

COMMERCIAL LAW: 1952

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INTRODUCTION:

In the commercial field, more than in any human endeavor, involving as it does tremendous sums of money and property, people are wont to take special care lest they find themselves without even the proverbial shirts on their backs. It is therefore gratifying to observe that business, both big and small, have availed themselves of the invaluable aid and guidance of legal counsel before embarking in any new enterprise or taking any steps respecting their commercial transactions.

It is not then surprising to note that the commercial law cases decided by the Supreme Court in 1952 remains, as in the previous year, comparatively few. This is not to minimize the importance of these decisions. For they serve to elucidate and to reiterate well-entrenched doctrines and principles growing out of commercial usage, and finding sanction in legislation and mercantile law jurisprudence. Such a state augurs well for the healthy development of the national economy. For where there is instability of the law with the consequent fear of litigation, there is reluctance and even outright refusal to invest on the part of those able to do so.

I—INSURANCE:

In the year past, the Supreme Court had again occasion in two cases to pass upon the question of the effects of war on pre-war insurance contracts. The case of *Gonzaga v. Crown Life Insurance Co.*¹ reaffirms the doctrine laid down in past cases.² In this case,

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¹ G. R. No. L-4197, promulgated, March 20, 1952.

² *Constantino vs. Asia Life Insurance Co.*, G. R. No. L-1669; *Peralta vs. Asia Life Insurance Co.*, G. R. No. L-1670; *McGuire vs. Manufacturers Life Insurance Co.*, G. R. No. 3581; *National Leather Co., Inc. vs. U. S. Life Insurance Co.*, G. R. No. L-2668; *Hidalgo de Carrero, et al. vs. Manufacturers Life Insurance Co.*, G. R. No. L-3032; *West Coast Life Insurance Co. vs. Gubagatas*, G. R. No. L-2810.

the Crown Life Insurance Co., whose home office is in Toronto, Canada, on September 26, 1939, issued to Ramon Gonzaga through its branch office in Manila a 20-year endowment policy for ₱15,000. The insured paid the agreed annual premium for three consecutive years, the last payment having been made on September 6, 1941. As a result of the outbreak of war, no premium were paid after that date, although the policy continued in force up to June 12, 1943, under its automatic premium loan clause.

The insured died on June 27, 1945 from an accident. His widow, the beneficiary named in the policy tried to collect the amount of the policy without success. Hence she brought action against the insurance company on December 18, 1947. The defendant set up the defense that the policy had lapsed by non-payment of the stipulated premiums on the dates agreed upon. From the decision of the trial court against her, the plaintiff appealed.

The Supreme Court reaffirmed the prevailing view that non-payment of premiums by reason of war puts an end to the contract. Citing the leading case of *Constantino v. Asia Life Insurance Co.*,³ the High Court adopted the doctrine therein formulated thus:

"The case, therefore, is one in which time is material and of the essence of the contract. Non-payment at the day involves absolute forfeiture if such be the terms of the contract, as is the case here. Courts cannot with safety vary the stipulation of the parties by introducing equities for the relief of the insured against their own negligence."

There was, however, one aspect of the case not raised before and upon which the plaintiff rested her case in the alternative. Taking advantage of the defendant's allegation that "through its General Agents, Hanson, Orth, and Stevenson, Inc. it had its offices open in the City of Manila during the Japanese occupation of the Philippines," the plaintiff claimed that it was the defendant's duty to notify her husband of its postal address during the war, and its failure to do so excused delinquency in the payment of the premium.⁴

In considering this contention, the Court found that the defendant being an enemy corporation, its offices were ordered closed by the Japanese Military Authorities in January, 1942. Likewise, the officers of Hanson, Orth & Stevenson, Inc. the defendant's general agents, being American citizens, were interned. In addition, on August 25, the Japanese administration issued "Instruction No. 71" by which enemy alien insurance companies were expressly prohibited

³ G. R. No. L-1669, prom. August 31, 1950.

⁴ The plaintiff cited the provision of the contract which stated: "All premiums subsequent to the first year are payable to the Company's authorized cashier at the

from doing business. Notwithstanding this prohibition, Hanson, Orth & Stevenson, Inc. maintained an office with a skeleton force, all Filipinos, for the purpose of receiving premiums from their policy holders. With the above evidence in view the Supreme Court held:

"In the face of the Japanese military decrees, which found sanctions in international law, the failure of the defendant or its Filipino employees to advise the insured of the defendant's new address did not work as a forfeiture of its right to have the premiums satisfied promptly. While clandestine transactions between the parties during the war might be binding, it was not obligatory on the insurer, and it was well-nigh risky for its employees, to send out notices to its widely scattered policy holders, what with the postal service under the control and administration of the ruthless occupants.

"There is no duty where the law forbids; and there is no obligation without corresponding right enjoyed by another. The insured had no right to demand that the defendant maintain an office during the war, and the defendant was not obligated to do so. Had the defendant not opened any office at all during the occupation and stopped receiving premiums absolutely, the plaintiff's position would not have been any better or worse for the closing and suspension of the defendant's business. Had the plaintiff's husband actually tendered his premiums and the defendant's employees rejected them, he could not have insisted on the payment as a matter of right. Stated otherwise, the defendant's opening of an interim office partook of the nature of a privilege to the policy holders to keep their policies operative rather than a duty to them under the contract.

"Of this privilege, incidentally, Gonzaga could have taken advantage if he was really intent on preserving his policy. Uncontroverted or admitted is the fact that the defendant's agent, through whom he had been insured, lived in Malabon, Rizal, and was his close acquaintance; and so were some of the defendant's Filipino employees who handled the insurance business of Hanson, Orth & Stevenson during the occupation. And Gonzaga admittedly comes to Manila on a visit every now and then, and could have, without difficulty, contacted any of those people."

Finally the Court made the observation that the policy carried a clause providing for its reinstatement under certain conditions from the date of lapse on application of the insured. Considering that the company resumed business in Manila on May 1, 1945 and that the insured died June 27, 1945, it follows that the insured could have but did not take advantage of the 'reinstatement clause, the Court concluded.

place stated in the fourth page hereof, or at such other place instead thereof as may be designated from time to time by notice from the company mailed to the insured at his last known post office address."

The later case of *Gonzales v. Asia Life Insurance Co.*⁵ reasserted the aforementioned doctrine that war was no excuse for non-payment of premiums. However, the Court in this case held that refusal to accept payment was not justified.

The facts of the *Gonzales* case are essentially as follows: The defendant American corporation, on April 15, 1940, issued its 20-year endowment policy insuring the life of Celso Gonzales, and designating the plaintiff Alicia Gonzales, as beneficiary. The premiums, payable on or before April 15, for the first two years were duly paid. The premium accruing April 15, 1942 was not actually paid. Evidence showed, nevertheless, that such premium was tendered but was not accepted "because at the time it was tendered the office was closing for the day on account of the threat of bombing by Japanese planes." On September 22, 1942, Celso Gonzales died.

After the liberation, in January, 1947, action was instituted by the beneficiary to recover the amount of the insurance policy. The defense was based on non-payment of premium and the consequent lapse of the policy before the insured's death.

In affirming the trial court's judgment for the plaintiff, the Supreme Court upheld its past ruling⁶ to the effect that war was no excuse for non-payment of premiums. However, the Court continued, it does not follow that the defendant in this case is entitled to reversal. It declared that "the refusal to accept payment was not justified" and "the insurer, therefore, may not assert non-payment of the premium as a defense to an action on the policy."

Quoting from Vance, an authority in insurance, the Court stated thus:

"The act of the insurer or his agent in refusing the tender of a premium properly made will necessarily estop the insurer from claiming a forfeiture from non-payment."⁷

On the collateral question as to whether the insurer was justified in contesting the claim and should pay the beneficiary legal interest for the duration of the delay,⁸ the Court did not rule on it, because the plaintiff has not appealed.

*Scottish Union and National Insurance Co. et al. v. Macadaeg and Yu Hun & Co.*⁹ is another insurance case which was the subject

⁵ G. R. No. L-5188, promulgated Oct. 29, 1952.

⁶ See note 2, *supra*.

⁷ VANCE ON INSURANCE, 2d Ed., p. 294, citing *Meyer vs. Insurance Co.*, 29 American Report 200; *Continental Insurance Co. vs. Muller*, 30 NE 718.

⁸ The Supreme Court likewise made reference to *Corpus Juris*, Vol. 32, p. 1306.

⁹ G. R. No. L-5717 and L-5751, L-5756.

of a decision ¹⁰ by the Supreme Court and later a resolution ¹¹ of the same Court. This case deals with the right of foreign corporation to cease operation and their liabilities to their policy holders in the Philippines under Republic Act 447.

In this case, Yu Hun & Co. sued to recover ₱240,000 on fire insurance policies issued by the petitioners, who are foreign insurance companies. Although the fire had occurred, the insurers deny liability. Pending the Court's decision, the insurers applied for permission to withdraw under the terms of sections 202-A to 202-E of the Insurance Act ¹² as amended by Republic Act 447. All their liabilities were assumed by the Commercial Union Assurance Co. with the approval of the Insurance Commissioner.

The trial court in the case for recovery entered a judgment for the plaintiff for ₱60,000 with 8% interest thereon in accordance with Section 91-B of the Insurance Act. The defendants appealed. But pending appeal, Yu Hun & Co. submitted an urgent petition for execution,¹³ which was granted against the vigorous opposition of the defendants. Hence, the defendant corporations filed a petition for prohibition and certiorari against the respondent judge and the plaintiff. The Supreme Court propounded this question: Is the withdrawal of a foreign corporation from business in the Philippines not a good reason for execution?

In answer thereto, the Supreme Court, denying the petition, opined:

"There is no doubt that the whole idea of Rep. Act 447 is to require the foreign insurer to show that it had no more responsibilities to any resident here, and may therefore go home with its securities.

"Now the second part of sec. 202-C requires the foreign insurer to 'reinsure.' Our insurance act defines reinsurance as 'one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance' (Sec. 88). This kind of reinsurance is not, obviously, what sec. 202-C contemplates, because the foreign insurer is not thereby relieved of local responsibility. Yet the term reinsurance is also sometimes 'applied to a contract between two insurers by which the one assumes the risks of the other and becomes substituted to its contracts, so that *on the assent* of the original policy-holders, the liability of the first insurer ceases, and the liability of the second is substituted.' (46 C.J.S. p. 196). This is naturally the kind of 'reinsurance' contemplated in the second part of section 202-C, i. e., a reinsurance that *free*s the original insurer from liability. However, as *Corpus Juris Secundum* implies, in such kind of reinsurance, *the assent* of the original

¹⁰ Promulgated August 30, 1952.

¹¹ Promulgated November 19, 1952.

¹² Act 2427, as amended.

¹³ By virtue of Sec. 2, Rule 39, Rules of Court.

policy-holder is essential. "The original insurer will be released *only* when the insured agrees with the insurer and reinsurer that he will accept the reinsurer." Yu Hun & Co. has not agreed.

"It is clearly improper to construe the second part of section 202-C as permitting the foreign insurer—*without the consent of the insured*—to transfer to another insurer his accrued liabilities under a policy, because it is fundamental in our civil laws that the debtor (insurer) may not have himself substituted by another without the consent of the creditor (the policy-holder)."

The remedy of the foreign insurers in such cases, according to the court, is to file a bond.¹⁴

In reply to the argument that having withdrawn under Rep. Act 447 with the permission of the Insurance Commissioner, the petitioners should not be prejudiced by such withdrawal, the Supreme Court said:

"The procedure outlined in Rep. Act 447 is intended to govern the conduct of the Insurance Commissioner where petitions are made for return of the deposit upon withdrawal of foreign insurers. It does not attempt to regulate the liquidation of liabilities of such foreign insurers, nor the right of claimants against them. Of course there is no doubt that if the Insurance Commissioner is advised that there are unpaid claimants against the foreign insurer he will refuse to allow withdrawal or the return of the securities deposited with him or such portion thereof as may be necessary to satisfy the local claimants. Yet it could be incorrect to assert that whenever he allows the return of such securities, there are factually and legally no unpaid claimants."

The petitioners' contention that the Insurance Commissioner's approval of the withdrawal, pursuant to law may not be reviewed by the Court was rejected on the ground that the matter at issue does not concern "outstanding risks" but accrued "liabilities," which the law requires to be discharged before withdrawal.¹⁵ The Court declared that the statute does not authorize a foreign insurer to assign to another insurer its accrued liabilities to a policy-holder, foisting a new debtor upon the latter.

After the above decision, the petitioners moved for reconsideration. The Insurance Commissioner had made answers to inquiries propounded by the petitioners, inviting him to "apprise" the Supreme Court of what he considers to be the proper interpretation of Rep. Act No. 447."

The Insurance Commissioner believed that his permission for foreign insurance companies to withdraw may be granted, provided the insurers caused another insurance company doing business in

¹⁴ Court citing *Mapua vs. Gutierrez David*, 43 O. G. 2039.

¹⁵ See Section 202-C, Insurance Law as amended by Rep. Act No. 447.

this country to assume whatever liabilities the withdrawing petitioners may have in the pending suits.¹⁶ In reply, the Court held:

"The law in our opinion, does not justify such belief. Under section 202-D of Rep. Act No. 447, the Commissioner may permit the foreign insurer to withdraw (and get back the securities it has deposited for the benefit of policy-holders) ¹⁷ only when he finds that such foreign insurer 'has no outstanding liabilities to residents of the Philippines,' unless assuming judicial powers and with abuse of discretion, the Commissioner should administratively abide that the aforementioned suits are entirely without foundation."

The Court noted that this section, carefully analyzed, consists of three parts. The first speaks of liabilities of the foreign insurer to policy-holders and creditors. The second and the third obviously refer to its outstanding policies, i.e., policies on which no claim has as yet arisen, because the risk insured against has not yet happened. In short, according to the Court, the first refers to accrued liabilities (outstanding claims) to be discharged; the second and the third to contingent liabilities (outstanding risks) to be re-insured.

The high tribunal then held that the situation of the petitioners and Yu Hun and Co. is governed by the first part. And the requirement that the foreign insurer "reinsured," backs this interpretation because, usually the subject-matter of the original insurance "must be in existence at the time the contract of reinsurance is made."¹⁸

But even supposing that the petitioner's liabilities to Yu Hun be considered as "primary liabilities" in the second part of section 202-C, the Court was of the opinion that it would not alter the result. The Court declared:

"There is no doubt that the whole idea of Rep. Act No. 447 is to require the foreign insurer to show that it has no more responsibilities to any residents here, and may therefore go home with its securities.

"Now the second part of sec. 202-C requires the foreign insurer to 'reinsure'. Our insurance act¹⁹ defines reinsurance as one by which an insurer procures a third person to insure him against loss or liability by

¹⁶ Sec. 202-C. Every foreign insurance company which withdraws from the Philippines shall, prior to such withdrawal, discharge its liabilities to policy-holders and creditors in this country. In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be reinsured and assumed by another insurance company authorized to transact business in the Philippines. In the case of such policies as are subject to cancellation by the withdrawing company, it may cancel such policies pursuant to the terms thereof in lieu of such reinsurance and assumption of liabilities.

¹⁷ See Sec. 179, Insurance Act as amended.

¹⁸ Court citing 32 C. J. 46.

¹⁹ See note 12, *supra*.

reason of such original insurance.²⁰ This kind of reinsurance is not, obviously, what sec. 202-C contemplates, because the foreign insurer is not thereby relieved of local responsibility. Yet the term reinsurance is also sometimes 'applied to a contract between two insurers by which the one assumes the risks of the other and become substituted to its contracts, so that on the assent of the original policy-holders, the liability of the first insurer cease, and the liability of the second is substituted.'" ²¹

"* * * The original insurer will be released only when the insured agrees with the insurer and reinsurer that he will accept the reinsurer."²² Yu Hun & Co. has not agreed.

"It is clearly improper to construe the second part of section 202-C as permitting the foreign insurer—without the assent of the insured—to transfer to another insurer his accrued liabilities under a policy, because it is fundamental in our civil laws that the debtor (insurer) may not have himself substituted without the consent of the creditor (the policy holder)." ²³

To strengthen its stand, the Court dealt on the correct interpretation of Rep. Act No. 447 thus:

"In addition to the foregoing considerations, Rep. Act No. 447 should not be so interpreted as to permit foreign insurers to escape the results of pending actions against them by withdrawing from the Philippines with all the securities they have deposited, provided they get the sanction of the Commissioner. That would be giving the Commissioner discretion to frustrate orders of courts in litigation against foreign insurers and to liberate the latter from claims of local policy-holders, whose interest it is his principal duty to protect, and for whose benefit he is given such broad powers of supervision over insurance companies as are seldom conferred upon parallel administrative agencies. And although this Court has refused to heed plea for preference of resident policy-holders in litigations against foreign insurer,²⁴ it is not disposed to permit any foreign insurer to evade or frustrate efforts to collect them in our courts." ²⁵

II—PRIVATE CORPORATIONS:

On the law of private corporations, five cases were decided by the Supreme Court in 1952. The case of *Winship v. Philippine Trust*.

²⁰ Sec. 88, Insurance Law, as amended.

²¹ Court citing 46 C. J. S. 196.

²² *Weil vs. Fed. Life Insurance*, 264 Ill. 425, 106 NE 246; VANCE ON INSURANCE, 2d Ed., p. 950.

²³ Art. 1293, Civil Code. Unconstitutional impairment of the obligations of contract might be asserted.

²⁴ *Constantino vs. Asia Life Ins. Co.*, see note 3, *supra*.

²⁵ The Court, further quoted the explanatory note of House Bill No. 165 which was enacted into Rep. Act No. 447 reading thus: "Furthermore, in the event that claims would be taken to court, altho our courts have jurisdiction over said claims, Philippine policy-holders would be greatly inconvenienced in the exaction of a favorable judgment. It is then not unlikely that the intervention of our Government, thru our

Co.²⁶ reiterated a previous ruling of the court to the effect that the nationality of a private corporation is determined by the character or citizenship of its controlling stockholders. In the case of *Reyes v. Blouse*,²⁷ a merger of properties and assets was distinguished from a strict merger or consolidation of two corporations.

Three other cases decided by the Supreme Court dealt briefly and incidentally on certain provisions of the Corporation Law. Thus, in the case of *Talisay-Silay Milling Co., Inc. v. Teodoro*,²⁸ the Supreme Court dissolved a preliminary injunction enjoining a sugar milling corporation from voting 21,988.5 shares held by it in Azucarera del Danao in any and all meetings of the latter entity on the ground that such a prohibition would result in the paralyzation of the corporate business of the latter company.²⁹ While in the case of *Arcache v. Lizares*,³⁰ the power to bind the corporation was inferentially held to be vested in the board of directors and not in its President following well-settled doctrines. Finally, in the case of *National Airports Corporation v. Teodoro*,³¹ the Supreme Court, among others held that the abolition of the National Airports Corporation by an executive order which was replaced by a newly-created entity was complete for all legal intents and practical purposes so as not to require even a winding-up process as provided for under Sec. 77 of the Corporation Law.

In the Winship case, the question was presented as to whether the order of the Japanese Military Administration requiring all deposit accounts of hostile people (including corporations) to be transferred to the Bank of Taiwan, as depositary of the said administra-

diplomatic representatives abroad, would have to be sought to enforce judgments of our courts against such insurance company as might have withdrawn from this country.

Under this bill, however, a foreign insurance company operating in the Philippines will not be allowed to withdraw from this country until after it shall have discharged its liabilities to policy-holders and creditors in the Philippines."

²⁶ G. R. No. 3869, prom. Jan. 31, 1952.

²⁷ G. R. No. L-4420, prom. May 19, 1952.

²⁸ G. R. No. L-4579 & L-4674, prom. March 31, 1952.

²⁹ Under the Corporation Law, there are certain specified matters which are vested upon the stockholders such as the election, removal, increase or reduction of the board of directors, increase or reduction of capital stock, insuring of bonded indebtedness, amendment of articles of incorporation, adoption, amendment and repeal of by-laws, investment of corporate funds of other purposes, the sale of all or substantially all of the corporate assets, and the authorization of the dissolution of the corporation. It may be seen, therefore, that for a corporation to be able to exercise all the powers expressly conferred upon it by law, as well as those necessarily implied therefrom, action by the stockholders is as much a necessity and is no less important as action by the board of directors. See Secs. 6, 17, 17½, 18, 22, 28½, and 62 of the Corporation Law.

³⁰ G. R. L-4333, prom. May 23, 1952.

³¹ G. R. No. L-5122, prom. April 30, 1952.

tion, applied to corporation organized and existing by virtue of the laws of the Philippines although almost all of the capital stock of said corporations were owned by American citizens.³² It appeared that by virtue of the above-mentioned order issued by the Japanese Military Administration, the defendant bank transferred to the Bank of Taiwan the current account deposits of the Eastern Isles Import Corporation and the Eastern Isles Inc. After the war, said deposits were transferred by the corporations concerned to Davis Winship who presented two checks drawn against said deposits to the Philippine Trust Co. for payment which was refused. In deciding the action brought thereon, the Supreme Court relied on the doctrine laid down in the *Haw Pia* case³³ and held that inasmuch as said corporations were actually controlled by American citizens, then under the control theory previously adopted by the court,³⁴ said corporations were of American nationality and therefore subject to the order issued by the Japanese Military Administration.

In the case of *Reyes v. Blouse*,³⁵ the minority stockholders of the Laguna-Tayabas Bus Co. instituted an action to restrain the Board of Directors of said corporation from carrying out a resolution approved by it and voted by two-thirds of its stockholders authorizing the said board of directors to take the necessary steps to consolidate³⁶ the properties and franchises of the Laguna-Tayabas Bus Co. with those of the Batangas Transportation Co. In holding said resolution as proper and valid, the court said that the purpose of the

³² It appears that all of the capital stock of the Eastern Isles Import Corporation was and had been owned by American citizens except one share with a par value of P100, in the name of Antonia Sevilla and one share with a par value of P100, in the name of Edmund A. Schwesinger; and that in the Eastern Isles Inc., all of the capital stock, likewise, was owned by American citizens except one share with a par value of P100, in the name of F. Capistrano.

³³ 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.

³⁴ In the case of *Filipinas Compañia de Seguros vs. Christern*, G. R. No. L-2294, prom. May 25, 1951, the Supreme Court "pierced the corporate veil" and determined the status of a corporation by inquiring into the nationality of its controlling stockholders. In that case, the Court in adopting the control theory cited in support thereof; *Clark vs. Uebersee Finanz Korporation* (December 8, 1947), 92 Law Ed. Advance Opinions, No. 4, pp. 148, 153, which adopted the control test; also, Martin Domke (*Enemy Corporations*, August, 1948).

³⁵ G. R. No. L-4420, prom. May 19, 1952.

³⁶ "Consolidation is a combination by agreement between two or more corporations, and under authority of law, by which their rights, franchises, privileges and property are united, and become the rights, franchises and privileges and property of a single

resolution was not to dissolve the Laguna-Tayabas Co. but merely to transfer its assets to a new corporation in exchange for its corporate stock.³⁷ This intent was deduced from the provision that the Laguna-Tayabas Bus Co. will not be dissolved but will continue existing until its stockholders decide to dissolve the same. This, according to the Court, comes squarely within the purview of section 28-1/2 of the corporation law which grants authority to a corporation to sell, exchange, lease or otherwise dispose of all its properties and assets, including its goodwill, upon such terms and conditions as its board of directors may deem expedient when authorized by the affirmative vote of the stockholders holding at least two-thirds of the voting power. The words "or otherwise dispose of" was construed by the Court to be broad enough to cover a merger or consolidation.

The remedy open to the minority stockholders in this case was to register their objections in writing and demand payment of their shares from the corporation as provided for in Sec. 28-1/2 of the corporation law, but they will not be permitted to frustrate the will of the majority shown to be acting for the common good and interest of the corporation.

In the Arcache case, plaintiffs sought to compel defendant corporation to surrender to them the certificate of title covering two parcels of land which was the subject matter of a contract of sale between the defendant corporation as vendor and the plaintiffs as vendees. The defendant corporation filed an answer, in substance alleging that the sum of ₱271,500, due as installment payment in January of 1945 had never been paid to the corporation, on account of which the corporation already rescinded the contract of sale. It appeared that the said sum was deposited by the husband of the plaintiff with the Philippine National Bank in the name and to the

corporation, composed generally, although not necessarily of the stockholders of the original corporations." *Atlantic Co. vs. Georgia*, 98 U. S. 359.

"Merger is the absorption by one corporation of the properties and franchises of another whose stock it has acquired, whereupon the merged corporation ceases to exist and the merging corporation alone survives." *Ahles Realty Corp. vs. Commissioner*, 71 Fed. (2d) 150 cited in TOLENTINO, COMMERCIAL LAWS OF THE PHILIPPINES, Vol. II, 6th Ed., p. 727.

³⁷ The action contemplated by the Board of Directors in this case, constituted neither a consolidation nor a merger as understood in corporation law. (See note 36. It was nothing more than a disposition of the properties and assets of a corporation which did not by itself dissolve the corporation or create a new one. As held in the case of *Petrogradsky vs. National City Bank*, 170 NE 479, "neither bankruptcy, nor cessation of business, nor dispersal of stockholders, nor the absence of directors, nor all of these combined, without more, will avail to stifle the breath of a juristic personality. The corporation abides as an ideal creation, impervious to the shock of these temporal vicissitudes."

credit of Nicolas Lizares, president of the defendant corporation because it was impossible at the time for the plaintiff-vendees, considering the fact that said Lizares was then in Baguio, to actually contact the defendant corporation through its officers. The Supreme Court agreed to the finding of the trial court that the deposit was made in good faith, at least to the extent of allowing the contract of sale to subsist. The Court, however, at the same time sustained the argument of the defendants that said deposit could not be binding on the corporation as it was not made to the person in whose favor the obligation has been constituted or to another authorized to receive it in his name, which in the case of corporations should be its board of directors.³⁸ Nevertheless, the fact of depositing the amount due was held by the Court as amounting to a valid excuse for not holding the plaintiffs in default.

In the National Airports case, the Philippine Airlines which was being sued for the payment of landing and parking fees on Bacolod Airport No. 2 by the owners of the land used as an airport brought in as third-party defendant, the National Airports Corporation which was organized under Republic Act No. 224 and under which the provisions of the Corporation Law were made applicable to said corporation. The third-party complaint thus filed was premised on the assumption that the National Airports Corporation was still in existence. It appeared, however, that said corporation was dissolved by an executive order, and its powers, duties, and properties were transferred to a newly-created entity. The Philippine Air Line contended that the National Airports Corporation, notwithstanding its dissolution, was still in existence, at least for the limited object of winding up its affairs under Sec. 77 of the Corporation Law. The Supreme Court, however, considered the said corporation as abolished for all purposes, considering that no trustees, assignees, or receivers had been designated to make a liquidation, and what was more there was nothing to liquidate.³⁹ There was thus a procedural error, which could be corrected by amendment of the pleading.

³⁸ Under the Corporation law, "all corporate powers shall be exercised, all business conducted and all property controlled and held by a board of directors." Sec. 28, *supra*.

³⁹ Under the Corporation law, there are three methods of winding up the affairs of a corporation for the purpose, among others, of prosecuting or defending suits by or against it. (1) Under Sec. 66, the court may appoint a receiver to take charge of the assets and dispose of them as the law may permit and justice require. (2) Under Sec. 77, the directors and executive officers of the corporation may take care of the winding up themselves. (3) Under Sec. 78, the corporation may transfer and convey all its properties to trustees for the benefit of stockholders and creditors. (See *In re Voluntary Dissolution of Union Guaranty Co.*, 37 O. G. 545, March 2, 1939; *Sumera vs. Valencia*, 67 Phil. 721.

III—NEGOTIABLE INSTRUMENTS:

A check is a bill of exchange drawn on a bank payable on demand.⁴⁰ It must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.⁴¹ And an inexcusable delay in presenting a check for payment will discharge also an indorser from liability thereon if the check is not paid, whether he is in fact injured or not.⁴² The person receiving a check drawn on funds in a bank is bound to exercise reasonable diligence in making presentment thereof for payment, if he wishes to avoid discharging an indorser thereof.⁴³ If the person receiving such a check and the bank upon which it is drawn are in different places, such a check must be forwarded for presentment by mail, or some other ordinary mode of transmission, on the next day after the receipt thereof at the place at which the payee resides, or does business, if reasonably and conveniently practicable, and, if not so, then upon the next day thereafter, and the same must be presented to the bank upon which it is drawn, and payment demanded, at the latest, upon the day after its receipt at the place at which such bank is located.⁴⁴

In a recent case⁴⁵ the Supreme Court of the Philippines held that an unreasonable delay in presenting a check for payment at the drawee bank, there being no excuse given for the delay, discharged the indorser of the check from liability. In the case of *Philippine National Bank vs. Seeto*⁴⁶ it appears that on March 13, 1948, Seeto presented a check dated at Cebu on March 10, 1948, to the branch of the Philippine National Bank at Surigao. The check is payable to cash or bearer and drawn by one Gan Yek Kiao against the Cebu branch of the Philippine Bank of Communications. Seeto made a

Nevertheless, under the reserved power of Congress to amend or repeal at any time, the Corporation Law or any part thereof, or dissolve at any time and or all corporations created by virtue of the Corporation Law, it has the power, necessarily implied, of determining the conditions under which the dissolution shall take place as well as the effects thereof. It may therefore provide for an absolute dissolution or for a gradual dissolution as contemplated in Sec. 77 of the Corporation Law. The Court considered the dissolution of the National Airports Corporation as one absolute and complete upon its declaration.

⁴⁰ Sec. 185, Negotiable Instruments Law.

⁴¹ Sec. 186, Negotiable Instruments Law.

⁴² *Nuzum vs. Sheppard*, 104 S. E. 587.

⁴³ See note 42, *supra*.

⁴⁴ See note 42, *supra*.

⁴⁵ *Philippine National Bank vs. Seeto*, G. R. No. L-4388, promulgated August 13, 1952.

⁴⁶ G. R. No. L-4388. See note 45, *supra*.

general and unqualified indorsement of the check and the agency of the Philippine National Bank at Surigao accepted it and paid the indorser the amount of the check. The check was mailed to the Philippine National Bank's Cebu Branch on March 20, 1948 and presented to the drawee bank for payment on April 9, 1948, but the check was dishonored for insufficient funds. The Philippine National Bank demanded from the indorser the refund of the value of the check, but the indorser refused to make the refund demanded. The Supreme Court held that there was an unreasonable delay in presenting the check for payment and this delay discharged the indorser from his liability as such.^{46a}

Sections 143 and 144 of Negotiable Instrument Law not applicable to checks.

As regards petitioner's contention, in the said *Philippine National Bank* case that inasmuch as a check need not be presented for acceptance, unlike a bill of exchange as required by *Section 143*,⁴⁷ *Section 144*⁴⁸ of the law is not applicable to the case at bar but *Section 84*, which provides that "subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holders," the Supreme Court admitted that *Sections 143 and 144* are not applicable to checks because these are provisions having to do with the presentation of ordinary bill of exchange, and therefore

^{46a} Said the Court: "The check is dated March 10, 1948 and was cashed by the Philippine National Banks agency on March 13, 1948. It was not mailed until seven days thereafter, i.e., on March 20, 1948, or ten days after issue. No excuse was given for this delay. Assuming that it took one week, or say ten days or until March 30, for the check to reach Cebu, neither can there be any excuse for not presenting it for payment at the drawee bank until April 9, 1948, or 10 days after it reached Cebu. There was unreasonable delay in the presentation of the check for payment at the drawee bank and as a consequence thereof, the indorser was thereby discharged from liability."

⁴⁷ Sec. 143, Negotiable Instrument Law, provides: "Presentment for acceptance must be made:

(a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(b) Where the bill expressly stipulates that it shall be presented for acceptance; or

(c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee;

In no other case is presentment for acceptance necessary in order to render any party to the bill liable."

⁴⁸ Sec. 144, Negotiable Instruments Law provides:

"Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged."

they do not apply to checks of which presentment for acceptance is not required. The Supreme Court also agreed that *Section 84*⁴⁹ applies to checks, but its application is subject to the condition imposed by *Section 186*, to the effect that the check must be presented for payment within a reasonable time after its issue.

*Effect of silence of section 186
as to the liability of indorser.*

In the above *Philippine National Bank case*, petitioner argued that inasmuch as *Section 186* of the Negotiable Instrument Law expressly provides for the discharge of the drawer from liability to the extent of the loss caused by the delay, and, on the other hand, it is silent as to the liability of the indorser, the latter may not be considered discharged from liability by reason of the delay in the presentment for payment under the general principle *inclusio unius est exclusio alterius*. To this the Court held that the silence of *Section 186* as to the indorser is due to the fact that his discharge is already expressly covered by the provision of *Section 84*, the indorser being a person secondarily liable on the instrument. The Court also stated that the reason for the difference between the liability of the indorser and that of the drawer in case of dishonor is that the drawer is not probably or necessarily prejudiced thereby, while an indorser is, actually or by legal presumption. The Court further stated that the proposition that an indorser of a check is not discharged from liability for an unreasonable delay in presentation for payment is contrary to the essential nature and character of negotiable instruments—their negotiability. They are supposed to be passed on with promptness in the ordinary course of business transactions; not to be retained or kept for such time as the holder may want, otherwise the smooth flow of commercial transactions would be hindered.

*Admissibility of Parol Evidence
to prove collateral agreement
relating to indorsement.*

In the same *Philippine National Bank Case*, petitioner maintained that the verbal assurances given by the indorser Seeto to the employees of the bank that he was ready to refund the amount of the check if the same should be dishonored by the drawee bank is a collateral agreement, separate and distinct from the indorsement by virtue of which petitioner was induced to cash the check, and, therefore, admissible as an exception to the parol evidence rule. The

⁴⁹ Sec. 84, Negotiable Instruments Law, provides:

Court stated that this contention is not entirely unfounded.⁵⁰ The Court maintained that if the supposed assurances were the considerations or reasons that induced the branch agency of the petitioner to go out of its ordinary practice of not cashing out of town checks and accept the check and to pay its face value, the same should be provable by parol evidence, provided, of course, that assurances or inducements offered would not vary, alter, or destroy the obligations attached by law to the indorsement.

However, the Court said that the supposed assurances of refund in case of dishonor of the check are precisely the ordinary obligations of an indorser, and these obligations are, under the law, considered discharged by an unreasonable delay in the presentation of the check for payment. Further the Court stated, that there was no express obligation assumed by Seeto that the drawer would always have funds, or that he (Seeto) would refund the amount of the check even if there was delay in its presentation, so that even if errors are committed by the Court below in disregarding the evidence presented to prove the assurances, such error was without prejudice, because the supposed assurances were part of his obligations as an indorser, which were discharged by the unreasonable delay in the presentation of the check for payment.

*Effect of certification
of a check.*

Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.⁵¹ And the bank becomes liable to the holder upon its certification, and it is immaterial to such liability in favor of a holder in due course whether the drawer had funds or not in the bank.⁵² If the drawer had funds in the bank, he cannot, after the check has been certified, draw out the funds then in the bank necessary to meet the certified check. That

"Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder."

⁵⁰ The Supreme Court cited the case of *Machan vs. De la Trinidad*, 3 Phil. 694, where it was held that parol evidence is admissible to show that parties signing as principals merely did so as sureties; the case of *Robles vs. Lizarraga Hermanos*, 50 Phil. 387, where the court held that parol evidence is admissible to prove "an independent or collateral agreement which constituted an inducement to the making of the sale or part of the consideration therefor; and also the case of *Phillips vs. Preston*, 5 How. (U.S.) 278, 12 L. ed. 152, where the Supreme Court of the United States held that any prior or contemporaneous conversation in connection with a note or its indorsement, may be proved by parol evidence.

⁵¹ Sec. 187, Negotiable Instruments Law.

⁵² *Security vs. State Bank*, 154 N. W. 282.

money is no longer his; as to him, it was the same as if the bank had paid the money upon the check instead of certifying it was good.⁵³ This rule was followed by the Supreme Court of the Philippines in a recent case.⁵⁴

In that case of *Gregorio Araneta, Inc. vs. Tuason de Paterno*,⁵⁵ it appears that two checks were issued by Gregorio Araneta, Inc. and payable to one Vidal, and were drawn against the Bank of the Philippines with which Gregorio Araneta, Inc. had a deposit in current account. They were certified by the President of the Bank and the certification stated that they were to be "void if not presented for payment at this office (Bank) within 90 days from date of acceptance." The Supreme Court held that under banking laws and practice, by the certification the funds represented by the check were transferred from the credit of the maker to that of the payee or holder, and, for all intents and purposes, the latter became the depositor of the drawee bank, with rights and duties of one in such relation. But the transfer of the corresponding funds from the credit of the depositor to that of the payee had to be co-extensive with the life of the checks, which in this case was 90 days. If the checks were not presented for payment within that period they became invalid and the funds were automatically restored to the credit of the drawer though not as a current deposit but as a special deposit.

IV—COMMON CARRIERS:

A contract of transportation by air may be regarded as commercial. The reason is that the transportation company is a common carrier; besides, air transportation is clearly similar and analogous to land and water transportation. And the obvious reason for its non-inclusion in the Code of Commerce was that at the time of its promulgation transportation by air on a commercial basis was not yet known. Thus, it was held in the case of *Mendoza vs. Philippine Air Lines, Inc.*⁵⁶

In the same case, where defendant air carrier was guilty of delay in the delivery of the can of film consigned to plaintiff resulting in the loss of profits to the latter, the Court held Art. 358⁵⁷

⁵³ *First National Bank vs. Leach*, 11 Am. Rep. 708.

⁵⁴ *Gregorio Araneta, Inc. v. Tuason de Paterno*, G. R. No. L-2886, promulgated August 22, 1952.

⁵⁵ G. R. No. L-2886.

⁵⁶ G. R. No. L-3678, prom. Feb. 29, 1952.

⁵⁷ If there is no period fixed for the delivery of the goods, the carrier shall be bound to forward them in the first shipment of the same or similar goods which he

of the Code of Commerce inapplicable as said provision treats of ordinary damages or damages in general, and not special damages as those alleged by plaintiff. Hence, it applied the Civil Code provisions under which the defendant could be held liable only for damages that were foreseen or might have been foreseen at the time the contract of transportation was entered into.⁵³ This, not being the case, because defendant was not made aware of the special circumstances like the fact that the film was to be shown during a town fiesta, the defendants were absolved from any liability.

may make to the point where he must deliver them; and should he not do so, the damages caused by the delay shall be for his account. Art. 358, Code of Commerce.

⁵³ The Court considered the defendant air carrier as a debtor in good faith under the Civil Code.