumably in Japanese war notes may be enforced in our courts after the liberation to the extent of the just obligation of the contracting parties, and, as said notes have become worthless, in order that justice may be done and the party entitled to be paid can recover their actual value in Philippine currency, what the debtor should pay is the value of the Japanese military notes in relation to the pesos in Philippine currency obtaining on the date when and at the place where the obligation was incurred, unless the parties had agreed otherwise. In the absence of evidence of value of the Japanese war notes in terms of Philippine currency, we may adopt the Ballantyne scale."[22]

An appellate court's judgment decreeing the payment in Philippine currency of the same amount in military notes, for damages resulting from illegal possession of property during the occupation, was modified by the Supreme Court. "Petitioner is not liable to pay now in Philippine pesos the same number of pesos to which he was sentenced in December, 1944. He is liable only to pay the equivalent which may be determined by means of the Ballantyne scale of values." [23]

Repayment in Specified Specie.—Where, however, the parties had expressly agreed that the obligation shall be paid in Philippine currency; or in currency that is legal tender after liberation; or that it shall be payable after a certain period has elapsed and not earlier, and the period elapsed after liberation, then payment shall be in Philippine currency at the par value of one peso in Philippine currency for every peso in Japanese fiat money. In any of these cases, the Courts have invariably enforced article 1255 of the Civil Code to the effect that "contracting parties may establish any pact, clauses and conditions they may deem advisable provided not contrary to law, morals, or public order", and article 1091 that "obligations arising from contract shall have the

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[22] Hilado v. de la Costa, G.R. No. L-150, Aug. 30, 1949.
[23] Soriano v. Abalos, G.R. No. L-1525, July 27, 1949.

force of law between the contracting parties and must be performed in accordance with their stipulation."

Aleatory contracts.—In the latest case[24] decided on the matter, the contract of *pacto de retro* stipulated that "This agreement is to the effect that within 30 days after the expiration of one year from June 24, 1944, the ... land may be redeemed or repurchased 'sa ganitong ding halaga' (at the same period)". The Supreme Court construed the phrase "sa ganitong ding halaga" as meaning "the same price of ₱5,000.00 in the currency prevailing at the time of redemption and not the equivalent in Philippine currency of ₱5,000.00 in Japanese war notes. x x x The parties herein gambled and speculated on the date of the termination of the war and the liberation of the Philippines by Americans. x x x This kind of agreement is permitted by law. x x x It may be viewed in the same light as insurance contracts, or sales of grain, sugar or other commodities to be delivered at some future date, whose price is subject to fluctuation and may, at the time of delivery be way above or below the sales price."

In another case,[25] the stipulation was that "Payment will be made in the currency that will be prevailing at the end of the stipulated period of one year. In consideration of this loan, I renounce any right that may come to me by reason of any postwar arrangement .... by legislation wherein this sum may be devalued..." In this case, both parties "elected to subject their rights and obligations to a contingency. If within one year, another kind of currency became legal tender, creditor would probably get more for his money. If the same Japanese currency continued, he would only get less, the value of the Japanese currency being then on the downgrade. x x x Our legislation has a word for these contracts—aleatory. The Civil Code recognizes their validity (Art. 1790)."

But it should be noted that in the same decision, the Court virtually proclaimed that the *ratio decidendi* therein was only valid in relation to the peculiar environmental facts of the Roño controversy and not for others similarly situated. "This decision does not cover situations where borrowers of Japanse fiat money promised to repay 'the same amount', or promised to return the same number of pesos 'in Philippine currency' or 'in the same currency prevailing after the war'. There maybe room for argument when these litigations come up for adjudication."

In an earlier case,[26] the condition was: "... in case the money which I (the vendor *a retro* paid to him (the vendee), shall be valueless, I shall change it with Philippine money." In the language of the court, "the redemption was not absolute, but conditional. A complete redemp-

[24] Gomez v. Tabia, G.R. No. L-1826, Aug. 5, 1949.
[25] Roño v. Gomez, G.R. No. L-1922, May 31, 1949.
[26] Teoxon v. Panis, G.R. No. L-1584, April 22, 1948.

tion of the land depended on the fulfillment of the condition—the change of the Japanese notes with Philippine currency."

Such Contracts Not Usurious.—The eventual gain of the creditors in these transactions "is not interest within the meaning of the Usury law. They would have gotten less if the Japanese occupation had extended to the end of 1945 or if the liberation forces had chosen to permit the circulation of Japanese notes. x x x There was the possibility that upon reoccupation, the Philippine Government would not invalidate the Japanese notes, which after all have been forced upon the people in exchange for valuable goods and property. The odds were about even. x x x There was no over-reaching nor unfair advantage.

Nor Immoral.—"Both parties were on equal footing. Both knew the situations in which they made the contract. Both took equal risk, since it was impossible to predict the exact time at which the Philippines could be liberated. Supposing that the liberation had been delayed for more than one year, then (the creditor) might have been the loser and (the debtor), the winner for the Japanese currency might have further diminished in value. Where is then the immorality of the contract?"[27]

If these contracts were immoral, then "it would be immoral for the home-owner to recover ₱10,000.00 when his house is burned, because he invested only ₱100.00 for insurance policy. And when a holder of a sweepstakes ticket who paid only ₱4.00 luckily obtains the first prize of ₱100,000.00, the whole business is immoral." [28]

On the Defense of Collective Duress.—The argument that the payments in Japanese fiat money were accepted because a refusal to do so would mean the enemy's ire, is untenable. "The question of whether or not said order (the Proclamation of January 3, 1942) constituted a collective and general duress and invalidated the payments made ... is a question of law, and not of fact." Acceptance of such payments in compliance with the proclamation of the Japanese Military Government "can not be considered as made under a collective and general duress, because an act done pursuant to the laws and orders of competent authorities can never be regarded as executed involuntarily or under duress or illegitimate constraint or compulsion that invalidates the act."[29]

"A representative of the debtor told the creditor that if he would not accept payment, he would suffer the consequences; and the creditor accepted payment because as he understood him, he will be reported to the Japanese Military Forces and that as a consequence, he will be taken to Fort Santiago. x x x This supposed threat was not one to inspire genuine fear. 'Consequences' is susceptible of various meanings. A

[27] Roño v. Gomez, S.C., supra.
[28] Ibid. CA.
[29] Phil. Trust v. Araneta, supra.

matured man, intelligent and well-educated (as the creditor was) .. it is unbelievable that he could have been impressed by such vague innuendo." [30]

Defense Is Impliedly Accepted.—But in the Tambunting v. Carrascoso case, the Supreme Court, although not in so many words, accepted the defense of compulsion in the acceptance of payment in Japanese fiat currency of a pre-war obligation. The Court took notice of the fact that "obviously, this defense could not be raised during the Japanese regime. x x x Yet this seems to be a valid plea..," it being a matter of public knowledge that if it were then made, creditor, who was an enemy national, would have risked repressive measures from the dreaded Kempitai.

Justice Tuason, in a strongly-worded dissenting opinion in the Phil. Trust v. Araneta case, said of this defense of collective and general duress: "This plea should not be dismissed with a shrug of the shoulder. x x x Because of its direct bearing with other payments involving millions, it is the duty of this court to give it respectful consideration. Such duress was real and imminent. The very order of the Japanese High Command upon the banks to open were an implied order to accept payment in Mickey Mouse notes."

Validity of Payments to Enemy Liquidator.—The Director-General of the Japanese Military Administration, upon the occupation of the Philippines, appointed the Bank of Taiwan, a Japanese-controlled bank, as liquidator of enemy banking institutions, empowered to collect all outstanding obligations accruing to the latter and ultimately liquidating them. Anent the legality of the appointment and the consequent liquidation processes, the Supreme Court had this to say: "...it being permitted to the Allied Nations, ... to sequestrate, impound, and block enemy properties found within their domain or in enemy territories occupied during the war by their armed forces, and it not being contrary to the Hague Regulations or international law, Japan had also the right to do the same in the Philippines. x x x With regard to the funds of commercial banks, ... it was impossible or impracticable to attain the purpose (i.e., of preventing their being used in aid of the enemy) ... without liquidating the said banks and collecting the loans given by them. x x x The fact that the Japanese Military Administration failed to pay the enemy banks the balance of the money collected by the Bank of Taiwan, did not and could not change the sequestration or impounding ... into an outright confiscation or appropriation thereof. x x x As the (enemy) had the power to sequestrate and impound the assets or funds ... it follows evidently that payments by the debtors to the Bank of Taiwan of their

[30] Aurrecoechea v. Kabankalan Sugar Co., G.R. No. L-551, March 31, 1947.

debts ... have extinguished their obligations to the enemy banks." [30] This ruling was consistently reiterated in the later cases of Hongkong and Shanghai Bank v. Samanillo,[31] Philippine Trust v. Araneta,[32] Gibbs v. Rodriguez and Luzon Surety Co.,[33] and Hilado v. dela Costa.[34]

In Re War-Time Bank Deposits and Withdrawals

The Law which Governs.—All deposits made with banking institutions during the enemy occupation and all deposit liabilities incurred by banking institutions during the same period are declared null and void, except as provided in this section. All withdrawals made by a depositor, including liquidation payments, during the enemy occupation from balances outstanding as of the last date prior to the enemy occupation shall be valid and banking institutions shall be liable only for the lowest minimum balance remaining out of such balance to the credit of the depositor on the last date prior to the enemy occupation and without interest beyond December 31, 1941. The term, "lowest minimum balance" shall be understood to mean the lowest level reached as of the close of any business day during the period of enemy occupation by a deposit account, or, if there be more than one deposit account, by the consolidation of all deposit accounts carried under the name of one depositor in said bank.[35]

Lowest Minimum Balance Explained.—"If a pre-war depositor who had ₱5,000.00 to his credit deposit, deposits during the occupation ₱1,000.00 and afterwards withdraws ₱1,000.00, his lowest minimum balance is ₱5,000.00 because his withdrawals must be taken from the deposit of ₱1,000.00 previously made during enemy occupation. But if the pre-war depositor withdraws ₱1,000.00 before making any deposit during occupation, the lowest minimum balance would be ₱4,000.00 even if he makes a deposit of ₱1,000.00 after his withdrawal." [36]

Nature of a Bank Deposit.— "In this jurisdiction, a bank deposit in current account is a transaction peculiar to the banking business, that is, a commercial deposit in accordance with article 303 of the Code of Commerce, because the bank is obviously a merchant within the meaning of article 1 of the Commercial Code; the thing or money deposited is an object of commerce; and the deposit of money in a bank is of itself a commercial transaction. x x x Current account deposits are essentially mercantile contracts (Tan Tick v. Am. Apothecaries, 38 O.G. 889)." [37]

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31 Supra.
32 Supra.
33 Supra.
34 Supra.
35 Section 2, Executive Order No. 49.
36 Hilado v. de la Costa, supra.
37 Ibid.

Who Suffers Loss for Devaluation of Enemy Currency?—"A deposit made within a bank of notes made with legal tender by the military occupant of an enemy territory whose occupation does not ripen to conquest ... must be considered as with specification of currency, that is, as a deposit of money made legal tender by the occupant ... unless there is evidence to the contrary. x x x It should not be understood as a general deposit without specification of currency, that is, a deposit of lawful money of the legitimate government . and therefore, if such (the war notes) currency becomes valueless, the depositor shall suffer the loss, because the currency so deposited is exactly of the same condition and validity as that kept in pockets or safes of depositors. x x x The minimum requirements of justice demand that said deposits should be considered as made with an implied specification of currency and hence, article 307 of the Code of Commerce which provides that 'when deposits consist in cash with specification of the currency constituting the same the increase and reduction in value suffered by the same shall be for the account of the depositor' is applicable." [38]

Constitutionality of Governing Law.—The Executive Order is not a deprivation of property without due process of law nor an an impairment of obligation of contract because it is "but a logical corollary and application to bank deposits in Japanese war notes of Executive Order No. 25, insofar as it declares that said notes are not legal tender in territories of the Philippines liberated from Japanese occupation." [39]

Conclusion

The writer has only made a factual presentation of the environmental circumstances of the cases and the decisional rules laid down therein. No attempt is made at an analytical dissection of the jurisprudence on the subject nor at a reconciliation of any seemingly conflicting case with the others. This, on the theory that our Courts have, with sufficient clarity and precision, set for the barrister and the law student a clear-cut determinant as to when a repayment should be revalued on the basis of the relative worth of the military pass-money in Philippine currency, or computed at the rate of one Philippine peso for every Japanese fiat peso. To the writer, insofar as the subject is concerned, a system of *elegentia juris* has been shaped.

● **MARIANO AMPIL, JR.**

[38] Ibid.
[39] Ibid.

May the Character of A Person Be Proven By the Testimony of Another Who Knows Him Personally?

I. CHARACTER IN EVIDENCE

a. Legal Basis

(Secs. 15 & 16, Rule 123, Rules of Court)

Sec. 15 Moral Character of Parties in Criminal Cases.—The good moral character of an accused having reference to the moral trait involved in the offense charged, may be proven by him. Unless in rebuttal, the prosecution cannot prove the bad moral character of the accused. The good or bad moral character of the offended person may be proved if it may establish in any reasonable degree the probability or improbability of the offense charged.

Sec. 16. Moral Character of Parties in Civil Cases.—Evidence of the moral character of a party in a civil case is not admissible unless the issue involved is character.

The two above provisions of the Rules of Court allow, subject to the conditions therein specified, proof of the character of a person. The question may be asked: What kind of evidence may be admitted to prove character? There is a conflict of authority on this matter. (Moran, Commentaries on the Rules of Court, Vol. III, p. 119) Section 32 of Rule 123, Rules of Court, provides that "common reputation existing previous to the controversy, respecting....moral character may be given in evidence..." Under the authority of and subject to the qualification established by this section, character may, therfore, be proven by common reputation.

b. The Majority View

But the question may be pursued further: Is proof of character by common reputation an exclusive mode of proof? In England it has been held to be exclusive. The majority also of American states like Alabama, Arkansas, Delaware, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Nebraska, Nevada, New Jersey, New Mexico, New York, Pennsylvania, Texas, and others hold that common reputation is the sole method of proving character.

c. The Minority View

Some American states, however, like Connecticut, Indiana, Iowa, Minnesota, Ohio, Washington, and Wisconsin uphold the contrary view, and admit proof of character by the testimony of a person who knows

and is in a position to testify about it. The stand taken by the courts of these states constitute the minority view at present.

d. The Question Raised

In our jurisdiction, the query might still be raised: Which of the two views should prevail? Shall we adopt the strict exclusionary rule enunciated by the majority, or shall we allow the character of a person to be proven by common reputation as well as by the testimony of a witness who knows him personally?

II. THE TWO RULES DISCUSSED AND COMPARED

a. Character and Reputation Defined

Character has been defined as "the peculiar qualities impressed by nature or by habit on a person which distinguish him from others"[1] It has been said to be the "possession by a person of qualities of mind or morals, distinguishing him from others".[2] It also refers to that "combination of properties, qualities or peculiarities which distinguishes one person from others".[3]

On the other hand, reputation has been defined as "the consideration or estimation in which a person is held especially by the community or the public generally".[4] Our Supreme Court defined it as "the sum or composite of the impressions spontaneously made by him (a man) from time to time, and in one way or another, upon his neighbors and acquaintances".[5]

b. Character Different From Reputation

From the above definitions, it is evident that the terms "character" and "reputation" are totally distinct terms. A second element, namely, the "community", or the "public", or the "neighbors" and "acquaintances", which is absent from the first, is indispensably linked with the concept of the latter. Character refers to a person's "qualities"; reputation to the "estimation" of those qualities or of the person himself by the general public.

In common parlance, the two terms have often been used synonymously, but in legal acceptation, the differences should be well-marked. "Character lives in a man; reputation outside of him."[6] "Character

[1] Webster's Dictionary; Bottoms v. Kent, 3 Jones, p. 160.
[2] Bouvier's Law Dictionary.
[3] The Chamberlayne Trial Evidence, Leslie J. Thompkins, p. 577.
[4] The Chamberlayne Trial Evidence, supra.
[5] Worcester v. Ocampo, 22 Phil. 42, 87.
[6] Jones, Evidence, 2nd ed, Vol. II, Sec. 669.

means what a person really is; reputation means what he is supposed to be."[7] "Character is reality and reputation is merely what is reported or understood from report, to be reality about a person or thing."[8] "Reputation may be evidence of character but it is not character itself."[9] The fact to be proved is different from the evidence admitted to prove it.

c. Character a Fact

Fact has been defined as actuality.[10] If, as gathered from the previously enumerated definitions, character is a "quality" in a person; an actuality, therefore, then, character must be a fact. As such, it should be proven like any other fact. A person who is familiar with it from his own knowledge should be permitted to testify.

d. Reputation Hearsay
(Wigmore, Evidence VII, Sec. 1609)

Since character is a fact and reputation is looked into merely as evidence of the fact reputed, it follows that "reputation" is hearsay testimony, for it is the unsworn expression of opinion on the part of the community used testimonially but uttered out of court and not under cross-examination. It is true that reputation is not always necessarily used as hearsay, that is, as a testimonial assertion. It may be part of the very issue, as where the reputation of the plaintiff is in issue to determine the damages in an action for defamation, or where the reputation of a house of ill fame is in question. In these and similar cases, reputation is the fact to be proved, irrespective of the actual character reputed. But when reputation is offered as a ground for inferring that the character affirmed by the reputation to exist does actually exist, then such evidence is plain hearsay, and if at all it is to be received, it must come as a hearsay exception. Under our law, only the provisions in Sections 32 and 91, Rule 123, of the Rules of Court save it from this legal infirmity.

But at any rate, the objection is as to the exclusive rigidity of the majority rule. It would be difficult to apply it in actual cases. Chief Justice Wheeler of Connecticut made the following pertinent criticisms on the matter in Richmond v. Norwich (115 Atl. 11):

> "Whether or not one was of quick temper will require proof of a fact. No one knows so well about this fact as he who has known the person and had the opportunity to determine it. How much more convincing is such evidence than that of a witness who testifies to the

[7] Burns v. State, 49 NE 929.
[8] State v. Wilson, 1 Atl 415.
[9] Wright v. Crawforsville, 42 NE 227.

> general repute of this person as to his mental characteristic? *His testimony is based upon hearsay, and quite likely rumor and gossip.* If mental characteristic is a fact, there is no valid reason why this fact may not be proved by any witness who knows about it. Personal observation and personal knowledge are a more trustworthy reliance than general reputation. (Underscoring mine.)

e. Other Objections to Reputation

Aside to the previously noted objections to the exclusionary doctrine, numerous others have been raised against it. The dissenting opinion of Justice Willes [11] may be said to be the first to raise the question of its untrustworthiness and impracticability:

> "I apprehend that the man's disposition (character) is the principal matter to be inquired into and that his reputation is merely accessory and admissible only as evidence of disposition. The judgment of the particular witness is superior in value and quality to mere rumor. *Numerous cases may be put in which a man may have no general character in the sense of any reputation, or rumor about him at all, and yet may have a good disposition and known only to a few; or again, he may be a person of the violent character and disposition and only his intimates may be able to testify that this is the case.* One may deserve that character (reputation) without having acquired it. In such a case the value of the judgment of a man's intimates upon his character becomes manifest. *In ordinary life, when we want to know the character of a servant we apply to his master's family; so the character of a man of business to those with whom he deals. According to the experience of mankind, one would ordinarily rely rather on the information and judgment of a man's intimates than on general report; and why not in the court of law?* (Underscoring mine.)

f. Proof by Personal Knowledge

Proof of character by the testimony of an intimate acquaintance has been described as "natural, straightforward, and useful".[12] The objection might be raised that it is likely to be biased, coming as it does from a friend. This objection, however, really raises only a question of "weight" rather than "admissibility" of evidence. It could not effectively be raised in the Philippines for unlike in England and in the United States, we do not have here the jury system. Faith can well be placed on the competence of our judges to appreciate a witness' testimony, whether it be biased or not. Furthermore, unlike proof of character by common reputation, this manner of evidence allows by its very nature the application of appropriate tests to determine its credibility. "Whether the witness knows what he pretends to know in regard to the disposition (character) in question, whether his opportunities for acquiring such knowledge have been sufficient, or his ability

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[10] Winston's Cumulative Encyclopedia and Dictionary.
[11] In Regina v. Rowton (supra).
[12] Wigmore, Evidence, Vol. VIII, Sec. 1926.

to acquire it has been competent, are matters in which there is no difficulty in testing, either upon a preliminary or cross examination of both."[13]

g. Personal Testimony and the Opinion Rule

(Wigmore, Evidence, VII, Sec. 1986)

The opinion rule to the effect that "the opinion of a witness are not legal testimony except in special cases, such for example, as experts in some profession or art, those of the witnesses to a will . etc."[14] Has usually been invoked against the acceptance of witness' testimony as to his belief about the character of a person he knows. The rule, however, has never more been misapplied as when it was made to justify the exclusion of this type of testimony. On the contrary, the principle of the opinion rule is amply satisfied by this type of evidence. It squarely meets the test of whether the witness can adequately detail the data on which his estimate rests and from which his inference is drawn. The actual application of the exclusionary rule on common reputation, on the other hand, prevents him from so doing. Even if witness can in memory recall and in language enumerate every incident and act indicative of character, he can not do so for what he is required to state is the general trait of character as generally spoken of in the community.

j. The Strict Rule Relaxed

The severity of the strict rule has led some courts to relax its rulings in various ways. This might have been due to the desire to prevent undue hardship on the part of litigants, for as laid down by Chief Justice Marshall.[15]

> "It might easily happen that a defendant could not prove general good reputation for peace and quiet, and yet his intimate friends and members of his immediate family might testify in his behalf as to his good character, and that he was a peaceable and quiet citizen, and thereby create a much more favorable situation than by witness testifying to his general good reputation."

Thus, in State v. McCabe (70 Pac, 2nd Series, 758), defendant was accused of murder. Evidence was introduced by the state to prove the good character of the deceased. One witness Nunn testified in effect that the deceased had been straight with him and that it was upon this record of personal dealing that he had based his response to the question as to the deceased's general reputation. No objection was made to the testimony, and it was only after cross examination had been made that a motion was submitted to strike it out. The court ruled:

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13 State v. Lee, supra.
14 Phillips v. Kingfield, 19 ME 378.

"Witness Nunn may have been disqualified from expressing his opinion as to the reputation of the deceased based solely on his own judgment arising out of his personal relation with Rose. Nevertheless, it can not be said that the court abused its discretion in permitting the testimony to stay in for what it is worth and to be weighed by the jury in the light of the very proper and very thorough cross-examination of Nunn by counsel for defendant. Evidence of character is founded on opinion and in the admission or rejection of opinion evidence the court has a certain discretion which will not be interfered with on appeal unless clearly erroneous.

"The testimony of witness Case and Nunn that they knew the reputation of the deceased for peace and quietude was weakened by their ambiguous and contradictory assertion on cross-examination. However, the court, who had the advantage of observing the character and demeanor of those witnesses on the stand, did not err in refusing to take their testimony from the jury The denial of the motion to strike the testimony could have done no harm, because the jury had the benefit of cross-examination to aid it in weighing the truth of the witnesses' declaration of knowledge. No substantial rights of the defendant was affected.

In California, three cases stand out to illustrate the relaxation of the strict rule: In the case of People v. Casey (53 Cal 361), the testimony of a long personal acquaintance that "during that time his character has always been that of a quiet, peceable citizen; I never know of his having any other difficulty", was referred to by the court as "not the most satisfactory method of proving a previous good reputation" Nonetheless, the testimony was admitted. In People v. Wade (50 Pac 642), the chaste character of the prosecutrix in a seduction case was allowed to be proved by the testimony from personal knowledge of the head of the family in which she lived. This ruling was followed with approval in the case of People v. Tibbs (76 Pac 904).

k. Under the Rules of Court

Section 1 of Rule 123 defines evidence as "the means, sanctioned by this rule, of ascertaining in a judicial proceeding the truth respecting a matter of fact" Section 3 of the same rule also provides that "evidence is admissible when it is relevant to the issue and is not excluded by this rule." Under the sanction of the two named provisions, proof of character by the testimony of an intimate acquaintance is perfectly legitimate. It is authorized by and will pass the strict rule laid down by Section 27 of Rule 123 to the effect that "a witness can testify to those facts only which he knows of his own knowledge; that is, which are derived from his own perception." Character is a fact and a person who personally knows what that fact is should be allowed to testify about it.

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[15] In Sabo v. State (163 NE 28).

The Rules of Court, as the following provisions of Rule 123 show, recognize the distinction between "character" and "reputation", and it uses the appropriate term when one or the other is meant or referred to:

> Sec. 31. Family Reputation or Tradition Regarding Pedigree.—The *reputation* or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereto be also a member of the family. Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree.
>
> Sec. 32. Common Reputation.—*Common reputation* existing previous to the controversy, respecting marriage or *moral character*, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation.
>
> Sec. 91. Impeachment of Adverse Party's Witness.—A witness may be impeached by the party against whom he was called, by contradictory evidence; by evidence that his *general reputation* for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of an offense.

These provisions show that under our Rules, "character" and "reputation" are not synonymous terms. The latter is only a means allowed to prove the former. There is no legal justification why this method of proof should be exclusive. On the contrary, the other provisions show that some other method may be used.

● TEODORICO N. PATAG

* * *

On the Philippine Ready - Mix Concrete Co., Inc.

The Antecedent Facts—

The Philippine Ready Mix Concrete Co. is a private corporation organized for the primary purpose of carrying on business of manufacturing specific building and construction materials and accessories of any form such as pipes, tubes, conduits, cement, iron and steel, rocks, tiles, paving and surface materials.

On April 29, 1948, it entered into a contract with the Republic of the Philippines, represented by the Director of Public Works for the construction of bituminous concrete course pavement on Manila Metropolitan Area, for the production of 10,000 metric tons of asphalt concrete, hot central plant mix surface course material, approximately 50 metric tons of bituminous concrete surface course and for the erection and operation of Bituminous Mixing Plants for the sum of ₱3,623,125.42.

This entity was incorporated under our Corporation Law with a Capital Stock of ₱2,500,000. The following officers of the Philippine government participated in the following capacities:

Primitivo Lovina, Secretary of Labor—as president of the corporation

Senators Vicente Madrigal and Fernando Lopez—as stockholders.

Mrs. Enriqueta Avelino, wife of former Senate President Jose Avelino—as stockholder.

Mrs. Luisa A. Pedrosa wife of Secretary of Finance Pio Pedrosa—as stockholder.

The Law in Point.—

A prohibition exists in our law, nothing less than the Constitution itself, which reads as follows:

Article VI. Sec. 17: "No senator or member of the House of Representatives shall directly of indirectly be financially interested in any contract with the Government or any subdivision or instrumentality thereof."

Article VII. Sec. 11 (2): "The heads of departments and chiefs of bureaus or offices and their assistants shall not during their continuance in office, engage in the practice of any profession, or intervene, directly or indirctly, in the management or control of any private enter-

prise which in any way maybe affected by the function of their offices nor shall they be **directly or indirectly, financially interested,** in any contract with the government or any subdivision or instrumentality thereof."

The Issue Raised.—

Such facts and provisions of the Constitution give rise to the following question:

Is the mere holding of 2 positions, one as an officer of the government and the other as stockholder or officer of a corporation, by one and the same person sufficient to constitute a violation of the law?

To such question, I would answer no. For a violation of the above mentioned provisions of the Constitution, there must be a contract entered into between the government and a corporation in which an officer of the government who is also a stockholder or an officer of such corporation, is financially interested either directly, when he himself contracts with the government in the name and under the authority of such corporation, or indirectly, when the corporation itself, thru officers other than the public officer concerned, enters into the contract.

An officer of a corporation may therefore have either a direct or indirect financial interest in the contract and a stockholder may have only an indirect interest since a corporation generally acts thru its board of directors, the members of which are considered officers of the corporation.

As applied to our case the question therefore is whether ownership by a senator or by a department head or by their wives, of shares of stock in a corporation which enters into a contract with the government constitutes a violation of constitutional prohibition in Art. VI Sec. 17 and Art. VII Sec. 11 (2)

Both such provisions prohibit a "direct or indirect financial interest." Upon the resolution of the meaning of such a phrase, rests the solution of our problem.

Scope of Direct and Indirect Financial Interest.—

Various interpretations have been given to in the following instances:

Where an agent and manager of a merchandising business sold supplies to the municipality of which he was an officer, direct financial interest was held to be present as such officer was "substantially benefited financially by his participation in the contract"[1] and where an officer of a corporation contracted directly with the government of

[1] Hobbes Wall & Co. v. Moran, 109 Cal. App. 316, 293 Pac. 145

which he was an officer; it was held to be "any pecuniary interest in the corporation, or to have and to hold a share or portion or part of it or in it, or to receive any part of the proceeds paid by the government In fact, a stronger case of interest exists where the public officer is not only a stockholder but also an officer of the corporation."[2]

On the other hand there is **indirect financial interest,** "altho there was no pecuniary gain" from the contract by the public officer where a contract for plumbing, heating and ventilating work in a public building was awarded to a corporation whose employee was a council member of the municipality awarding the contract thru a public bid, even if such person holding two offices "did not have control over or receive any benefit other than dividends on his stock and had nothing to do with securing the contract"[3] and where a member of the board of trustees of the city was a stockholder of the corporation which sold coal to said city. The reason given in a case where the manager of a branch shareholder of the corporation which contracted with the city was a member of the city council was that "such person would be indirectly benefited since on the success of the corporation's business primarily depend the continuance of his position and compensation"[4] and such business of the corporation is certainly affected by the contract.

Indirect financial interest may in fact be "any interest which will prevent him from exercising absolute loyalty to the state".[5] "The degree is immaterial as the law makes no discrimination with respect to the interest which should disqualify as the same is impossible to measure by any scale"[6] as held in a case where a stockholder of the corporation contracting with the city, was a councilman of the latter.

Where the directors of a water corporation which contracted to furnish water to municipality, were also council members of the latter and where members of the city council were stockholders of a corporation contracting with the city, the ruling was that "it is unimportant as to whether the public officer prohibited is an officer or a stockholder of the corporation. Either interest is within reason of the rule prohibiting an officer from being directly or indirectly financially interested in a contract with the state of which such officer or stockholder is a public officer."[7] "That it is indeed the most common form of violation of the provision"[8] was held by the court where a member

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2 Doll v. State, 45 Ohio St 445, 15 NE 293; Case et al. v. Johnson, 97 Indiana 477.

3 Stockston Plumbing and Supply Co. v. Wheeler 229 Pac 1020; Consolidated Coal Co. v. Board of Trustees, 164 Mich. 235.

4 Muller v. Martinez, (1938) 23 Cal. App. (2nd) 364, 82 P (2nd) 519; Stockton Plumbing & Supply Co. v. Wheeler id.;

5 Hobbes, Wall & Co. v. Moran id.; Muller v. Martinez id.

6 Fester v. Cape May (1897) 60 NJL 78, 36 A 1089.

7 Milford v. Milford Water Co., 124 Pa. 610, 3 LRA 122; Nunemacher v. City of Louiseville (1895) 98 Ky 334, 32 SW 1091;

8 Thompson v. Dist. of Moorland, 233 NW 439, 74 ALR 490.

of the district board was also a shareholder of the corporation and "that the interests of the parties are already within the prohibition."[9] Delegate Briones made a statement to the same effect on the floor of the Convention where "the stockholder of a corporation or a partner is at the same time a member of Congress."[10]

The Reason Behind the Prohibition—

It may be argued that such a prohibition would deter businessmen from aspiring to important public offices but the considerations of public policy and of the public welfare far outweighs the same. Besides, men who for the lust of gold would deny their services and time to the public would most likely not make good public officials and would only use their public positions to line their purses. It can only be one or the other; a good businessman or a good public officer, not both.

On the other hand "a public officer is an agent of the government and it is a cardinal doctrine of agency that whenever an agent is vested with authority, he must use it in good faith for the benefit of the principal"[11], and "during the period of time existing of such trust and relationship"[12] "his interest cannot become antagonistic to his public duty"[13] which is "entitled exclusively to the exercise of his best judgment in its behalf."[14] "That there is no dereliction of duty on the public officer's part or that the state may have an advantageous contract without suffering any loss is immaterial."[15] "It's also the relation itself which the law condemns and not only the result."[16]

"Some men are big enough to waive personal considerations and discharge fairly and impartially public duty, but however all men are not so constituted. Owing to the weakness of human nature, men do sometimes yield. One who has power, will be too readily seized with inclination to use opportunity for securing his own interest at the expense of that for which he is entrusted. The case is similar to a judge who cannot be permitted to hear and decide his own case or one in which he is personally intersted. The judge might rise against the temptation but because of the temptation he's not permitted to act."[17]

The prohibitions therefore are "to act as shields of the people from the selfishness and greed of officials,"[18] and "to remove any suspicion

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[9] Dall v. State id.; Marshal v. Elwood City, 41 Atl. 994; Antigo Water Co. v. Antigo, 129 NW 888; Schenectady v. Schenectady County, 151 NYS 830.

[10] Aruego, Framing of the Constitution, Vol. I page 319-320.

[11] Abbot's Mun. Corp. p. 569.

[12] Norbeck Co. v. State, 32 SE 189; 14 NW 847;

[13] Beck v. Woodward, id.; Stand v. Consumer's Water Co., 28 Atl. 1578.

[14] Town of Hartley v. Fleese Lumber Co., 185 Iowa 861, 171 NW 183.

[15] & [16] Norbeck & Norbeck Co. v. State, 32 SE 189, 142 NW 847; Palmer v. State, 75 NW 818; State v. Williams, 153 NE 595, 68 SE 900; Brodley and Gilbert Co. v. Jacques, 106 SW 308:

[17] James v. City of Hamburg, 174 Iowa 310, 156 NW 394;

[18] Capitol Gas Co. v. Young, 109 Cal. 104.

in any member of the Legislature. He must, like Caesar's wife, be above suspicion and temptation."[20]

Conclusions—

(A) The Constitutional provisions have therefore been violated in the following manner by the following public officers:

By Secretary of Labor Primitivo Lovina, when he continued to be an officer and stockholder of the Philippine Ready Mix Concrete Co. after his appointment as Secretary of Labor, which constitutes a direct financial interest. "His disqualification began the moment he acted in office and continues until he's ousted therefrom."[21]

By Senators Vicente Madrigal and Fernando Lopez as stockholders of the corporation, which constitutes an indirect financial interest.

As to former Senate President Jose Avelino and Secretary of Finance Pio Pedrosa, for the reason that "the property of the marriage is considered partnership property until it is proven it belongs exclusively to the husband or wife,"[22] so that "shares of stock acquired during coverture in the name of the wife are presumptively conjugal"[23] and as "the profits from such shares realized during marriage accrues to the conjugal partnership to be shared equally by the spouses,"[24] the same constitutes indirect financial interest by such public officers.

(B) The public officer who has violated the fundamental law of the land is personally liable. "The prohibitions in our Constitution are not only positive law, rules developed by our courts but they are also legislative rules founded on public policy."[25] "They are principles of common law and of equity made more emphatic by statutory enactment."[26] Lack of a penal provision does not free the public officer from liability as where a prohibition exists, there's corresponding liability for its infringement and such liability is such penalty as the courts in accordance with the general law may impose.

(C) Only when the disqualified public officer severs his connection with the corporation by selling his stock subsequently to the execution of the contract between the corporation and the government may such corporation contract with the government again.

(D) The contract, as contrary to public policy and as prohibited impliedly by the Constitution, is void. Such nullity cannot be cured by

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19 Milford v. Milford Water Works Co., 124 Pa 610, 17 Atl. 185.
20 Palmer v. State, id.; James v. City of Hamburg, id.; Abbott's Mun. Corp. p. 569.
21 Byrd v. Cook, 92 SE 61; Commonwealth v. de Camp, 35 Atl. 601.
22 Art. 1707, 1417 Old Civil Code; Sison v. Ambalada, 30 Phil. 118.
23 Staples Home Printing Co. v. Bldg. & Loan Assn., 36 Phil. 417.
24 People v. Concepcion, 44 Phil., 126.
25 Consolidated Coal Co. v. Board of Trustees, id.; Dillon on Mun. Corp. Sec. 772; City of Bristol v. Dominion Natl. Bank, 149 SE 632.

the prohibited stockholder's subsequent sale of the stocks owned by him at the time the contract was entered into between the corporation and the government. It is admittedly rather hard on the other stockholders of the corporation who didn't know of the disqualification of their co-stockholders who are senators, members of the House of Representatives, or heads of departments, chiefs of bureaus and their assistants, but the interests of this minority must be made subservient to the interests of the people.

● LOURDES TAYAO

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