COMMERCIAL LAW: INSURANCE, PRIVATE CORPORATIONS, NEGOTIABLE INSTRUMENTS AND PUBLIC SERVICE LAW

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In view of the increased emphasis on the economic development of the country, one would expect a corresponding increase in mercantile law jurisprudence. As yet, mercantile law decisions remain comparatively few in number. They, however, serve as much to elucidate, to clarify, to render our law more in accord with equity and justice. Some are the first decisions of their kind in our jurisdiction,[1] others repudiate existing doctrines,[2] while the rest restate prevailing rules.[3] Even as mere restatements however, they still serve a purpose. They render more emphatic the law in point.

I. INSURANCE

1951 gives us three Supreme Court cases on Insurance. *Salonga v. Warner, Barnes & Co.*[4] provides authority for the proposition that an agent in the Philippines of an insurance company in a foreign country is not the proper party because it is not the party in interest [5] in an action to recover on a marine insurance contract on cargo entered into between plaintiff's consignor and the foreign in-

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[1] *Filipinas v. Christern*, G. R. No. L-2246, prom. May 25, 1951; *Manufacturers Life Inc. Co. v. Meer*, G. R. No. L-2910, prom. June 29, 1951; *Montinola v. PNB*, G. R. No. L-2861, prom. Feb. 26, 1951; *Silva v. Cabrera*, G. R. No. L-3629, prom. March 19, 1951; *Everett Steamship Corp. v. Chuahiong*, G. R. No. L-2933, prom. Sept. 26, 1951; *Chinese Flour Importers v. Prisco*, G. R. No. L-4465, prom. July 12, 1951; *Wise & Company, Inc. v. Prisco*, G. R. No. L-4403, prom. July 17, 1951.

[2] *Inter-provincial Autobus Co. v. Lubaton*, G. R. No. L-3622, prom. July 26, 1951; *Inter-provincial Autobus Co., Inc. v. Mabanag*, G. R. No. L-3302, prom. Jan. 11, 1951; *Malate Taxicab and Garage Company v. Public Service Commission*, G. R. No. L-2877, prom. April 26, 1951; *Manila Yellow Taxicab et al. v. Public Service Commission*, G. R. No. L-2875 and G. R. No. L-3114 to 3208, prom. Oct. 31, 1951. But see discussion on the prior operator rule.

[3] *Salonga v. Warner, Barnes & Co. Ltd.*, G. R. No. L-2246, prom. Jan. 31, 1951; *Orosco v. Araneta*, G. R. No. L-3691, prom. Nov. 21, 1951; *Ablaza Trans. v. Public Service Commission*, G. R. No. L-3563, prom. March 29, 1951; *Halili v. Balane*, G. R. No. L-3364, prom. April 11, 1951; *Pascua v. Concepcion*, G. R. No. L-4312, prom. Aug. 15, 1951; *Halili v. Floro*, G. R. No. L-3465, prom. Oct. 25, 1951; *Lirio v. Phil. Power & Development Co.*, G. R. No. L-2654, prom. July 24, 1951; *Almendras v. Ramos*, G. R. No. L-2401, prom. Oct. 22, 1951.

[4] G. R. No. L-2246, prom. Jan. 31, 1951.

[5] Section 2, Rule 3 of the Rules of Court requires that "every action must be presented in the name of the real party in interest."

surance company. And in the case of *Filipinas Compañia de Seguros v. Christern, Huenefeld and Co.*,[6] the court in adopting the control test [7] declared that since the defendant was controlled by German subjects, the policy in its favor ceased to be in force when the loss occurred, i. e., more than two months after war was declared between the United States and Germany. The insured was considered a public enemy. Then finally, in the case of *Manufacturers Life Insurance Co. v. Meer* [8] the court after considering the effect of the application of automatic premium loan clauses held that premiums deemed paid by virtue of such clauses in life insurance policies are taxable under Sec. 255 of the Internal Revenue Code. Moreover, the case furnishes a definition for cash surrender value.

The decision in the Salonga case reaffirms the doctrine laid down in the case of *Macias & Co. v. Warner, Barnes & Co.*[9] In the Salonga case, a contract was entered into between Westchester Fire Insurance Company of New York and Tina Gamboa, whereby the former insured one case of rayon yardage shipped by the latter on the steamer "Clovis Victory" from San Francisco, California to Manila, and consigned to Jovito Salonga. About a month after arrival in Manila the shipment was found to have a shortage. Only part of the damage caused was paid by the American President Lines, agents of the ship "Clovis Victory." So action was brought against Warner, Barnes & Co. as agent of the foreign insurance company in the Philippines.

The Supreme Court, in reversing the ruling of the lower court, declared: ". . . a contractual obligation or liability or an action ex-contractu must be founded upon a contract, oral or written, express or implied." [10] Bearing this rule in mind, the Court then observed that "the defendant has not taken part, directly or indirectly, in the contract in question" and "did not assume any obligation thereunder either as an agent or as a principal." The tribunal then continued: "It cannot, therefore, be made liable under said contract, and hence it can be said that this case was filed against one who is not the real party in interest".[11] The Court further said: ". . . the scope

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[6] G. R. No. L-2294, prom. May 25, 1951.

[7] The control test is the concept of "piercing the corporate veil" and determining the status of a corporation by inquiring whether it is controlled by enemies or not.

[8] G. R. No. L-2910, prom. June 29, 1951.

[9] 43 Phil. 155.

[10] The Court cited the case of *Macias & Co. v. Warner, Barnes & Co., supra,* in support of its decision.

[11] The real party in interest is the party who would be benefited or injured by the judgment or the party entitled to the avails of the suit. (Court citing 1 SUTHERLAND, CODE PLEADING, PRACTICE AND FORMS, p. 11).

and extent of the functions of an adjustment and settlement agent do not include personal liability.[12] . . . A judgment for or against an agent, in no way binds the real party in interest." [13] Hence, the high tribunal concluded, "the recourse of the insured is to press his claim against the principal." [14]

In the case of *Filipinas Compañia de Seguros v. Christern, Huenefeld & Co., Inc.*,[15] the defendant corporation on October 1, 1941, obtained from the plaintiff company a fire policy for ₱100,000 covering merchandise contained in a building located in Binondo, Manila. On Feb. 27, 1942, or during the Japanese military occupation, the building and the insured merchandise were burned. In due time the defendant submitted its claim under the policy. The plaintiff refused to pay on the ground that the policy in favor of the defendant had ceased to be in force on December 10, 1941, when the United States declared war against Germany, the defendant corporation (though organized under Philippine laws) being controlled by German subjects, and the plaintiff being a company under American jurisdiction when said policy was issued. Nevertheless, the plaintiff was obliged to pay the defendant in pursuance of the order of the director of the Bureau of Financing, Philippine Executive Commission. Thus the instant action was filed for the purpose of recovering from the defendant the sum paid.

In reversing the decision of the lower courts, the Supreme Court held: ". . . majority of the stockholders of the respondent corporation were German subjects. This being so, we have to rule that said respondent became an enemy corporation upon the outbreak of the war between the United States and Germany." [16]

Sec. 8 of the Insurance Law provides "anyone except a public enemy may be insured." It stands to reason that an insurance po-

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[12] Citing 45 C. J. S. 1338-1340.

[13] This was previously pointed out in the case of *General Corporation of the Philippines & Mayon Investment Co. v. Union Insurance Society of Canton, Ltd. et al.*, G. R. No. L-2684, prom. Sept. 14, 1950.

[14] Citing *Arroyo v. Granada and Gentero*, 18 Phil. 484; *Salmon v. Pacific Commercial Co.*, 36 Phil. 557.

[15] *Supra.*

[16] The Court in support thereof, cites: *Clark v. Uebersee Finanz Korporation* (December 8, 1947), 92 Law Ed. Advance Opinions, No. 4, pp. 148-153, which adopted the control test (*supra*); Martin Domke, (*Enemy Corporations*, August, 1948) which traced the history of the control test in England and American courts beginning with the Daimler case where it was first applied; and the Philippine case of *Haw Pia v. China Banking Corporation*, G. R. No. L-554, prom. April 9, 1948, where it was held that the China Banking Corporation came within the meaning of the word "enemy" as used in the Trading with the Enemy Acts, not only because it was incorporated under the laws of an enemy country, but because it was controlled by enemies.

licy ceases to be allowable as soon as an insured becomes an enemy.[17] The Court then declared: "The respondent having become an enemy corporation on December 10, 1941, the insurance policy issued in its favor on October 1, 1941 by petitioner (a Philippine corporation) had ceased to be valid and enforceable, and since the insured goods were burned after December 10, 1941 and during the war, the respondent was not entitled to any indemnity under said policy from the petitioner. However, elementary rules of justice (in the absence of specific provision in the insurance law) require that the premium paid by the respondent from the period covered by its policy from December 11, 1941, should be returned by the petitioner." However, petitioner was allowed to recover only the equivalent in actual Philippine currency of the amount paid on April 19, 1943, in accordance with the rate fixed in the Ballentine scale.

In the case of *Manufacturers Life Insurance Co. v. Meer*,[18] the Court in deciding the case explained the nature of the operation of automatic premium loan clauses[19] thus: In effect the insurance company loans to the insured an amount equal to the premiums due, which in turn the insured pays to the insurance company. Hence, as such, the insurance company collects premiums. Consequently, the insurer becomes a creditor of the loan, but not of the premiums, and it becomes entitled to collect interest, not on the premiums, but on the loan. The Court further held that as a result of the operation of the automatic premium loan clauses, there was actually an increase in the assets of the insurance company. Of course, the plaintiff could not sue the insured to enforce the credit. Yet, it had means of satisfaction out of the cash surrender value. But then it might be argued that satisfying the credit from the cash surrender value would not increase the assets of the company. The Court declared, however, that: Considering that the cash surren-

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[17] 6 COUCH, CYC. OF INSURANCE LAW, pp. 5352-5353; and VANCE, LAW ON INSURANCE, Sec. 44, p. 112, cited by the court.

[18] *Supra.* See XXVI *Philippine Law Journal*, No. 4, pp. 464-469.

[19] A sample of an automatic premium loan clause would be that involved in this case, as follows: "This policy shall not lapse for non-payment of any premium after it has been three full years in force, if, at the due date of such premium, the Cash Value of this Policy and of any bonus additions and dividends left on accumulation (after deducting any indebtedness to the Company and the interest accrued thereon) shall exceed the amount of said premium. In which event the Company will, without further request, treat the premium then due as paid, and the amount of such premium, with interest from its actual due date at six per cent, per annum, compounded yearly for expenses, shall be a first lien on this Policy in the Company's favor in priority to the claim of any assignee or any other person. The accumulated lien may at any time, while the Policy is in force, be paid in whole or in part . . ."

der value is an amount which the insurance company holds in trust [20] for the insured to be delivered upon demand, payment out of it would mean a decrease in the liability of the company to the insured, for actually the cash value of the policy is a liability of the company.

Finally, because the plaintiff contended that it was not engaged in business in the Philippines during the years 1942 to September 1945 [21] the Court declared that although this contention may be factually true, yet, considering that "still it (plaintiff) was practically and legally operating in this country by collecting premiums on its outstanding policies, incurring the risk and/or enjoying the benefits consequent thereto, without having previously taken any steps indicating withdrawal in good faith from this field of economic activity" it can still be considered as engaged in the insurance business in the Philippines.

II. PRIVATE CORPORATIONS

Only two cases on the law of private corporations were decided by the Supreme Court in 1951. The case of *Santamaria v. Hongkong & Shanghai Banking Corporation* [22] furnishes authority for the proposition that a person who delivers a certificate of stock in blank is chargeable with negligence and is estopped from asserting title as against someone to whom the certificate has in turn been delivered in good faith by the person to whom he originally delivered the same. And in the case of *Orozco et al. v. Araneta* [23] it was held that a stock dividend partakes of the nature of income, not of capital.

In the Santamaria case plaintiff bought shares of stock from a certain mining corporation. She received a certificate of stock in the name of the broker and endorsed in blank by said broker. Plaintiff thereafter pledged the same share of stock with another broker

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[20] The Court in the course of its opinion defined "cash surrender value" thus: "As applied to insurance, it is the amount of money the company agrees to pay to the holder of the policy if he surrenders it and releases his claim upon it. The more premiums the insured has paid the greater will be the surrender value; but the surrender value is always a lesser sum than the total amount of premiums paid (CYCLOPEDIA LAW DICTIONARY, 3rd Ed., 1077)."

Our Supreme Court has previously in some detail explained the nature of "cash surrender value" in the case of *Sun Life Assurance Company v. Ingersoll and Tan Sit*, 42 Phil. 331. The ruling in the case under consideration does not depart from the concept expressed therein.

[21] Such fact became material in view of the arguments advanced in the case and because section 255 of the Internal Revenue Code applies only to companies "doing insurance business in the Philippines."

[22] G. R. No. L-2808, prom. August 31, 1951.

[23] G. R. No. L-3691, prom. November 21, 1951.

to secure the payment of shares of stock being purchased through the latter broker. It appeared later that this broker was prohibited to transact business by the Securities and Exchange Commission and that her stock certificate was given to defendant bank as security for a personal loan of the broker. The broker was convicted for estafa. Plaintiff, having failed to enforce the civil judgment in the criminal case brought this action against the defendant bank for the purpose of recovering the original value of the stock certificate.

The Supreme Court considered Santamaria negligent. It said that "it is a well-known rule that a bona fide pledgee or transferee of a stock from the apparent owner is not chargeable with knowledge of the limitations placed on it by the real owner, or of any secret agreement relating to the use which might be made of the stock by the holder.[24] * * * The rule is 'where one of the innocent parties must suffer by reason of a wrongful or unauthorized act, the loss must fall on the one who first trusted the wrongdoer and put in his hands the means of inflicting such loss.' " [25] The Court further held: "The Bank was not obligated to look beyond the certificate to ascertain the ownership of the stock at the time it received the same from R. J. Campos & Co. (the second broker) for it was given to the Bank pursuant to their letter of hypothecation. Even if said certificate had been in the name of the plaintiff but indorsed in blank, the Bank would still have been justified in believing that R. J. Campos & Co. had title thereto for the reason that it is a well-known practice that a certificate of stock, indorsed in blank, is deemed quasi-negotiable, and as such the transferee thereof is justified in believing that it belongs to the holder and transferer." [26]

The Court further held that the fact that on the right margin of the said certificate the name of the plaintiff appeared written could at best give the impression that the plaintiff was the original holder of the certificate.

In the other case of *Orozco v. Araneta* [27] the high tribunal reaffirmed the doctrine laid down in the *Matter of the Testate Estate*

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[24] FLETCHER, CYCLOPEDIA OF CORPORATIONS, Sec. 5562, Vol. 12, p. 521.

[25] *Ibid.*

[26] The Court cites in support thereof: FLETCHER, 12 CYCLOPEDIA OF CORPORATIONS, pp. 521-524, 525-527, and two American cases, viz.: *Heyman v. Hamilton National Bank*, 266 S. W. 1043; and *McNeil v. Tenth National* Bank, 7 Am. Rep. 341.

It will be noted that our Supreme Court has, in the case of *Bachrach Motor Co. v. Ledesma*, 64 Phil. 681, previously declared that certificates of stock "are sometimes denominated quasi-negotiable."

[27] *Supra.*

of Emil Bachrach[28] which overruled the doctrine laid down in *Fischer v. Trinidad.*[29] In the Bachrach case it was held that "a dividend, whether in the form of cash or stock is income and consequently, should go to the usufructuary, taking into consideration that a stock dividend as well as a cash dividend can be declared only out of profits of the corporation, for if it were declared out of the capital it would be a serious violation of law."

III. NEGOTIABLE INSTRUMENTS

Only one case[30] was decided by our Supreme Court in 1951 dealing on the Negotiable Instruments Law.[31] However, it enunciates several principles.

Material Alteration

In the case of *Montinola v. Phil. Nat. Bank*[32] the plaintiff, alleged indorser of a check drawn on the defendant bank added beneath the signature of the drawer the words "Agent, Phil. National Bank" thus making the Bank a drawee also. The Court considered the addition of such words as a material alteration. Having been

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[28] G. R. No. L-2659, prom. Oct. 12, 1950. In the Bachrach case, the Court had occasion to discuss the Pennsylvania rule and the Massachusetts rule.

The so-called Massachusetts rule, which prevails in certain jurisdictions in the U. S. regards cash dividends, however large, as income and stock dividends, however made, as capital (*Minst v. Paine*, 99 Mass. 101; 96 Am. Dec. 705). It holds that a stock dividend is not in any true sense any dividend at all since it involves no division or severance from the corporate assets of the subject of the dividend; that it does not distribute property but simply dilutes the shares as they existed before; and that it takes nothing from the property of the corporation, and adds nothing to the interests of the shareholders.

On the other hand, the so-called Pennsylvania rule declares that all earnings of the corporation made prior to the death of the testator stockholder belong to the corpus of the estate, and that all earnings when declared as dividends in whatever form, made during the lifetime of the usufructuary or life tenant are income and belong to the usufructuary or life tenant (Eay's Appeal, 28 Pa. 368; In re Thompson's Estate, 262 Pa. 278, 105 Atl. 273; *Hite v. Hite*, 93 Ky. 257, 20 S. W. 778).

[29] 43 Phil. 973, 983. In that case the court said:

"The essential and controlling fact is that the stockholder who receives stock dividends receives nothing out of the company's assets for his separate use and benefit; on the contrary, every centavo of his original investment, together with profits earned, continue to remain the property of the company, subject to the business risk which may result in wiping out the entire instrument. The stockholder, by virtue of the stock dividend, has no separate or individual control over the interest represented thereby, further than he had before the stock dividend was issued. The receipt of a stock dividend in no way increases the money received by the stockholder nor his cash amount at the close of the year."

[30] *Montinola v. Phil. Nat. Bank*, G. R. No. L-2861, prom. Feb. 26, 1951.

[31] Act No. 2031.

[32] *Supra.*

made without the consent of the parties liable thereon, it discharged the instrument except, of course, as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers.[33]

The conclusion has been arrived at in accordance with Sec. 125 of the Negotiable Instruments Law which defines what constitutes a material alteration. Not only are the relations of the parties changed,[34] but moreover the added words alter the effect of the instrument.[35] For as drawer the bank warrants certain things,[36] which it would not as mere drawee (it has neither certified nor accepted the check).

Partial Indorsement

The same case of *Montinola v. PNB* in applying Sec. 32 of the Negotiable Instruments Law furnishes authority for the proposition that a partial indorsement of a check does not operate as a negotiation of the instrument. The party to whom the instrument is partially indorsed can only be regarded as a mere assignee.

Holder in Due Course

Sec. 52 of the Negotiable Instruments Law defines a holder in due course as a *holder* who has taken the instrument under certain conditions. What constitutes a holder is defined in Sec. 191 as the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof. In the above mentioned case of *Montinola v. PNB*, Montinola was not considered a holder in due course because he was not considered a holder. He was neither payee, nor indorsee, as pointed out above. Moreover, one of the requisite conditions that must be satisfied to be holder in due course is that the holder must become such before the instrument was overdue. In this case, Montinola took the check two and a half years after it became payable. By then the check was therefore stale. Furthermore, the Court upon a consideration of the circumstances[37] under which the check was

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[33] Sec. 124, Negotiable Instruments Law.

[34] Sec. 125 (d), *supra*.

[35] Sec. 125, par. 2, *supra*.

[36] Sec. 61, *supra*.

[37] Montinola must have known that at the time the check was issued in May, 1942, the money circulating in Mindanao and the Visayas was only the emergency notes and that the check was intended to be payable in that currency. Also, he should have known that a check for such a large amount of ₱100,000 could not have been issued to Ramos in his private capacity but rather in his capacity as disbursing officer of the USAFFE, and that at the time that Ramos sold a part of the check to him,

taken concluded that Montinola could not be said to have taken the check in good faith.

Assignee Subject to All Defenses Available to Assignor

In the above case of Montinola after the Court concluded that Montinola was a mere assignee, it proceeded to declare that as such assignee he was subject to all defenses available to the assignor. In this case Ramos (the payee-assignor) could not have collected the value of the check because it was issued to him as disbursing officer of the USAFFE. He negotiated it personally to plaintiff. The instrument was, therefore, negotiated in breach of trust. Hence, he (Ramos) transferred nothing to plaintiff.

IV. PUBLIC SERVICE LAW

Most of the mercantile law decisions in 1951 deal on the Public Service Act. Many have resulted from controversies between pre-war and post-war operators. But as often is the case in Public Service controversies the ultimate end is still to secure the exclusive right to operate a public service, or at least, to have the minimum of competition.

Exceptions to the Prior Operator Rule Expanded

The prior operator rule has long been a part of Philippine law. It has been enunciated and extensively discussed in *Batangas Transportation Co. v. Orlanes* [38] and applied in subsequent cases.[39] Exceptions to the rule have likewise been recognized, as follows: 1) a second operator will be allowed when the prior operator would not render adequate service altho given an opportunity to do so; 2) when there is sufficient traffic for two or more operators; 3) when public interest demands two operators, as in the case of public services like ice plants, taxicabs, etc.; and 4) when a second operator is to be allowed to operate in roads not covered by the certificate of the first operator.[40] In the case of *Interprovincial Autobus Co. v. Lubaton* [41] the Supreme Court made the following statement:

Ramos was no longer connected with the USAFFE but already a civilian who needed the money only for himself and his family.

[38] 52 Phil. 455. The Court in this case relied on numerous American decisions.

[39] *Batangas Transportation v. Ochoa*, G. R. No. 29154, prom. Dec. 20, 1928, not reported; *Bohol Land Transportation v. Jalandoni*, 53 Phil. 560; *Gilles v. Halili*, 65 Phil. 738; *Manila Electric Co. v. Mateo*, 66 Phil. 19.

[40] *Batangas Transportation Co. v. Orlanes, supra*, 754.

[41] G. R. No. L-3622, prom. July 26, 1951.

> "The petitioner should have asked beforehand for an authority to put up additional units if his intention was to serve the public instead of expressing that intention and capacity only after the respondent has been given a provisional permit. Petitioner in offering to operate additional units only after respondent was given a permit, demonstrates his failure to comply with his moral obligation of maintaining an adequate service. If respondent did not file his petition, petitioner would have continued to exploit the business without regard for the convenience of the public."

Under the above statement, it would seem that a second operator would be allowed when the prior operator fails to render adequate service even if the Commission had not previously required the old operator to improve his service. The first exception mentioned in the case of Batangas Transportation has been rendered much more extensive—so extensive, indeed, that it has been stated as a consequence that the prior operator rule has been abandoned.[42]

Prior Operator Rule Not Applied to Provisional Permit Holders

Immediately after liberation one of the problems that arose is the inadequacy of transportation. The equipment of pre-war operators having been destroyed, they were unable to give the public adequate service. Many provisional permits were, therefore, issued to meet the increasing public need. When the time set for the expiration of these permits came, the holders petitioned for their conversion into permanent permits and moreover, for increase of equipment. The petitions were invariably opposed by pre-war operators and one of the reasons they advanced was the prior operator rule. In the case of *Interprovincial Autobus Co., Inc. v. Mabanag*[43] the Supreme Court met such argument by considering holders of such provisional permits as old operators. To use its words:

> "It is therefore apparent that the applicant-respondent is not a new operator. He comes, rather, under the new policy adopted by the Commission and the Government to give opportunity, encouragement and protection to those persons and entities who immediately after liberation, when because of the last war the equipment of the old operators and common carriers had been destroyed and lost and their service paralyzed, offered to help and did help in the rehabilitation of the transportation business. Had the Government waited for the complete rehabilitation of the old operators who had to rely on the payment of their war damage claims or raise capital with which to replace their lost equipment, the Government and the public would have had to wait a long time."

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[42] The scope note in the CASE DIGEST, 1951 of the case of *Inter-provincial Autobus Co. v. Lubaton, supra*, states that the "first operator rule has been overruled."

[43] G. R. No. L-3302, prom. Jan. 11, 1951.

In subsequent cases [44] covering similar situations the first operator rule was not applied, not only because of the above reason and the demands of public necessity [45] but moreover, because equity and justice demanded the conversion. In *Malate Taxicab and Garage Company v. Public Service Commission*,[46] the Supreme Court said:

> "It would seem a matter of simple justice, in the light of their past performance, of the enormous increase of population of Manila and neighboring cities and municipalities, and of the encouragement given them by the Commission, thanks to the failure or inability of the pre-war operators to supply normal needs, that the post-war operators should not now be left in the lurch. They had 'answered the call of service for the convenience of the public,' at a time when, in the words of the appellant, 'the supply (of cars and taxi meters) was very meager and limited,' when 'everything was priced at a premium,' when 'new cars could be obtained only in the so-called Black Market.' Whatever the reasons for the pre-war operators' refusal or inability to resume full operation during the acute shortage of transportation facilities, the investments of the post-war, small operators deserve protection, at least as much as those who claim to have lost heavily as a result of the war. At the most, the Commission does not appear to have acted arbitrarily in issuing regular certificates of public convenience to these operators."

Reception of Evidence by One Other Than Commissioner

Under Sec. 2 of the old Public Service Law, Act 3108, as amended by Sec. 2 of Act 3844, any one of the commissioners may, through authority of the commission, make all inquiries which the commission is empowered to undertake.[47]

Under Sec. 3 of the present law, as amended by Rep. Act 178, in contested cases and rate-fixing cases, the commission may delegate the reception of evidence to one of the commissioners who shall report to the commission in banc the evidence so received by him to enable it to render its decision.[48]

But Sec. 32 of the present law also provides that the commission may by proper order commission any of its attorneys or division chiefs to receive evidence. It may commission any clerk of the court of first instance to take the testimony of witnesses in any case pending before the Commission where such witnesses reside in places

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[44] *Malate Taxicab & Garage Co. v. Public Service Commission*, G. R. No. L-2877, prom. April 26, 1951; *Manila Yellow Taxicab et al. v. Public Service Commission*, G. R. No. L-2875 and G. R. No. L-3114 to 3208, prom. Oct. 31, 1951.

[45] *Ibid.*

[46] *Supra.*

[47] AQUINO, PHILIPPINE TRANSPORTATION, ADMIRALTY, CUSTOMS, PUBLIC SERVICE AND AVIATION LAWS, 1949 edition, p. 381.

[48] *Ibid.*

distant from Manila and it would be inconvenient and expensive for them to appear personally before the Commission.[49]

Professor Ramon Aquino of the U.P. College of Law has raised the question as to whether Sec. 32 was impliedly modified by Rep. Act 178, amending Sec. 3 of C.A. 141 insofar as contested and rate-fixing cases are concerned because of the apparent inconsistency between the two sections.[50] The Supreme Court in the case of *Silva v. Cabrera*,[51] had occasion to answer this question. This case was contested. The commissioners instead of hearing and receiving the evidence of the parties themselves commissioned the Chief of the Legal Division "to take the testimony of witnesses." It must be noted, however, that such official did more than take the testimony of witnesses or perform the functions of an officer taking depositions under Rule 18 of the Rules of Court. Rather, he played the role of Commissioner under Rule 34 wherein he acted as representative of the Commission that made the delegation to him, passed upon petitions and objections during the trial, either overruling or sustaining the same and ordered witnesses to answer if the objection to the question was overruled, and then making his findings and report to the body that commissioned him. He was referred to as the "commission" and the proceedings had before him as "hearings." Thereafter the Commission rendered a decision based on the findings of that official granting the option to operate the ice plant. The Supreme Court declared the proceedings void and remanded the case for proper hearing. In so doing, it stated:

> "In conclusion, we hold that under the provisions of section 3 of the Public Service Act as amended by Republic Act 178, the reception of evidence in a contested case may be delegated only to one of the Commissioners and to no one else, it being understood that such reception of evidence consists in conducting hearings, receiving evidence, oral and documentary, passing upon the relevancy and competency of the same, ruling upon petitions and objections that come up in the course of the hearings, and receiving and rejecting evidence in accordance with said ruling. However, under section 32, of the same Act, even in contested cases or cases involving the fixing of rates, any attorney or chief of division of the Commission, a clerk of court of Courts of First Instance, or a Justice of the Peace, may be authorized to take depositions or receive the testimonies of witnesses, provided that the same is done under the provisions of Rule 18 of the Rules of Court."

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[49] *Ibid.*

[50] Aquino, *supra*, p. 381.

[51] G. R. No. L-3629, prom. March 19, 1951.

Provisional Permit Issued Ex Parte [52]

The case of *Ablaza Transportation v. Public Service Commission* [53] reaffirmed the doctrine in *Javellana v. La Paz* [54] to the effect that where the case cannot be decided at once and the Commission issues a provisional permit to meet an urgent public need, the Commission does not thereby exceed its authority. The former rule under the Barredo case [55] was that the Commission may not issue a provisional permit ex parte pending the final determination of an application for a new certificate to operate a direct service.

Disapproval of Electric Franchise Granted by Municipality

In the case of *Almendras v. Ramos* [56] the power of the Public Service Commission to disapprove a franchise granted by a municipality was reaffirmed.[57] In the words of the Court:

> "The efficacy of a municipal electric franchise arises, therefore, only after the approval of the Public Service Commission, and the latter, cannot be said to have infringed the legislative prerogative of the municipal council of Padada, because the Commission merely exercised a power granted by law." [58]

Power of Commission to Order Return of Excess Rates Charged

In view of Sec. 21 of the Public Service Act, it cannot be doubted that the Commission has the power to impose a fine on a public service operator violating any of its orders.[59] But since the Commission possesses only limited powers [60] and the power to order a re-

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[52] See Sec. 17, C. A. 146, as amended, otherwise known as the Public Service Act for "Proceedings of Commission without Previous Hearing."

[53] G. R. No. L-3563, March 29, 1951.

[54] 64 Phil. 893.

[55] *Barredo v. Public Service Commission*, 58 Phil. 79.

[56] G. R. No. L-4201, prom. Oct. 22, 1951.

[57] In *Escudero Electric Service Co. v. Roxas Vda. de Soriano*, 55 Phil. 376, 380, it was held that the holder of a legislative franchise must get a certificate of public convenience and necessity from the Commission.

The franchise granted is made by its terms to depend upon the issuance of a certificate of convenience by the Commission. Such franchise thus conditioned is not by itself alone a ground for compelling the commission to issue such certificate.

[58] See Sec. 16 (b), Public Service Act.

[59] Sec. 21, C. A. No. 146. Formerly, the Commission had no power to impose fines upon public service operators for the violation of or failure to comply with the terms and conditions of any certificate or order. *Fil. Bus Co. v. Phil. Railway*, 57 Phil. 860; *San Nicolas Trans. v. Public Service Commission*, 58 Phil. 697.

[60] *Barredo v. Public Service Commission*, 58 Phil. 79, 81; *Filipino Bus Co. v. Phil. Railway Co.*, 57 Phil. 860, 868.

fund of overcharges has not been conferred, a question arose as to whether the Commission possesses this power. In *Everett Steamship Corp. v. Chuahiong and Commission*,[61] the Supreme Court ruled affirmatively on the question. In so deciding the Court advanced three reasons: First, such power may be considered embraced within its power to enforce compliance with any of its directives; Second, a contrary decision would place the Commission in a ridiculous predicament for "after pocketing more than eighteen thousand pesos (the overcharged rates) the carrier could very well laugh when ordered to pay ₱200 (the fine imposed);" Third, that such power is a proper quasi-judicial function.

Appeal From Decisions of the Commission

In the case of *Lirio v. The Philippine Power and Development Co.*[62] it was held that only those who were parties in the hearings before the Commission may appeal to the Supreme Court. In this case, while the petitioners were consumers of the respondent company and were directly prejudiced by the increase in the rates authorized by the Commission, still they were denied the right to petition for the review of the order of the Commission because they did not either personally or through counsel appear in the hearings before the Commission.

Other Rules

The old rule [63] that the Supreme Court will not substitute its discretion for that of the Commission on questions of fact and that it will only interfere when it clearly appears that there is no evidence to support its order or decision or when the question involved is one of jurisdiction or law has again been reaffirmed.[64]

It has also been held that where a public service operator has in its application for additional units declared that there is plenty of traffic on his line cannot in opposing the petition of an operator operating in the same line for the conversion of a temporary permit

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[61] G. R. No. L-2933, prom. Sept. 26, 1951. For a more extensive discussion of this case, see XXVII *Philippine Law Journal*, No. 1, p. 115.

[62] G. R. No. L-2654, prom. July 24, 1951.

[63] *Ynchausti Steamship Co. v. Public Utility Commission*, 42 Phil. 621; *Manila Electric Co. v. De Vera*, 66 Phil. 161.

[64] *Halili v. Balane*, G. R. No. L-3364, prom. April 11, 1951; *Inter-provincial Autobus Co., Inc. v. Mabanag*, G. R. No. L-3302, prom. Jan. 11, 1951; *Manila Yellow Taxicab et al v. Pub. Serv. Comm., supra.*

to a permanent certificate of public convenience be heard to affirm the contrary.[65]

And in *Halili v. Floro* [66] it has been held that an opposition to a petition for increase of equipment founded on the allegation that the oppositor can fill up the deficiency at any time was rejected "because he (the oppositor) should have applied to the Commission for that purpose before the respondent had presented his application and made the requisite preparations for increasing his carrying capacity."

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[65] *Pascua and Edurise Transportation Co. v. Concepcion*, G. R. No. L-4312, prom. Aug. 15, 1951.

[66] G. R. No. L-3465, prom. Oct. 25, 1951.