SURVEY OF MERCANTILE LAW: 1954

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NEGOTIABLE INSTRUMENTS LAW

Rate of Exchange.

Which rate of exchange[1] should be the basis of payment — the rate existing at the time of the negotiation of the instrument or the rate prevailing at the date of maturity? In the case of *Gregorio Araneta, Inc. v. Philippine National Bank*[2] the Court looked into the stipulations of the parties in solving this problem. The pertinent clause reads: "In consideration thereof, I/we promise and agree to pay you at maturity in Philippine Currency the equivalent of the above amount or such portion thereof as may be drawn or paid upon the faith of said credit . . . and agree to reimburse you in the manner aforesaid . . ." Construing the above clause, the court held that the reference to the maturity of the draft has to do with fixing the time of payment and not the rate of exchange. The rate of exchange at which the draft should be paid by the plaintiff, according to the terms of the agreement, was determined by the rate prevailing on the date the draft was drawn and presented or negotiated.[3]

Consideration.

In the case of *Garcia v. Lianco*[4] plaintiff succeeded in securing the lease of the Sta. Cruz churchyard for the defendant, and in consideration for this, defendant executed a promissory note.[5] In an action on the note, defendant and his guarantor alleged that there was no valid

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[1] Sec. 2, Negotiable Instruments Law provides: The sum payable is a sum certain within the meaning of this Act although it is to be paid — (d) With exchange, whether at a fixed or at the current rate.

[2] 50 O.G. No. 11, p. 5360 (1954). In this case, plaintiff applied to defendant for a letter of commercial credit in favor of the Allied National Corporation, Ltd. of London for the sum of £7,440. On Aug. 30, 1949, a draft for £4,031.13 was negotiated by the defendant's correspondent bank in London against plaintiff's credit. Defendant paid the draft at the then existing rate of $4.0325 for every English pound. On Dec. 25, 1949, the date of maturity of the draft, the British pound was devaluated from $4.0325 to $2.8015 to a pound. Plaintiff paid defendant ₱23,194.37 based on the rate existing at the time of maturity. Defendant, however, claimed that the rate of exchange should be that existing at the time of negotiation of the draft; hence it debited plaintiff's overdraft account in the sum of ₱10,533.55, the balance which it alleged was still due.

[3] Banking practice that a draft should be paid at the rate of exchange existing on the date of maturity is immaterial where there is an express contract between the parties.

[4] 50 O.G. No. 3, p. 1145 (C.A.) (1954).

[5] The note provides, in part: "For value received, I promise to pay Pedro V. Garcia or his order, the sum of ₱29,000, without interest . . . ."
(Sgd.) Tomas B. Lianco

consideration for the note. The Court of Appeals held that there was a valid valuable consideration for the note — consisting of the services rendered by the plaintiff-appellee in securing for the defendant the lease of the premises around Sta. Cruz Church. Consideration which is sufficient to support a negotiable instrument, may consist either in some right, interest, profit, or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss, responsibility, or act, labor or service on the other side.[6] Services rendered by the payee of a note in securing the lease of certain premises is such consideration.

Carriage of Goods by Sea Act

Suit for loss or damages maybe brought within one year.

Under the Carriage of Goods by Sea Act[7] the failure by the shipper to give notice of loss or damage to goods to the carrier will not defeat the right of the shipper to recover for such loss or damage provided suit is brought within one year after delivery or from the date when the goods should have been delivered.[8] The provisions of this Act on the carrier's liability may not be rendered nugatory by any stipulation in the bill of lading.[9] In the case of *Elser & Atlantic Mutual Insurance Company v. Court of Appeals, International Harvester Co., & Isthmian Steamship Co.* our Supreme Court declared that clause 18[10] of the bill of lading must of necessity yield to the provisions of the Carriage of Goods by Sea Act prohibiting covenants, agreements, and clauses relieving the carrier or the ship from liability for loss or damage to or in connection with goods otherwise than as provided for in such Act. The Court further ruled that granting that the Act did not cover the contract between the parties due to the fact that the goods were shipped while the Philippines was still a territory of the United States, still there would be nothing to prevent the parties from making the

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[6] Story, On Promissory Notes, section 186.

[7] Public Act No. 521, 74th U.S. Congress. By Commonwealth Act No. 65, approved and taking effect on October 22, 1936, the Carriage of Goods by Sea Act was accepted and extended to the Philippines.

[8] See Benito Chua Kuy v. Everett Steamship Corporation, G.R. No. L-5554, promulgated May 27, 1953.

[9] Section 3, paragraph 8, Carriage of Goods by Sea Act.

[10] Clause 18 of the bill of lading provides that notice of loss be given to the carrier within 30 days after receipt of the goods.

Section 3, par. 6, sub-paragraph 4 provides: "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, that if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the rate when the goods should have been delivered." Compare with Article 366, Code of Commerce, where notice of loss or damage is a condition precedent for bringing suit for recovery.

Act applicable to their contract by express agreement, as the parties in this case actually covenanted.[11]

INSURANCE

Accidental Benefit Clause — Effect of Murder.

Accident insurance is a form of insurance which provides for a specified payment in case of an accident resulting in bodily injuries or death.[12] Accident insurance on life may be obtained by specific policies of accident insurance or in a clause appended to or made a part of the ordinary life insurance policy, generally called "Accidental Benefit Clause." In the case of *Kanapi v. The Insular Assurance Co. Ltd.*,[13] our Supreme Court held that death resulting from injury "intentionally inflicted by a third party" (murder in this case) is not accidental death or death due to accident. Far from proving that the insured died from bodily injury sustained in an accident, the agreed facts were to the effect that the insured was murdered, thus making it indisputable that his death resulted from injury inflicted by a third party and not by accident. In so far as death intentionally inflicted by a third person is excepted by the clause, recovery was denied.

Concealment — effect of physicians findings.

In the absence of fraud or collusion, is the insurer bound by the findings of its own physicians that the insured was an insurable risk? In the case of *Chuy v. The Philippine American Life Insurance Co.*[14] our Supreme Court held that in the absence of fraud or bad faith on the part of the physicians conducting the medical examination, their findings that the insured was an insurable risk shall preclude the in-

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[11] Quote: "Prior to the Philippine Independence on July 4, 1946, trade between the Philippines and other ports and places under the American Flag was not, by ordinary definition, foreign commerce. Hence, the U.S. and Philippine Acts did not apply to such trades even though conducted under foreign bottoms and under foreign flag, unless the carrier expressly exercised the option given by section 13 of the U.S. Act to carry under the provisions of that Act." However, in the case of *Benito Chua Kuy v. Everett Steamship Corporation*, supra, the Court held that, after July 4, 1946, the Philippines is a foreign country to the United States and the Carriage of Goods by Sea Act will apply to all commerce to and from the Philippines in foreign trade.

[12] Definition of accident insurance, see *Employer's Liability Assurance Corporation v. Merrill*, 29 N.E. 529. The happening of the event, to be properly termed an accident, must not only be unforeseen, but without the design and aid of the person. See *Christ v. Pacific Mutual Life Ins. Co.* (1924) 35 A.L.R. 730.

[13] 50 O.G. No. 3, p. 1044 (1954). The defendant insurance company issued a policy on the life of plaintiff's husband whereby the defendant undertook to pay the plaintiff beneficiary, upon death due to natural causes ₱5,000 and if death be due to accidental means, an additional ₱5,000. The insured died from a bullet wound inflicted by one Conrado Quemosing, who was found guilty of murder.

[14] 50 O.G. No. 3, p. 1157 (Court of Appeals case) (1954). The insured in this case was examined by four physicians of the defendant company and was certified by them to be insurable. His application, together with the certification of the examining physicians was duly approved by medical director of the company and the policies issued.

surance company from setting up the defense that the insured was in bad health, therefore, not insurable. Speaking through Justice Pablo, the Court held that "four doctors of the company which insured the deceased are the parties most interested in procuring the truth about the state of health of the insured. They had examined him and declared that he was in good health because they were convinced that he was. There was neither the slightest indication that they acted in bad faith or perpetrated a fraud."

Another question raised was whether the refusal of the insurance company to settle the claim entitled the plaintiff to recover damages for delay.[15] The Court held that damages may be recovered only if the defendant company acted in bad faith in contesting the claim and the lapse of seven months was not indicative of bad faith inasmuch as the company was merely taking the necessary precautions to ascertain the identity of the insured.

Insurer — Right of Subrogation.

The new Civil Code provides that "if the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of the contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract."[16] This right of the insurer to be subrogated to the rights of the insured will arise only if the insured is not at fault. If the insured is guilty of negligence or fault, as a consequence of which the injury or loss resulted, the insurer has no right to subrogation. In the case of *The World Fire & Marine Insurance Co. vs. Macondray & Co., Inc.*,[17] the insurer was granted the right to subrogation where it paid the insured for the loss of a large quantity of fountain pens and lighters as a result of pilferage on the pier while the cargo was awaiting delivery. The loss was accountable to the fault of the firm performing the arrastre service.

Obligation of Insurer in Case of Guaranty.

As a general rule the contract of insurance is a principal obligation to pay to the beneficiary the amount of the policy when the risk insured against happens. However, when the insurance company becomes

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[15] Article 2208 of the Civil Code, provides: "In the absence of stipulation attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: . . . (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's valid, just and demandable claim."

Sec. 91-a of the Insurance Act allows the plaintiff-beneficiary interest at the rate 6 per centum per annum for the delay, when the court finds that there was justification for the insurance company to contest the payment. See *Teal Motor Company v. Continental Insurance Co.* 59 Phil. 804.

[16] See Article 2207, New Civil Code. The right to subrogation is granted only in cases of property insurance.

[17] Court of Appeal's Case, 50 O.G. No. 10, 4901 (1954).

a party to a contract acting as a guaranty for the fulfillment of an obligation by the principal parties bound on a contract, as for example the delivery of certain amount of lumber, the obligation is merely subsidiary. In the case of *The World Wide Insurance and Surety Co. v. Jose et al*,[18] the Court held that the obligation of the insurance company is only subsidiary and not primary because it construed the contract of the insurer to be one of guaranty and not of insurance strictly.

Trading with the Enemy Act—Effect on Insurance Policies.

In the case of *Brownell, as Attorney General of the United States v. Sun Life Assurance Company of Canada*,[19] the Court had occasion to pass upon the effect of the Trading with the Enemy Act[20] on insurance policies enforced in the Philippines at the outbreak of the last war. The Court ruled that the application of the Trading with the Enemy Act in the Philippines is based concurrently on the operation of the Philippine Property Act of 1946 and on the tacit consent thereto and the conduct of the Philippine Government in receiving the benefits of its provisions. Payment, therefore, by the insurance company to the government of the United States without the execution of a deed of discharge and indemnity for its own protection saves the insurer from any further liability because the said Act considers such payment as a full acquittance and discharge for purposes of the obligation of the person making the payment.

PRIVATE CORPORATIONS

CORPORATE EXISTENCE

A. *One Man Corporation.*

In the case of *Marvel Building Corporation, et al vs. Saturino David*, the defendant Collector of Internal Revenue seized properties appearing in the name of the plaintiff corporation to answer for the payment of war profits tax amounting to ₱3,593,950.78, assessed against plaintiff Maria B. Castro, appearing in the books of the corporation as

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[18] 50 O.G. No. 11, p. 5287 (1954).

[19] 50 O.G. No. 10, p. 4814 (1954). The action was instituted in the CFI of Manila under the provisions of the Philippine Property Act of the United States against the defendant to compel the respondent to comply with the demand of the petitioner to pay him the sum of ₱310.10 which represented one-half of the proceeds of an endowment policy which matured on August 21, 1946 and which was payable to Naogiro Aihara, a Japanese national. Under the policy, Aihara and his wife, Filomena Gayapan, were insured jointly for the sum of ₱1,000 and upon maturity the proceeds thereof were payable to said insured, share and share alike. The contention of the defendant was that the Trading with the Enemy Act of the United States was of doubtful application in the Philippines because it has not been adopted in our jurisdiction.

[20] Public Law No. 91, 65th Congress of the United States, passed on October 6, 1917, entitled: "An Act to Define, Regulate, and Punish Trading with the Enemy and For Other Purposes." See Republic Act Nos. 7, 8 and 447; Also Executive Order No. 29, October 25, 1957.

the principal stockholder. From the evidence presented, the Supreme Court found that the other stockholders were mere dummies of said Maria B. Castro, who is in fact the sole owner of all the shares in the plaintiff corporation. A stock corporation, however, is not dissolved by the mere fact that all the shares of its capital stock have come into the hands of a single stockholder or of a less number of stockholders than were required by the statute in the formation of the corporation.[21] In other words, the degree of majority or dominance in stock ownership does not destroy the corporate entity or make it the same as that of the stockholder.[22] This is the general rule.

B. *Piercing the veil of corporate fiction.*

In the same case of *Marvel Building Corporation vs. Saturnino David,* the Supreme Court denied the petition to enjoin the defendant Collector of Internal Revenue from selling the properties described in the complaint as belonging to the plaintiff corporation in order to prevent evasion of payment of taxes upon finding that all the shares of said corporation belonged to the very same person against whom a tax had been assessed. In effect, the Supreme Court pierced the veil of corporate fiction and looked beyond to the person of the sole stockholder.

Practically all authorities agree that under some circumstances in a particular case the corporate fiction may be disregarded. A leading and much cited case puts the rule as follows: If any general rule can be laid down in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until a sufficient reason to the contrary appears; but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons.[23] Another rule is that when the corporation is the mere alter ego, or business conduit of a person, it may be disregarded.[24] Corporate fiction, therefore, will not be disregarded without just cause and this in addition to mere unity of interest. Before corporate entity can be disregarded and the acts and obligations of a corporation can legally be recognized as those of a particular person or vice versa, it must appear that the corporation has ceased and the facts must be such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice. Whether the corporation shall be disregarded depends on questions of fact, to be appropriately pleaded.[25] No fictitious holding can

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[21] *Muckle vs. Fitts,* 3 F. Supp. 41, 46.
[22] *Georgia, S. & F. R. Co. vs. Georgia Public Service Commission,* 289 Fed. 878.
[23] *U.S. vs. Milwaukee Refrigerator Transit Co.,* 142 Fed. 247.
[24] *Wood Estate vs. Chanslor*—Cal., 286 Pac. 1001.
[25] *Minifie vs. Rowley,* 187 Cal. 481.

be allowed to evade taxation and a corporate holding may be disregarded to frustrate such a plan.[26]

This rule of disregarding corporate fiction under certain circumstances has been consistently applied by our Supreme Court.[27]

CAPACITY TO BECOME A PARTNER IN A PARTNERSHIP

In the case of *J. M. Tuason & Co., Inc., represented by its managing partner Gregorio Araneta, Inc. vs. Quirino Bolanos*, the action was for the recovery of possession of registered land. The defendant set up the defense of prescription and that registration of the land in dispute was obtained by the plaintiff or its predecessors in interest through fraud or error, without the knowledge of or notice to the defendant. The trial court rendered judgment for the plaintiff declaring the defendant without right to the land in question. On appeal, the defendant assigned as one of the errors the fact that the case was not dismissed on the ground that it was not brought by the real party in interest. The Supreme Court held that what the Rules of Court[28] require is that an action be brought in the name of but not necessarily by the real party in interest. In fact the practice is for the attorney at law to bring the action, that is, to file the complaint in the name of the plaintiff. That practice appears to have been followed in this case, since the complaint is signed by the law firm of Araneta & Araneta "counsel for the plaintiff" and commences with the statement: "Comes now the plaintiff through its undersigned counsel." It is true that the complaint also states that the plaintiff is "represented herein by its managing partner Gregorio Araneta, Inc.," another corporation, but there is nothing against one corporation being represented by another person, natural or juridical, in a suit in court. The contention that Gregorio Araneta, Inc. cannot act as managing partner for the plaintiff on the theory that it is illegal for two corporations to enter into a partnership is without merit, for the true rule is that "though a corporation has no power to enter into a partnership, it may nevertheless enter into a joint venture with another where the nature of that venture is in line with the business authorized by its charter."[29] There is nothing in the record to indicate that the venture in which the plaintiff is represented by Gregorio Araneta, Inc. as its "managing partner" is not in line with the corporate business of either of them.

Thus, it has often been stated by the courts that it is *ultra vires* of a corporation to become a partner.[30] The objection has been stated

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[26] *Gardiner vs. Treasurer & Receiver General*, 225 Mass. 355.

[27] *Koppel (Philippines) vs. Yatco*—Off. Gaz. Nov. 1947, p. 4604; *Cagayan Fishing Dev. vs. Sandiko*—36 Off. Gaz. 1118, May, 1938; *La Campana Coffee Factory Inc. vs. Kaisahan*, G.R. No. L-5677, prom. May 25, 1953.

[28] Rule 2, Section 2.

[29] *Wyoming Indian Oil Co. vs. Weston*, 80 ALR 1043, cited in Fletcher 2 CYC of Corporations 1082.

[30] *Brunswick Timber Co. vs. Guy*, 52 Ga. App. 617, 184 S. E. 426 (1936).

by an author[31] to be that a corporation is authorized to act only through its directors and officers in the transfer of its property, in the incurring of obligations and in otherwise carrying out its purpose. If it were to become a partner, co-partners would have the power to make the corporation a party to the transactions in an irregular manner, since the partners are not agents subject to the control of the Board of Directors. The *ultra vires* doctrine as a basis for a defense to contracts to which the corporation has become a party is of diminishing importance. The tendency of modern corporate legislation is to abolish it. Even without legislation, an *ultra vires* contract of partnership is, if partially executed, a foundation of rights. Neither the corporation nor the non-corporate partner is permitted to refuse to account for property received for the joint account. In many cases, the courts have avoided the difficulty by designating the relation as joint adventure, rather than partnership and so holding enforceable, contracts that are entirely executory. It would seem, however, that the same objection might be made to joint adventure as to partnership, on the score of delegation of powers, where joint adventures have mutual powers of representation.[32] In some states in the United States, general corporation laws or charters expressly permit the corporation to be a partner.[33] However, it may be stated that in the absence of specific authority conferred by corporation laws or corporate articles, a corporation lacks capacity to become a partner.[34]

Power to Own Lands

In the case of *Municipality of Caloocan vs. Chuan Huat & Co., Inc.*, the plaintiff commenced proceedings in the Court of First Instance of Rizal to expropriate, pursuant to the provisions of Rep. Act No. 207, a parcel of land containing an area of 12,068 sq. m., owned by Chuan Huat & Co., Inc., a domestic corporation, the stocks of which belongs mostly to Chinese citizens. After holding that expropriation does not apply to small parcels of land, the Supreme Court said that the fact that the parcel of land is owned by a corporation the stock of which belongs mostly to Chinese citizens does not authorize the use of the power of eminent domain under Rep. Act No. 267. If the corporation is disqualified to own land under the rule laid down in the Krivenko case[35] is disqualified because of alienage of the owners of its corporate stock, eminent domain is not the proper proceedings to divest it of its title.

It is submitted that under the rule laid down in the Krivenko case, a corporation although organized under the laws of the Philippines, may be disqualified from holding any land in the Philippines, if its stocks

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[31] Crane on Partnership.
[32] Supra, Crane.
[33] *Butler vs. American Toy Co.*, 46 Conn. 136 (1878).
[34] Supra, Crane on Partnership.
[35] 44 *Off.* Gaz. 471.

are owned mostly by aliens. To hold otherwise would be to open the door to the circumvention of the Constitutional provision prohibiting aliens from owning public agricultural lands.[36]

Reconstitution of Corporate Records

In view of the fact that the incorporation papers of many pre-war corporations were lost during the last war, Congress passed Rep. Act No. 62, providing that all registered domestic corporations and registered partnerships or other forms of associations which lost their articles of incorporation and by-laws or articles of co-partnerships, either totally or partially, shall reconstruct the same or take steps towards such reconstruction within two years from the date of approval of this Act by following the procedure which the Securities and Exchange Commission may adopt by rules and regulations approved by the Secretary of Justice. Such corporations, associations and partnerships as shall fail to reconstruct such records within that period, or shall fail to exert reasonable efforts to complete the reconstruction required, pursuant to the aforesaid rules and regulations, shall lose all rights, powers and privileges afforded by their past registration.[37] It further provides that all domestic corporations and registered partnerships whose articles of incorporation and by-laws or articles of co-partnership have not been lost or destroyed shall furnish the Securities and Exchange Commission with certified copies of such records as it may require.[38] In the case of *Sergio del Castillo vs. SEC*, the Supreme Court had occasion to construe these provisions of Rep. Act No. 62. The two principal contentions of the petitioner in said case were: first, that Section 3, under which no time limit is prescribed for reconstitution, contemplates a situation where corporate records kept in the office of the corporation have not been lost or destroyed and not in a case where a copy of the articles of incorporation may be found in the possession or custody of another; second, that since the reconstituted records did not contain a copy of the by-laws, Section 2 was not complied with. The Court disposed of these contentions by holding that the purpose of Rep. Act No. 62 is to enable the corporation or other entities to reconstitute or reconstruct their corporate records, especially the articles of incorporation with a view to establishing their corporate existence for the protection of the public. This purpose would in a way be frustrated if Section 3 were to be construed strictly so as to limit its application to cases where the articles of incorporation and by-laws kept in the files of the entities concerned have not been lost or destroyed. The law embraces the situation wherein copies of the necessary corporate records are available regardless of the place where they may be found, as long as, and this is impor-

[36] Art. XIII, Sec. 1.
[37] Section 2, Rep. Act No. 62.
[38] Section 3, Rep. Act No. 62.

tant, that their authenticity is established to the satisfaction of the SEC. With respect to the second contention, the Supreme Court held that the law is merely permissive as to the records that may be reconstructed and reconstituted and does not prohibit the reconstitution of the articles of incorporation or the by-laws, whichever is available.

LEGAL ENTITY

On the creation of a corporation, the individuality of the corporators or members is merged in the corporate body and the corporation becomes in law a legal entity or artificial person entirely distinct from its members and its officers, and the property or rights acquired, or the liabilities incurred by it are regarded as its property, rights, and liabilities as such distinct legal entity.[39] It has been held that private corporations are "persons" within the scope of the guaranties provided for by the Constitution of the Philippines in so far as their properties are concerned.[40]

Corporate entity, however, may be disregarded where it is so organized and controlled and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit, or adjunct of another corporation.[41] Whether one corporation is a mere agency or instrumentality of another, or whether they are identical is a question of fact to be proved by competent evidence. This question of fact depends on many circumstances overcoming or failing to overcome the indicia of separate entities.[42] It is not enough that shareholders and officers or managers in the corporations are identical,[43] for common officers and management is not incompatible with separate entities, or conclusive of identity.[44]

In the case of *Jose Maglunob et al vs. National Abaca & Other Fibers Corporation*, the petitioners prayed for a writ to compel the respondent corporation to respect their rights to a parcel of land as landless war veterans under Rep. Act No. 65. The NAFCO answered that the land in question was owned by another corporation, the Furukawa Plantation Co., a corporation separate, apart and distinct from the respondent, but whose board of directors happened to be the same as that of the respondent. The trial court after hearing dismissed the case upon finding that the property belonged exclusively to the Furukawa Plantation as evidenced by a Transfer Certificate of Title issued in its favor.

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[39] 14 C. J., Sec. 5.
[40] *Smith Bell Co., Ltd. vs. Natividad*, 40 Phil. 136, 145.
[41] *Chicago, M. & St. P. R. Co. vs. Minneapolis Civic & Commerce Association*, 247 U.S. 490, 501.
[42] Fletcher, CYC of Corporations p. 154.
[43] *William Wrigley, Jr. Co. vs. L. P. Larson, Jr. Co.*, 5 F. (2d) 731.
[44] *F. P. McKay Co. vs Savery House Hotel Co.* 184 Iowa 260.

Power of Officers to Bind the Corporation

In the nature of things, a corporation, since it is impersonal, cannot act at all except through persons representing it — the stockholders as a body and at a corporate meeting, the board of directors and other officers and agents. A corporation therefore must have the power to appoint officers and agents and to authorize them to act for it; and it is a general principle that a corporation, subject to express restrictions, may authorize an officer or other agent to do in its behalf and name any act which is within the powers expressly or impliedly conferred upon it by its charter. And in determining whether a corporation is liable for the acts of persons as its agents, precisely the same principles apply as determine the liability of natural persons under similar circumstances.[45]

Under Section 28 of the Corporation Law, unless otherwise provided in said Act, the corporate powers of all corporations formed under said Act shall be exercised, all business conducted and all property of such corporation controlled and held by a board of not less than five nor more than eleven directors to be elected from among the holders of stock, or, where there is no stock, from the members of the corporation. It is therefore the general rule that the power to bind the corporation rests in its board of directors or trustees, but this power may either, expressly or impliedly, be delegated to other officials or agents of the corporation.[46]

In the recent case decided by the Supreme Court, *Heacock vs. National Labor Union*,[47] the plaintiff corporation was held liable for commitments to pay bonus to its employees provided sufficient profits were made, which commitments were made by its President and promised by its General Manager, and which appeared in the corporation's supplement in the *Manila Times* and *Manila Chronicle*, dated August 21, 1948. There having been no correction or denial from the Board of Directors, their silence was deemed as having ratified such commitments.

Corporate Liability to Its Employees for a Damage Caused by a Stranger

A novel question was presented to the Supreme Court in the case of *Domingo de la Cruz vs. Northern Theatrical Enterprises, Inc.*[48] The plaintiff herein was hired as a special guard in the entrance of the movie house owned by the defendant corporation. A gate crasher, on being refused admittance, attacked the plaintiff and upon being cornered, plaintiff shot his assailant to death. After being charged and

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[45] Fletcher, 2 CYC of Corporations, p. 239.
[46] *Yu Chuck vs. Kong Li Po*, 46 Phil. 608
[47] G.R. No. L-5577, July 31, 1954.
[48] G.R. No. L-7089, August 31, 1954.

acquitted of homicide, the plaintiff brought an action against his employer to recover his legal expenses occasioned by the improper filing of the suit by the heirs of the deceased gate crasher, as well as for moral damages. The Supreme Court agreed with the trial court that the relationship between the movie corporation was not that of principal and agent because the principle of representation was not in any way involved. Plaintiff was not employed to represent the defendant corporation in its dealings with third parties. He was a mere employee hired to perform a certain specific duty or task, that of acting as special guard and staying at the main entrance of the movie house to stop gate crashers and to maintain peace and order within the premises. The Court, after finding out lack of precedents governing the case continued:

> ". . . a case involving damages caused by a stranger or outsider while said employee was in the performance of his duties presents a novel question which under the present legislation we are neither able or prepared to decide in favor of the employee.
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> "It is to the interest of the employer to render legal assistance to its employees. But we are not prepared to say and to hold that the giving of said legal assistance to its employees is a legal obligation. While it might yet and possibly be regarded as a moral obligation, it does not at present count with sanction of man-made rules. . . . Since there is no legal obligation, there is no right to reimbursement."

DISSOLUTION

The term "dissolution" as applied to a corporation, signifies the extinguishment of its franchise to be a corporation and the termination of its corporate existence.[49] It is an accepted theory that what the law itself has granted, the law must take away. And so a corporation can come to an end and its life extinguished only by the act or with the consent of the sovereign power by which it was established.[50] Every corporation created under the Philippine Corporation Law may be dissolved in any of the ways provided in said law and as amended, the Rules of Court govern all judicial voluntary dissolutions. A corporation which has been legally dissolved is dead. It no longer enjoys an existence for any purpose. This, however, is changed by statutory provisions continuing the existence of the corporation for a certain period for the purpose of winding up its affairs. And a provision in an incorporation law, allowing corporations created under it a certain period for winding up its affairs enters into and is a part of the charter of every corporation organized under it.[51]

Section 77 of the Philippine Corporation Law expresly provides that every corporation whose charter expires by its own limitation or

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[49] 16 Fletcher, Sec. 7966, p. 655.
[50] 16 Fletcher, Sec. 7971, p. 659.
[51] *Ferguson vs. Miners' and Manufacturers' Bank*, 3 Sneed (Tenn.) 609.

is annulled by forfeiture or otherwise or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established. Included therefore in the powers which a dissolved corporation may exercise during the period given it for closing up its affairs is that of settling and adjusting debts and claims by and against it.[52]

The above provision of law was applied recently by the Supreme Court in the case of *Daguhoy Enterprises Inc. vs. Rita L. Ponce, wife of Domingo Ponce,* wherein the defendant executed two deeds of mortgage in favor of the plaintiff corporation to secure a loan of ₱6,190.00, but which deeds of mortgage, after presentation to the Register of Deeds were withdrawn due to certain defects and deficiencies. Instead of curing the defects and furnishing the necessary data, the defendants mortgaged the same parcel of land in favor of the RFC to secure another loan. Upon learning of this development, the plaintiff corporation brought an action against the defendants. The Court held that although the loan was payable within six years from June, 1950, under Art. 1198 of the new Civil Code, the debtor lost the benefit of the period by reason of her failure to give the security in form of the two deeds of mortgage and to register them, and so the obligation became pure and without any condition and consequently the loan became due and immediately demandable. With respect to the affirmative defense set up by the defendants that the plaintiff corporation had no legal capacity to sue for the reason that as a corporation it no longer was in existence because at a meeting previously held by the stockholders, a resolution was adopted dissolving the said corporation, the Supreme Court upheld the contention of the appellee that a mere resolution by the stockholders or by the Board of Directors of a corporation to dissolve the same does not effect the dissolution but that some other step, administrative or judicial, is necessary. Furthermore, under section 77 of the Corporation Law, a corporation dissolved will continue in existence as a judicial entity for a period of three years after the declaration of its dissolution, to wind up its affairs and protect its interests during the period of liquidation.

PUBLIC SERVICE LAW

Assets Requirements

The applicant for the operation of a public service must be financially capable of undertaking the proposed service and meeting the

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[52] *Saltmarsh vs. Planters' & Merchants' Bank,* 14 Ala. 668.

responsibilities incident to its operation.[53] And where it is further shown that other lines in which the applicant had been authorized to operate were subsequently abandoned by him, it cannot be said that the findings of the Public Service Commission as to insufficiency of assets is unfounded. The Supreme Court so held in the case of *Taruc v. Bachrach Motor Co., et al.*[54] Petitioner filed an application for authority to operate an auto bus service of 26 units over six lines with various specified terminals. Said application was opposed by the Bachrach Motor Co., Pangasinan Transportation Co., and the Red Line Transportation Company. In due course the application was granted *in toto* in a decision dated May 22, 1952. Within the 30 days period therein granted, however, petitioner was able to register only eleven out of 26 units and for this reason he sought an extension of time to register the remaining 15 units. The Commission in resolving the motion for reconsideration in effect denied petitioner's application for five of the six lines applied for, granted only one line and reduced the authorized equipment from 26 units to twelve.

It appears from the evidence that the cost of the 26 units applied for as testified by the applicant himself would be ₱192,400.00. The applicant's properties on the other hand are valued at ₱48,000.00 which added to his ₱7,000 in cash would only total ₱55,000.00.

It is obvious that the applicant's assets are grossly insufficient to permit the operation of the units applied for.

On the other hand, where an applicant for public utility has been granted five additional units and has in fact purchased already three trucks therefor and with a capital of ₱15,000.00, the Commission did not err in holding that the applicant is financially capable of maintaining and operating the proposed service. Such was the ruling of the court in *Pangasinan Transportation Co., Inc. v. de la Cruz*,[55] wherein the petitioner Pantranco was a TPU truck operator between Urdaneta, Pangasinan and Manila, Baguio and Dagupan. Desiring to expand its operation, petitioner applied for authority for additional units and lines. The question before the Court was whether the applicant was financially in a position to undertake the additional service applied for and whether there was still a need for such additional services. The applicant testified that besides his farm, he had an annual income of

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[53] *Manila Yellow Taxicab v. Austin Taxicab Co.*, 59 Phil. 771 (1934). The requisites before a certificate of public convenience may be granted are: 1) The applicant must be a citizen of the Philippines or of the United States or a corporation or co-partnership, associaton or joint-stock company constituted and organized under the laws of the Philippines 60% at least of the stock or paid-up capital of which belongs entirely to citizens of the Philippines or of the United States; 2) the applicant must be financially capable of undertaking the proposed service and meeting the responsibilities incident to its operation; and 3) the applicant must prove that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner.

[54] G.R. L-6260, May 26, 1954.

[55] G.R. No. L-6533, June 29, 1954.

₱5,000.00 from his business, and also had ₱10,000.00 invested in gasoline which he could easily convert into cash; that he had also purchased two second hand Chevrolet trucks and one new Chevrolet truck and had concluded an agreement for the acquisition of 10 more. These, the Court held, were enough to sustain the finding made by the Commission in favor of the applicant.

PUBLIC SERVICE COMMISSION: *Conclusiveness of Findings*

It has been held time and again in a long line of decisions[56] that the Supreme Court will not modify or set aside an appealed order of the Public Service Commission unless it clearly appears that there was no evidence before it to support reasonably such order, or that the same was without the jurisdiction of the Commission or contrary to law.[57]

And this rule was reiterated in the following cases: *Surigao Express Co v. Mortola*;[58] *Pangasinan Transportation Co. Inc., v. Tambot*;[59] *Angat-Manila Transportation Co., Inc. v. Vda. de Tengco*;[60] *Pangasinan Transportation Co. v. de la Cruz*;[61] *Red Line Transportation Co. v. Taruc*;[62] *Red Line Transportation Co. v. Jurado*,[63] wherein the court in essence stated: That where the Commission has reached a conclusion of fact after weighing the conflicting evidence, the conclusion must be respected, and this court will not interfere unless it clearly appears that there is no evidence to support the decision of the Commission.[64] And the court will not be justified in substituting its own judgment for that of the Commission just because the witnesses for the oppositors have testified that the service being rendered by this opposition and the other operators in that region is already adequate for the present needs.

Prior Operator's Rule

Before permitting a new company or new operator to invade the territory of another already established with a certificate of public convenience, thereby entering into competition with it, if this be for the benefit of the public, the prior operator must be given an opportunity to extend its service in order to meet the public needs in the matter of transportation.[65] However, when said prior operators fail to offer on any previous occasions to put up any additional unit, the rule does not ap-

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[56] Sec. 35, C.A. No. 146; *San Miguel Brewery v. Lapid*, 53 Phil. 542 (1921); *Manila Yellow Taxicab & Acro Taxicab Co. v. Danon*, 58 Phil. 75, as cited in *Joson v. Santos*, 45 O.G. 1740; *Batangas Transportation Co. v. Vera & Silva*, 40 O.G. 2 (1940); *Ice & Cold Storage v. Valero*, G.R. No. L-2458, Jan. 28, 1950.

[57] Sec. 35, C.A. Act No. 146.

[58] G.R. No. L-4816, March 23, 1954.

[59] G.R. No. L-6738, August 25, 1954.

[60] G.R. No. L-5906, May 26, 1954.

[61] G.R. No. L-6533, June 29, 1954.

[62] G.R. No. L-6179, November 29, 1954.

[63] G.R. No. L-6004, April 29, 1954.

[64] MORAN, RULES OF COURT, Vol. 1, 933-34 (1952 ed.).

[65] *Javier v. Orlanes*, 53 Phil. 468 (1929).

ply.[66] This rule was invoked in the case of *Angat-Manila Transportation Co., Inc. v. de Tengco*[67] for a certificate of public convenience to operate six passenger and freight buses between San Miguel, Bulacan and Manila. The application was opposed by Pampanga Bus Co., Manila Transportation Co. Inc., on the ground that their bus service passing through or near San Miguel is adequate to cope with the public need. The Supreme Court said:

> "Neither is there merit in petitioner's argument that the existing operators whose bus service touches the town of San Miguel should have been given priority in supplying any deficiency. The petitioner obviously had failed to offer on any previous occasion to put any additional units. At any rate, the San Miguel-Manila line may be deemed to be new and independent."

The opposing operator must also show that he has a better right to the service than the new operator so that the holder of a municipal franchise for electric light, heat and power who did not apply to the Public Service Commission for approval of such franchise has no better right than an applicant who has been authorized by the Public Service Commission to extend his service. This was the ruling in the case of *De Castro v. Ramos*.[68] This is an appeal by certiorari filed by petitioner de Castro against a decision of the Public Service Commission authorizing Ramos to extend his electric service in the poblacion of Digos, Davao, to the barrio of Miral of the same municipality. De Castro filed an opposition, alleging that he had been granted a municipal franchise for electric light, heat and power by the municipal council of Digos, Davao; that he already possessed the engine, posts, wires and equipment for the service and that he is financially able to maintain the service. As to petitioner's opposition, the Commission found that the supposed franchise granted petitioner is contained in a municipal resolution dated March 17, 1951, but the petitioner did not apply for its approval by the Commission because of his mistaken belief that it was not necessary. The Court held:

> "His neglect or delay, even if excusable may not be invoked to reverse the judgment of the Commission without a showing that he is entitled to a preference over the respondent either because his competitor has no means to render the service or because he is better qualified to render the service than said competitor. In other words before relief can be granted for his neglect or delay he must show a better right to the service than his opposition. These he failed to show."

A factor to consider in granting new franchise is the increase in operation in the areas governed by the proposed service without any increase in the units or facilities of transportation in the existing lines

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[66] *Yellow Taxicab v. Public Service Commission* G.R. No. L-2875.
[67] G.R. No. L-5906, May 26, 1954.
[68] G.R. No. L-5779, March 30, 1954.

according to the case of *Pangasinan Transportation Co., Inc. v. Tambot*,[69] this should warrant the operation of additional service by the applicant.

PROVISIONAL PERMIT

The Commission has the power to issue provisional permits *exparte* pending final determination of an application for a permit to operate additional service.[70] It has also been held that the Commission does not exceed its authority when it issues a provisional permit to meet an urgent public need in cases that cannot be decided at once.[71] This ruling has been reiterated in the case of *Transport Contractors Inc. v. Public Service Commission and Delgado Brothers Co., Inc.*[72]

Delgado Brothers Inc., a Philippine Corporated filed an application to the Public Service Commission for a certificate of public convenience to operate a TH freight truck within Angeles, Pampanga, and from there to all points in Luzon. The application was ordered published and set for hearing. Pending the hearing, however, at the instance of the applicant, the Public Service Commission issued a provisional permit to operate, subject however, to the outcome of the basic application as well as to cancellation, modification and revocation at any time. The herein petitioner asked for a reconsideration of said order granting a provisional permit and upon the denial of the motion filed the present petition for certiorari. Held: Where it appears that a permit was issued in response to an urgent public need after the Commission has made investigations to satisfy itself that such is really necessary, the Commission has acted with authority.

The Court said:

> "A denial of the provisional permit would have deprived the U.S. Air Force and the U.S. Government of a transportation service which was and is urgently needed and which at any rate, only the Delgado Brothers Inc., and not the petitioner could have rendered."

Authority to Authorize the taking of depositions.

Where witnesses reside in places distant from Manila and it would be inconvenient and expensive for them to appear personally before the Commission, the Commission may, by proper order, commission any attorney or chief of the division of the Commission, any clerk of the Courts of First Instance, a municipal judge, justice of the peace of the Philippines to take the deposition of witnesses in any case pending before the commission, including contested cases or cases involving the fixing of rates.[73]

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[69] G.R. No. L-6738, August 25, 1954.
[70] *Ablaza Transportation Co. v. Ocampo*, G.R. No. L-3563, March 29, 1951.
[71] *Javellana v. La Paz Ice Plant & Cold Storage Co.*, 64 Phil., 893 (1937); *Silva vs. Ocampo et al.*, G.R. No. L-5162, Jan. 31, 1952.
[72] G.R. No. L-7116, August 31, 1954.
[73] Sec. 32 Public Service Act C.A. No. 146 as amended.

The foregoing provision was applied in the case of *Surigao Express Co., Inc. v. Mortola,*[74] wherein the Justice of the Peace of Cabadbaran, Agusan was authorized by the Commission to receive the testimony of witnesses of the applicant and the oppositors in the form of depositions and rendered a decision granting the application basing it on the findings of the Justice of the Peace, that there was a great number of passengers and freight in the area applied for, thus requiring additional transportation facilities.

Under the provisions of Sec. 3 of the Public Service Act as amended by Rep. Act 178, the reception of evidence in all contested cases and in all cases involving the fixing of rates may be delegated only to one of the commissioners and to no one else who shall report to the commission in banc the evidence so received by him to enable it to render its decision.[75]

Fortunately the Legislature realized that strict adherence to such a ruling would obstruct the Commission in the prompt disposal of contested cases. Rep. Act 723 amended said section and deleted the aforesaid provision.

And where the Justice of the Peace took the depositions after the expiration of the authority conferred, the Commission may disregard the oppositor's objection that the authority has already expired. Such was the ruling in *Red Line Transportation Co., Inc. v. Jurado,*[76] where the Justice of the Peace of Camalaniugan was empowered to receive on such date or dates as he may designate, but not later than January 15, 1951 the testimony of applicant's witnesses. But the actual taking of deposition was fixed on January 22, 1951 due to postponement asked for by the oppositor. The court stated "It was a technical point, which the Commission could overlook and even cure by issuing an extended authority *nunc pro tunc.*"

Public Service Commission not bound by Technical Rules of Evidence:

While as a matter of ordinary procedure, evidence on matters not touched upon in the pleading should not be received; nevertheless such rule of procedure should not be strictly adhered to by the Commission,[77] for the law creating the Commission has invested it with ample powers

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[74] G.R. No. L-4816, March 23, 1954.

[75] In the cases of *Silva v. Cabrera,* G.R. No. L-5162, January 31, 1952; *Raymundo Transportation Co. Inc. v. Cervo,* G.R. No. L-3899, May 21, 1952, the Supreme Court held that, "under the provisions of Sec. 3 of the Public Service Act as amended by Rep. 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.

[76] G.R. No. L-6004, April 29, 1954.

[77] Sec 29 Public Service Act Com. Act No. 146 as amended.

to conduct its hearings and investigations without being trammelled by the ordinary rules of court.[78]

This doctrine was reiterated in the case of *Ruben Valero et., al. v. Follante,*[79] wherein the petition to operate an ice plant in the municipality of Candon, Ilocos Sur was granted. But on a motion for reconsideration and after a rehearing was held the Public Service Commission set aside its former decision and revoked the authority granted based on the additional evidence adduced to substantiate the facts alleged in the motion for reconsideration that the applicant did not have the financial capacity to operate the service. The Court held: Sec. 29 of the Public Service Act provides that "All hearings and investigations before the Commission and in the conduct thereof the Commission shall not be bound by the technical rules of legal evidence." The only thing required is that the parties be given proper notice and hearing in accordance with the rules[80] except in cases where the Commission can act without previous hearing.[81]

> "Where two commissioners of the Public Service Commission maintained that an applicant does not have the necessary financial capacity, to operate an ice plant although one of them believes that the procedure of taking additional evidence was unwarranted, nevertheless the decision to deny the application, must be affirmed."

PROTECTION INVESTMENT RULE:

It is one of the primary purposes of the Public Service Law to protect and conserve investments which have already been made for that purpose by public service operators. It is in pursuance of this policy that the *Prior Applicant's Rule*[82] and the *Prior Operator's Rule*[83] were evolved.

So much so that even if there has been a partial abandonment of the lines, the Commission would not order an immediate cancellation of its certificate of public convenience where it is clearly shown that such suspension of service was caused by circumstances beyond the operators control, and the public had not in any manner been inconvenienced or prejudiced thereby. Such was the ruling of the Court in the case of *Pangasinan Transportation Co. v. F. F. Halili*[84] wherein petitioner asked for the cancellation of the certificate of public convenience issued in favor of the respondent Halili on its Agno-Pangasinan Manila line, Bolinao-Manila line and Sta. Cruz-Manila line on the ground that there has

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[78] *Phil. Shipowner's Association v. Public Utility Commission,* 51 Phil. 957 (1926).

[79] G.R. No. L-6134, April 23, 1954.

[80] Sec. 16 Public Service Act Com. Act No. 146 as amended.

[81] Sec. 17 Public Service Act Com. Act No. 146 as amended.

[82] *Batangas Transportation Co. v. Orlanes,* 52 Phil. 455 (1928).

[83] *Javier v. Orlanes,* 52 Phil. 468 (1929).

[84] G.R. Nos. L-6075 & 6078 August 31, 1954.

been a failure to operate said line and an abandonment thereof. The court held:

> "Certificates of public convenience involve investment of a big amount of capital both in securing the certificate of public convenience and maintaining the operation of the line covered thereby and mere failure to operate temporarily should not be a ground for cancellation especially as when in the case at bar, the suspension of the service was directly caused by circumstances beyond the operator's control like the dearth of truck tires and spare parts and considering further that the public had not in any manner been inconvenienced or prejudiced thereby."

Ground for Cancellation of certificate of Public Convenience:

In the case of *Heras & Heras v. Santos*,[85] the Court held: "Where the decision in its approval of sale of a public utility expressly stated that the approval is "without prejudice to the cancellation of said line if it should be established that applicant vendee after the transfer of the line to her confines her operation to a portion of the line instead of operating the entire line", the remedy of the oppositors is not to prevent the approval of the sale, but to start proceedings for cancellation of the certificate sold if they can prove unauthorized abandonment of service on any portion of the line, as expressly reserved by the decision.

POWER TO SUSPEND OPERATION OF UTILITIES:

The Commission shall have the power without previous hearing, subject to established limitations and exceptions or save provisions to the contrary, to prohibit or prevent any public service as herein defined from operating without having first secured a certificate of public convenience.[86] This provision in the Public Service Act[87] refers to applicants who were already operating public utilities without having obtained any certificates of public convenience and it does not apply to those already possessed with the certificate of public convenience. In *Salvador v. La Paz Ice Plant & Cold Storage Co. Inc., etc.*[88] petitioners applied for certificates of public convenience to install and operate in the City of Iloilo their respective Ice Plants with their corresponding capacities. After a joint trial of the three applications the Public Service Commission promulgated a decision granting the applicants certificate of public convenience. But on March 24, 1952, the La Paz Ice Plant filed a motion based on Article 17-A of Commonwealth Act No. 146 praying for the suspension of the operations of the Ice plants of the applicants which was granted by the Court. The petitioners contend that the orders suspending the operation of their ice plants have been issued without justification.

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[85] G.R. No. L-6914, August 11, 1954.
[86] Sec. 17-A Commonwealth Act No. 146.
[87] Commonwealth Act No. 146.
[88] G.R. Nos. L-6241 & L-6231, February 26, 1954.

The Supreme Court held that where the Public Service Commission upon a simple motion ordered the immediate suspension of the operation of ice plants duly granted certificates of public convenience to operate and install the same, the summary suspension ordered without any proof of violations of the law, is illegal deprivation of the right acquired by the operators by virtue of their certificate of public convenience. And the Commission in so ordering such suspension committed grave abuse of discretion.*

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