SURVEY OF 1955 CASES IN COMMERCIAL LAW

JOSÉ C. CAMPOS, JR.*
MARIA C. LOPEZ-CAMPOS **

I. NEGOTIABLE INSTRUMENTS LAW.

A. LIABILITY OF A BANK PAYING A FORGED CHECK.

If the drawee bank pays a check where the signature of the drawer turns out to be a forgery, who shall bear the loss? In the celebrated case of *Price v. Neal*,[1] the drawee (bank) bears the loss if it pays a check with the signature of the drawer forged, unless the depositor whose signature is forged is himself guilty of negligence. The remedy of the bank is against the forger and not against the depositor nor against the holder in due course who received payment.[2] In the case of *Calinog v. Philippine National Bank*,[3] the bank paid the check without knowing that the signature of the drawer was forged and then charged the same to the account of the plaintiff. In holding that the bank had no right to charge the amount of the check against the depositor's account, the Court ruled that the bank was negligent in cashing the forged check; therefore, it should suffer the loss.[4]

B. LIABILITY OF ONE WHO IDENTIFIES PAYEE OF A CHECK.

In the same case *Calinog v. PNB*, supra, a certain Andres Aguilar signed his name on the back of the check "for identification of payee's signature and payment guaranteed." His signature appeared just after the indorsement in blank of a certain Damaso Romero. The question was whether Andres Aguilar in so signing the check warranted the genuineness of the check and guaranteed payment of the check. The Court held that in placing his signature to

---

* LL.B. (U.P.), LL.M. (Yale); Assistant Professor of Law, College of Law, University of the Philippines.
** LL.B. (U.P.), LL.M. (Yale); Assistant Professor of Law, College of Law, University of the Philippines.

[1] Court of King's Bench, 1762. 3 Burr. 1354.

[2] First National Bank of Portland v. United States National Bank of Portland, 197 Pac. 547 (1921).

[3] (C.A.) 51 O.G. 4104 (1955).

[4] The Court pointed out the following facts, among others, as indicative of the bank's negligence: The bookkeeper was not careful in detecting the dissimilarity in the signature appearing in the card of specimen of the bank and signature in the check. The paying teller, instead of paying the check to Romero, whose signature had been identified by Aguilar, paid it to Calinog (payee), whom he required to sign once more on the back of the check below the signature of Aguilar, thus making it appear that she was the last indorsee and holder of the check.

said certification he did not become an indorser of said check.[5] The certification clause could not be interpreted as meaning that Aguilar guaranteed the genuineness of the signature of the drawer because the latter was not the one cashing it. Anyone who assumes the responsibility of identifying the payee of a check is answerable to the bank cashing it if the bank pays its amount to such person.[6]

II. INSURANCE.

A. INTEREST OF MORTGAGOR ON INSURANCE TAKEN BY MORTGAGEE ON MORTGAGED PROPERTY.

If the mortgagee insures the mortgaged property in his own name and pays the premium, in case of loss, is the mortgagor entitled to the benefits under the policy? In the case of *Palileo v. Cosio*,[7] the Supreme Court distinguished a case when the mortgagor has interest on the policy and when he has none. If the mortgagee insured both his interest and that of the mortgagor, then the insurance proceeds will inure both to the benefit of the mortgagee and the mortgagor. In such a case, the limit of recovery by the mortgagee who insured the property is the extent of his credit at the time of the loss. Any excess inures to the benefit of the mortgagor.[8] But where the "mortgagee insures his interest on the property independently of the mortgagor, upon destruction of the property the insurance money paid the mortgagee will not inure to the benefit of the mortgagor," but will inure to the exclusive benefit of the mortgagee. In such a case, "the mortgagee is not allowed to retain his claim against the mortgagor, but is transmitted by subrogation to the insurer to the extent of the money paid."[9] Although there is a rule to the contrary,[10] the weight of authority is that "the insurer

---

[5] Technically, a party who signs on the back of the instrument a guarantee of payment is not an indorser within the meaning of Sections 17(f) and 63, N.I.L., because he clearly indicates by appropriate words his intention to be bound in some other capacity.

[6] The Court further held that Aguilar in so signing certified as to the genuineness of the signature of Romeo only and that if payment is made to him, payment is made to the correct party.

[7] G.R. No. L-7667, Nov. 28, 1955.

[8] See San Miguel Brewery v. La Union, 40 Phil. 674 (1920).

[9] Quoting from VANCE, INSURANCE 772-73 (3rd ed.).

[10] The contrary view holds that "if a mortgagee procures insurance on his separate interest at his own expense and for his own benefit, without any agreement with the mortgagor with respect thereto, the mortgagor has no interest in the policy and is not entitled to have the insurance proceeds applied in reduction of the mortgage debt; furthermore, the mortgagee has still a right to recover his whole debt from the mortgagor." 3 L.R.A. (NS) 79.

is thereupon subrogated to the rights of the mortgagee under the mortgage." The mortgagor-debtor, however, is not entitled to apply the insurance proceeds in the reduction of the mortgage debt, and the debt still subsists.

B. CONCEALMENT OF A MATERIAL FACT.

In the case of *The Philippine American Life Insurance Co. v. Silverio*,[11] the Court of Appeals once more reiterated the rule that concealment of a material fact will entitle the injured party to rescind a contract of insurance.[12] In the instant case, the policy provided for (1) a good health clause, and (2) the incorporation of the statements and answers in the application as part of the policy. About two months after the policy had been issued, the insured died. Evidence showed that the insured was suffering from "pulmonary tuberculosis minimal" at the time he applied for insurance, and yet he gave negative answers to questions about his state of health in the application blank and by the medical examiner. These facts concealed by the insured concerning his state of health and his previous confinement in a hospital were material in the appraisal of his application for insurance to such an extent that had such facts been disclosed, his application would have been disapproved.[13]

In the case of *Lucia Ungco Vda. de Enriquez v. West Coast Life Insurance Co.*,[14] the Supreme Court held similarly that the omission of the insured to disclose the fact that he was suffering from pulmonary tuberculosis at the time of taking policy is such concealment that will avoid the policy. The Court went further in extending the principle of misrepresentation with respect to facts concerning the insured's kin. A statement made by the insured as to the cause of death of his parents are material and forms part of the consideration for the contract. If the representation is false, it will entitle

---

[11] (C.A.) 51 O.G. 6252 (1955).

[12] See §§ 25 and 26, Act No. 2427 (Insurance Act).

[13] In the case of Argente v. West Coast Life Ins. Co., 51 Phil. 724 (1928), our Supreme Court analyzed the reason for the rule, thus: "The basis of the rule vitiating the contract in cases of concealment is that it misleads or deceives the insurer into accepting the risk, or accepting it at the rate of premium agreed upon. The insurer, relying upon the belief that the assured will disclose every material fact within his actual or presumed knowledge, is mislead into a belief that the circumstance withheld does not exist, and he is thereby unduced to estimate the risk upon a false basis that it does not exist. The principal question, therefore, must be, was the insurer misled or deceived into entering a contract or in fixing the premium of insurance by withholding of material information or facts within the insured's knowledge or presumed knowledge?"

[14] 51 O.G. 3458 (1955).

the injured party to rescind.[15] In the same case, the incontestable clause was held not applicable because the policy had been in force for less than a year.

C. VALUE OF PROPERTY INSURED.

What would be the extent of recovery by the insured in case of loss of personal property where the policy fixes the value of the property insured? In the case of *Suter v. Union Surety and Insurance Co., Inc.*,[16] our Supreme Court held that the insurance company shall be liable for the value as fixed in the policy, where the insured is not guilty of over-valuing the property and on the basis of which the premiums were fixed and paid.[17] The issue was: How should the value of the thing insured be determined, at the time of acquisition or at the time it is insured? The same Court held that the value of the property insured is the value at the time it was insured, not the value at the time it was acquired.[18] In determining the value at the time it was insured, the ordinary test is the price it will command in the market if offered for sale.[19] As long as the insured dealt fairly and honestly with the insurer in fixing the value and the insured has observed good faith in forming his estimate of the value, the amount fixed in the policy shall be conclusive as to the insurer. The Court in deciding the case did not make any distinction as to whether the policy in question is a valued policy or an open policy. If it were a valued policy and the valuation stated therein had been determined by agreement, then the value as thus fixed therein shall control the amount of recovery, in the absence of fraud.[20] If it were an open policy, then the extent of recovery in case of total loss will be the actual loss suffered, which shall be ascertained by a committee of appraisers.[21]

---

[15] In this case, the insured stated in answers to questions regarding the cause of death of his parents that they died of "typhus" and "labor" when in fact they both died of tuberculosis. This is material because if disclosed it would certainly influence the insurer in accepting the risk or in estimating the premium. See § 30, Insurance Act.

[16] 51 O.G. 1905 (1955).

[17] In this case, the plaintiff insured two Rockola Juke-Box for ₱4,000 each covered by two separate policies. The premiums were fixed on that basis and were paid. The insured articles were burned in a fire of accidental origin. The insurer claimed that the juke boxes cost only $387 each and limited its liability to that. The insured claimed that the original cost was $387 but that did not include foreign exchange tax, freight insurance, shipping costs, and incidental expenses. Plaintiff claimed that it sold juke box for ₱4,000 each to make a profit out of it.

[18] Harding Commercial Union Ass. Co., 38 Phil. 474 (1918).

[19] *Ibid.*

[20] §§ 149 and 163, Insurance Act.

[21] See §§ 17 and 58, *id.*

Another question raised by the defendant is whether the plaintiff, as a managing partner in the firm of Morcoin Co., Ltd., has an insurable interest in the juke boxes. The test of insurable interest, according to the Court, is whether the insured has such a right, title, or interest therein, or relation thereto, that he will be benefited by its preservation and continued existence or suffer a direct pecuniary loss from its destruction or injury by the peril insured against.[22] Plaintiff, being a partner in the business, has such insurable interest.

D. INCONTESTABLE CLAUSE RUNS ANEW UNDER A REINSTATED POLICY.

If a lapsed policy is reinstated, may the insurer rescind the contract of insurance on the ground of concealment or misrepresentation of a material fact? In the case of *Vda. de Collado, et al. v. The Insular Life Assurance Co., Ltd.*,[23] the insured paid several quarterly installments of the premiums on a life policy beyond the thirty-day period of grace.[24] The insurance company received the premiums without any notice to the insured that the policy had lapsed except the premium due the last quarter of 1951, i.e., due on October 1, 1951, which the company accepted after notice to the insured that his policy having lapsed he could apply for reinstatement. Accordingly, the insured applied for reinstatement of his policy and submitted a health statement as required by the company. The application for reinstatement contained the usual good health clause. Three months after the policy had been reinstated, the insured died and the insurer refused the claim of the beneficiaries on the ground that concealment of a material fact by the insured in the application for reinstatement avoided the policy. The beneficiaries claimed that the policy having been in force for more than two years,[25] the defense of concealment was barred by the incontestable clause.

The Court held that the rule of incontestability of a policy finds no application in the instant case because the period of two years should be counted not from the date of issuance of the policy but from the date of reinstatement. The reinstated policy should be viewed as a new contract, and the period of contestability for fraud, concealment, misrepresentation or breach of warranty in the appli-

---

[22] 32 C.J. 111.

[23] (C.A.) 51 O.G. 6269 (1955).

[24] For instance, that due on April 1, 1950 was paid on May 6, 1950; that due on Oct. 1, 1950 was paid on Nov. 6, 1950; that due on Jan. 1, 1951 was paid on Feb. 6, 1951; that due on April 1 ,1951 was paid on May 2, 1951; that due on June 1, 1951 was paid on July 31, 1951; and that due on Oct. 1, 1951 was paid on Nov. 28, 1951.

[25] The policy was issued on Jan. 1, 1949.

cation for reinstatement runs from the time of reinstatement.[26] On the claim that under section 47 of the Insurance Act [27] the insurer is barred from rescinding after the plaintiffs have commenced an action in court, the same Court held that the insurer has served notice of rescission and cancellation of the policy on the plaintiffs prior to the institution of the present action. This notice operates as a valid exercise of the right to rescind.

E. ACCEPTANCE BY THE INSURER OF OVERDUE PREMIUMS.

If the insurer receives overdue premiums tendered by the insured, does it waive its right to cancel the policy in case of default in payment of future premiums? In the same *Collado* case,[28] the Court held that mere acceptance by the insurer of overdue premiums does not constitute waiver of its right to rescind the contract of insurance for default in payment of future premiums.[29] The case would be different had the insured died at any time after the payment of overdue premiums but previous to the reinstatement of the policy for the appellee (insurer), by the acceptance of such overdue premiums, is deemed to have waived its right to rescind the policy.[30]

F. PAYMENT OF INDEMNITY.

If a life policy, which matures during the Japanese occupation by the death of the insured, becomes payable after the liberation, is the indemnity due the beneficiaries payable in Philippine currency or should it be adjusted under the Ballantyne scale of values? In the case of *Londres v. National Life Insurance Co.*,[31] the Court held that the claim should be paid in accordance with the present legal tender or Philippine currency because the policy became payable after the

---

[26] Citing 45 C.J.S. 765.

[27] § 47(a): "Whenever the right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right must be exercised previous to the commencement of an action on the contract."

[28] See note 23 *supra*.

[29] "Anent the appellant's claim that the appellee had waived the right to rescind the policy in view of the latter's repeated acceptance of overdue premiums for the second and third years, we held that such conduct evinced by the appellee does not necessarily deprive it of the right to cancel the policy in case of default incurred by the insured in the payment of future premiums."

[30] What the Court meant is: If the insurer received the overdue premiums without requiring the insured to apply for reinstatement of his lapsed policy, the acceptance of the overdue premiums would constitute waiver of its right to cancel the policy, especially when the insured is already dead. The acceptance by the insurer without reservation continues the original policy and puts it in force.

[31] G.R. No. L-5921, March 29, 1954.

liberation. At that time the legal tender was already the present currency.[82]

G. CONTRACTUAL LIMITATION OF ACTION IN INSURANCE POLICY.

Section 61-A of the Insurance Act provides that "Any condition, stipulation or agreement in a policy of insurance, limiting the time for commencing an action thereunder to a period less than one year from the time the cause of action accrues, is void." In the case of *Eagle Star Insurance Co., Ltd., et al. v. Chia Yu*,[83] one of the primary issues raised was: When does the cause of action accrue? The Court held that the plaintiff's cause of action in an insurance contract does not accrue until his claim is finally rejected by the insurance company. The reason for this rule is that, before the final rejection by the insurer, there is no real necessity for bringing suit.[84]

The Court also held the stipulation in the policy limiting the bringing of a suit or action for the recovery of any claim within twelve months next after the happening of the loss as invalid, because if given effect, it "would reduce the period allowed the insured for bringing his action to less than one year." [85]

III. CORPORATION LAW.

A. DONATION BY A CORPORATION TO HEIRS OF FORMER EXECUTIVE.

A business corporation is regarded as being carried on primarily for the profit of its shareholders. The discretion of the directors does not, in general, extend to humanitarian purposes or to purely philanthropic donations for the benefit of society at the expense of shareholders.[86] There are circumstances, however, under

---

[82] The Court applied § 91-A of the Insurance Act to the effect that in case of maturity by death of the insured, the proceeds are payable within sixty days after the presentation of the claim and the filing of proof of death. From the point of view of the insurance company, the proceeds of the policy become payable only after the expiration of this period and only when the beneficiaries have furnished proof of death. The beneficiaries presented her claim and furnished proof of death on May 16, 1949.

[83] 51 O.G. 1855 (1955).

[84] In the present case, the policy provides that "the insured should file his claim first, with the carrier and then with the insurer. He had a right to wait for his claim to be finally decided before going to court. The law does not encourage unnecessary litigation."

[85] The clause in the policy provides: "No suit or action on this policy, for the recovery of any claim shall be sustainable in any Court of law or equity unless the insured shall have fully complied with all the terms and conditions of this policy, nor unless commenced within twelve (12) months next after the happening of the loss." It is obvious that compliance with this condition precedent will necessarily consume time and thus shorten the period for bringing the suit to less than one year if the period is to begin, as stated in the policy, from "the happening of the loss."

[86] See Dodge v. Ford Motor Co., 170 N.W. 668 (1919).

which a donation by a corporation may be to its benefit as a means of increasing its business, promoting patronage or performing a duty of caring for its employees.[37] In the case of *Carla, et al. v. The De la Rama Steamship Co.*,[38] a donation given by the corporation to the minor children of its late president because he "was to a large extent responsible for the rapid and very successful development and expansion of the activities of the company" was a valid corporate act. The donation was within the broad powers of the corporation to carry out the purposes for which it was organized, namely, "to aid in any other manner any person in the affairs and prosperity of whom it (corporation) has a lawful interest." [39]

B. RATIFICATION OF ULTRA VIRES ACT BY STOCKHOLDERS.

In the same abovementioned *Carla* case,[40] the Court sustained the donation as a valid corporate act on another ground; that, granting *arguendo* that the donation was not within the purview of the purpose clause,[41] it became a valid act of the corporation when it was ratified by all the stockholders. Query: Can an "ultra vires" act be ratified by the stockholders? To answer this, a distinction should be made between corporate acts or contracts which are illegal and which are merely "ultra vires." The former contemplates the doing of an act which is contrary to law, morals, or public order, or contravenes some rules of public policy, or public duty, and is therefore void. It cannot serve as a basis of a court action, nor acquire validity by performance, ratification or estoppel. On the other hand, "ultra vires" acts are those which are not illegal and void *ab initio*, but are merely outside of or beyond the scope of the articles of incorporation. Such acts are merely voidable and may became valid and binding when ratified by the stockholders. But such ratification shall not prejudice creditors' rights nor preclude a proper attack by the State because of such ultra vires act. The weight of authority, therefore, holds that "acts merely ultra vires, but not illegal, may be ratified by the stockholders of the corporation.[42]

---

[37] Hutton v. West Cork Ry. Co., 23 Ch. Div. 654; Corning Glass Works v. Lucas, 37 F. 2d 798 (1929); People v. S. W. Straus & Co., Inc., 285 N.Y.S. 648 (1936).

[38] 51 O.G. 755 (1955).

[39] Paragraph (j) of the purpose clause provides, among others: ". . . to aid in any other manner any person, association, or corporation of which any obligation or in which any interest is held by this corporation or in the affairs or prosperity of which this corporation has a lawful interest. . . ."

[40] See note 38 *supra*.

[41] Therefore, ultra vires because beyond the scope of the corporate powers.

[42] The Court cited the case of Brooklyn Heights R. Co. v. Brooklyn City R. Co., 135 N.Y.S. 990, 1001 (1912), where the Court stated:

C. RIGHT OF FOREIGN CORPORATION TO SUE IN LOCAL COURTS.

A foreign corporation doing business in the Philippines may not by itself or assignee sue in our courts to enforce any debt, claim or demand, unless it shall have a license.[43] However, if a foreign corporation does an isolated business transaction in the Philippines without actually transacting business here, it may maintain a suit in our courts without a license.[44]

If a foreign corporation enters into a contract with a Philippine corporation in a foreign country for delivery of goods c.i.f. at a foreign port, is the foreign corporation transacting business in the Philippines? In the case of *Pacific Vegetable Oil Corp. v. Singzon*,[45] our Supreme Court held that the foreign corporation has not transacted business in the Philippines and may, therefore, sue in Philippine courts without need of a license, because the contract was entered into and consummated at San Francisco, a foreign port.[46] Under the terms of the contract, the vendor (domestic corporation) agreed to deliver the goods c.i.f. at San Francisco. A specification

---

"Strictly speaking, an act of a corporation outside of its charter powers is just as such ultra vires where all the shockholders consent thereto as in a case where none of the stockholders expressly or impliedly consent, and it is generally held that an ultra vires act cannot be ratified so as to make it valid, even though all the stockholders consent thereto; but inasmuch as the stockholders in reality constitute the corporation, it should, it would seem, be estopped to allege ultra vires and it is generally so held where there are no creditor or the creditors are not injured thereby, and where the rights of the State or the public are not involved, unless the act is not only ultra vires but in addition illegal and void. Of course, such consent of all the stockholders cannot adversely affect creditors of the corporation nor preclude a proper attack by the State because of such ultra vires act." 7 FLETCHER, CORPORATION § 3432, at 585 (1931).

The doctrine that an Ultra vires act may be ratified by the consent of all the stockholders provided that no creditors are thereby prejudiced should not be construed to mean that the stockholders may extend the corporate powers beyond that authorized by the state by mere unanimous consent. The act, if ratified, maybe a basis of a right as between stockholders but will not preclude a proper attack by the State.

[43] § 69, Act No. 1459, as amended (The Corporation Law).

[44] Marshall-Wells v. Elser & Co., 46 Phil. 71 (1924). "Transacting business," as applied to corporations, implies a continuity of commercial dealings and arrangements, and contemplates to that extent, the performance of acts or works or the exercise of some functions normally incident to and in progressive execution of, the purpose and object of its organization. See Mentholatum Co. v. Mangaliman, 72 Phil. 524 (1941). But the taking of a single or an isolated order for business in the Philippines is not "transacting business" as that term is understood in corporation law.

[45] G.R. No. L-7917, April 29, 1955.

[46] The Court stated that the goods were sold at San Francisco, California, and delivery by the Philippine corporation was to be made at such foreign port. The transaction was therefore entered into at a foreign port and performance was made at such foreign port.

in a contract relative to the payment of freight[47] by the vendor indicates that it is the duty of the vendor to have the goods transported to their destination and that title to the goods does not pass until the goods reach their destination.[48]

D. NATIONALITY OF A CORPORATION; CONTROL TEST.

Under our Corporation Law, corporations are classified into either domestic or foreign.[49] A domestic corporation is one formed, organized or existing under Philippine Law while any other corporation is a foreign corporation.[50]After World War II, our Supreme Court departed from this statutory classification and applied the control test in order to determine the nationality of corporations organized under Philippine Law.[51] Even if the corporation is organized under Philippine Law, if majority of its stockholders are foreigners it is a foreign corporation. The control test must, however, be construed to apply only to cases involving property rights of alien enemies in time of war and is not intended to disturb the underlying theory of the corporation law, that, a corporation has a personality distinct from those of its shareholders. In the case of *Register of Deeds of Rizal v. Ung Sui Si Temple*,[52] the Supreme Court further applied the control test to a non-stock religious corporation composed of Chinese citizens seeking to register a parcel of land in the name of the corporation. In denying registration, the Court held that "the purpose of the sixty per centum requirement under the Constitution is obviously to insure that corporations or association allowed to acquire agricultural land or to exploit natural resources shall be controlled by Filipinos; and the spirit of the Constitution demands that in the absence of capital stock the controlling membership should be composed of Filipino citizens." With the ruling in this case, the control test has now been extended to cases involving the application of nationalization laws.

E. QUASI-NEGOTIABLE CHARACTER OF CERTIFICATE OF STOCK; RIGHTS OF AN INNOCENT PURCHASER FOR VALUE.

Shares of stock of a corporation are transferable by delivery of the certificate of stock indorsed by the owner or his attorney in

---

[47] C.I.F. mean cost, insurance and freight by the vendor.

[48] See WILLISTON, SALES 406-08; Behn, Meyer & Co .v. Yangco, 38 Phil. 605 (1918).

[49] § 68, Corporation Law.

[50] The classification is based on the place of incorporation.

[51] See Filipinas Compania de Seguros v. Christian Huenefeld and Company, Inc., G.R. No. L-2294, May 25, 1951, and Davis Winship v. Philippine Trust Company, G.R. No. L-3869, Jan. 31, 1952.

[52] G.R. No. L-6776, May 21, 1955.

fact or other person legally authorized to make the transfer.[53] The certificate is not the stock itself but is evidence of the holder's ownership of the stock and of his rights as a stockholder to the extent specified therein.[54] A transfer of the certificate will entail a transfer of all rights in the share of stock. Certificates of stock are not negotiable instruments; [55] neither are they documents of title.[56] Strictly speaking, certificates of stock may be included in what is known as "securities." [57] While it is well settled that certificates of stock are not negotiable instruments, yet if certificates are indorsed in blank, they possess a quasi-negotiable character so closely allied to negotiable paper that the law sanctions their passing from hand to hand by delivery, free from antecedent equities.[58] The rule, however, did not extend so far as to hold that the true owner could be divested of his title if a certificate indorsed in blank were stolen or lost and sold by the thief or finder to a bona fide purchaser.[59] If the owner of the certificates of stock is negligent or has clothed the wrongdoer with customary evidence of title, the owner may be estopped to assert his title against the bona fide purchaser.[60] This estoppel creates a kind of quasi-negotiability of share certificates. In the case of *De Los Santos, et al. v. McGrath. Attorney-General of the United States,*[61] the Court upheld the right of the registered owner on the ground that no title is acquired by the innocent purchaser for value where the certificates indorsed in blank have been stolen from him. Where the certificates indorsed in blank were lost or stolen from the registered owner and is sold to a bona fide purchaser for value, the rights of the true owner shall prevail unless he has been guilty of negligence.[62] In the present case, there was no proof that the registered owner was negligent.

---

[53] § 35, Corporation Law.

[54] I COOK, CORPORATIONS § 13; Richardson v. Shaw, 209 U.S. 365 (1908).

[55] See § 1, Negotiable Instruments Law. A certificate of stock is not an unconditional promise or order to pay a sum of money; it evidences no debt but is merely an instrument of title. Nelson v. Owen, 21 So. 75 (1896); Baker v. Davie, 97 N.E. 1094 (1912).

[56] See Art. 1636, Civil Code.

[57] Sec. 2, Securities Act.

[58] Austin v. Hayden, 171 Mich. 38, Ann. Cas. 1915B, 894.

[59] Hudson Trust Co. v. American Linseed Co., 134 N.E. 178 (1922); Bangor Electric Light and Power Co. v. Robinson, 52 F. 520. See 31 YALE L.J. 773 (1921).

[60] National Safe Deposit Savings and Trust Co. v. Hibbs, 229 U.S. 391 (1913).

[61] G.R. No. L-4848, Feb. 28, 1955.

[62] In the previous case of Santamaria v. Hongkong and Shanghai Banking Corporation, G.R. No. L-2608, Aug. 31, 1954, the same Court held that "when the owner of shares of stock indorses the certificates in blank and delivers them to a broker, she clothes said broker with apparent title to the shares, including apparent authority to negotiate them." In failing to take the necessary precautions she was negligent and

IV. ADMIRALTY.

A. COST OF SALVAGE OPERATION ON VESSEL STRANDED ACCIDENTALLY IS NOT A GENERAL AVERAGE.

In maritime law, an average may consist of all extraordinary or accidental expenses, or all damages or deteriorations which may be incurred by the vessel or the cargo during the voyage.[63] It is classified into simple or particular average, or general or gross average.[64] As a general rule, a simple or particular average includes expenses and damages to the vessel or cargo which have not inured to the common benefit of all persons having interest in the vessel and cargo while a general average includes expenses and damages intentionally incurred to avoid a common peril.[65] One marked difference between a simple and a general average is that, in the former, the owner of the goods which gave rise to the expense or damage shall bear the simple average, while in the latter, all persons having interest in the vessel and cargo at the time of the general average shall contribute.[66] Where a vessel is accidentally stranded due to the shifting of the sandbars, are expenses incurred in floating said vessel a general average that must be shared by the cargo owners? In the case of *A. Magsaysay, Inc. v. Agan*,[67] the Supreme Court held that such expenses are not general average because they were not incurred to float a vessel intentionally stranded to save it. The stranding was accidental and there was no danger common to the vessel and cargo. The expenses were only for the sole benefit of the vessel. It is therefore a simple everage.

B. AGENT OF SHIPOWNER NOT LIABLE FOR DEMURRAGE.

Demurrage is defined as an amount stipulated in the contract of charter party to be paid to the shipowner by the charterer or the shipper for any delay in the sailing of the ship.[68] If the delay in the sailing of the vessel is caused by an act of an agent of the shipowner, is such agent liable to pay the demurrage? In the case of *Plumelet v. Morales Shipping Co., Inc.*,[69] the Court held that demurrage is not chargeable by law to an agent of the shipowner. The Code of Commerce speaks of demurrage as a liability to be paid

---

had to suffer the loss as against a purchaser for value who took it in good faith from the broker.

[63] Art. 806, Code of Commerce.
[64] Art. 808, *id.*
[65] Arts. 809 and 811, *id.*
[66] Arts. 810 and 812, *id.*
[67] G.R. No. L-6393, Jan. 31, 1955.
[68] Art. 652, Code of Commerce.
[69] G.R. No. L-7767, Oct. 26, 1955.

by the charterer or shipper in case of delay in the sailing of the vessel due to their fault.[70]

V. CARRIAGE OF GOODS BY SEA ACT.

A. CONSIGNEE MUST BRING ACTION AGAINST THE CARRIER WITHIN ONE YEAR FROM DELIVERY OF THE GOODS.

Where goods are transported by a carrier from the United States to the Philippines, within what time may the consignee sue the carrier for loss or damage to the goods or for failure to deliver the goods? In the case of *Eagle Star Insurance Co. Ltd., et al. v. Chia Yu*,[71] the Supreme Court upheld the validity of a stipulation in a bill of lading limiting the liability of the carrier for damage or loss to goods to one year from the date the goods have been delivered.[72] The stipulation is but a repetition of a provision contained in section 3, pragraph 6 of the United States Carriage of Goods by Sea Act of 1936 which was adopted and made applicable to the Philippines by Commonwealth Act No. 65 and by express agreement incorporated by reference in the bill of lading.[73]

B. CONTRACTOR AND OPERATOR OF ARRASTRE SERVICE IS NOT A CARRIER.

In the case of *Insurance Company of North America v. Philippine Ports Terminal*,[74] the plaintiff sought to apply the Carriage of Goods by Sea Act[75] to the defendant, Philippine Ports Terminal. The issue was: whether the defendant, as operator and contractor of arrastre service, is a "carrier" within the meaning of the Act? The Court held that the defendant is not a carrier because a "carrier"

---

[70] Arts. 656, 689 and 691, Code of Commerce.

[71] 51 O.G. 1855 (1955).

[72] The stipulations 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 from delivery of the goods or the date when the goods should have been delivered."

[73] See Chua Kuy v. Everett Steamship Corporation, G.R. No. L-5554, May 27, 1953, and E. E. Esler, Inc., et al. v. Court of Appeals, et al., G.R. No. L-6517, Nov. 29, 1954. § 3, par. 6 of the Carriage of Goods by Sea Act provides, among others:

"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 the suit within one year after the delivery of the goods or the date when the goods should have been delivered."

[74] G.R. No. L-6420, July 18, 1955.

[75] Public Act No. 521 of the 74th U.S. Congress made applicable to the Philippines by Com. Act No. 65.

is defined by the Act as the owner or the charterer who enters into a contract of carriage for a shipper.[76]

VI. Law on Trademarks and Tradenames.

A. Unfair competition; use of similar labels or containers.

Unfair competition consists generally in passing or attempting to pass off upon the public goods or business of one person as and for the goods or business of another.[77] It is a question of fact and involves an inquiry as to whether, as a matter of fact, the name or mark used by the defendant has previously come to indicate or designate the plaintiff's goods.[78] Where a person deals or sells goods having the general appearance of the goods of another, or sells goods wrapped in containers with labels having a strong semblance to that of another, is he guilty of unfair competition? In the case of *Alexander and Co., Ltd. and Kerr and Co., Ltd. v. Sy Bok*,[79] the Court ruled that "where the defendant's labels and boxes have the general appearance of the plaintiff's and are likely to induce ordinary purchasers to buy them as the goods of the plaintiff, there is unfair competition." That the goods are called by some other name is not important because unfair competition is not confined to the adoption of same or similar names. If the things which go to make up the general outside appearance of the article are so substantially similar as to "likely deceive the ordinary purchaser, exercising ordinary care," the defendant is guilty of unfair competition.[80] The Court further held that when section 29 of Republic Act No. 166 speaks of "purchasers" it generally refers to ordinary average purchaser because it is not necessary that the resemblance be sufficient to deceive experts, dealers or other persons familiar with the goods involved.[81]

B. Generic or descriptive term may not be used as an exclusive tradename.

May a descriptive or generic term be registered as an exclusive trade name of a registrant or may a registrant acquire an exclusive right to use or appropriate a descriptive or generic term as a tradename? In the case of *Ong Ai Gui v. Director of Philippine Patents*

---

[76] § 1, par. a, sub-par. d, Carriage of Goods by Sea Act.

[77] Alhambra Cigar and Cigarette Mfg. Co. v. Mojica, 27 Phil. 265 (1914).

[78] *Ibid.*

[79] 51 O.G. 2890 (1955).

[80] Rueda Hermanos v. Felix Paglinawan and Co., 33 Phil. 196 (1916).

[81] The Court reiterated the principle laid down in the case of Alhambra Cigar and Cigarette Mfg. Co. v. Mojica, *supra* note 77, and E. Spinner and Co. v. Neuss Hesslein, 54 Phil. 224 (1930).

Office,[82] the petitioner applied for the registration of the word "nylon" as a tradename.[83] The Court held that although a combination of words including some generic or descriptive term may be registered, the use of such generic term or descriptive term is conditional, subject to the limitation that the registrant does not acquire the exclusive right to the term or word.

VII. INSOLVENCY LAW.

A. UNPAID CHARGES FOR USE OF GOVERNMENT AIRPORT AS PREFERRED CLAIM.

In the case of *In re Matter of Involuntary Insolvency of the Commercial Air Lines, Inc. Velayo v. Republic*,[84] The question was whether the unpaid charges for use of government airport and navigation facilities were entitled to preference in the distribution of the assets of the insolvent debtor? The Court held that the claim for unpaid charges for use of government airports and navigation facilities, being civil fruits belonging to the government, and not to the agencies set up to administer or manage them, enjoys preference under section 50, paragraph (e) of the Insolvency Law as a debt due the National Government. The fact that the payment of charges may be made payable to instrumentalities of the National Government and not directly to it does not divest it of the preference it enjoys.[85]

VIII. COMMON CARRIERS.

A. OSTENSIBLE OPERATOR UNDER THE "KABIT SYSTEM" IS PRIMARILY LIABLE FOR INJURIES TO OR DEATH OF PASSENGERS.

One of the most pernicious attempts of motor vehicle operators to circumvent the law on common carriers is the practice known as

---

[82] 51 O.G. No. 4, 1943 (1955).

[83] Opposition was filed by the firm of E. I. Dupont De Nemours and Company, an industrial firm in the United States, on the ground that the word "nylon" was a name coined by them as a generic name of a synthetic fabric material and being descriptive is not distinctive of the applicant's goods.

[84] G.R. No. L-7915, July 30, 1955.

[85] § 50(e) of the Insolvency Law provides: "The following are the preferred claims which shall be paid in the order named:

". . .

"(e) Debts, taxes and assessments due the Insular Government."

The order of preference in this section must be considered repealed and superseded by Art. 2244 of the new Civil Code in the light of the provisions of Art. 2237 which provides: "Insolvency shall be governed by special laws insofar as they are not inconsistent with this Code." Under Art. 2244 (9), "Taxes and assessments due to the National Government, other than those mentioned in articles 2241, No. 1, and 2242, No. 1 shall enjoy preference with respect to other property of the debtor."

the "kabit system." The kabit system is an arrangement whereby a person who has been granted a certificate of public convenience allows other persons who own moter vehicles to operate them under such license, for a fee or percentage of the earnings. For quite a time this practice have gone unabated on account of the apparent indifference of those in charge of enforcing the law on common carriers. In the case of *Dizon v. Octavio and Gamu*,[86] the question raised before the Court of Appeals was whether a contract of carriage exist between the passengers on the one hand, and the ostensible operator or the actual operator, on the other.[87] The Court of Appeals held that a contract of carriage exist between passengers and the ostensible operator as well as the actual operator. Under the "kabit system" the ostensible operator must be considered as the carrier. As such, he must be held solidarily liable with the actual operator of the vehicle for the safety of the passengers under the contract of carriage.

B. LIMITATION OF ACTION; ARTICLE 366 OF THE CODE OF COMMERCE DOES NOT APPLY IN CASE OF NON-DELIVERY OF GOODS.

Where goods shipped on a vessel engaged in coastwise trade are not delivered to the consignee at the port of destination, must the shipper or consignee file his claim for damages within 24 hours?[88] In the case of *New Zealand Insurance Co., Ltd. v. Choa Joy*,[89] the Supreme Court held that article 366 of the Code of Commerce does not apply in cases where there is no delivery of the merchandise or goods by the carrier to the consignee at the place of destination.[90] In the present case the cargo was never received by the consignee because the ship ran aground while enroute to Manila. The carrier, therefore, breached its contract and as such, it forfeited its right to invoke in its favor the condition required by article 366 of the Code of Commerce.

---

[86] (C.A.) 51 O.G. 4059 (1955).

[87] The grantee of the certificate of public convenience in whose name the vehicle is registered is the ostensible operator. He need not be the person actually operating the vehicle.

[88] Art. 366 of the Code of Commerce provides: "Within 24 hours following the receipt of the merchandise, the claim against the carrier for damage or average which may be found therein upon opening the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside of such package, in which case the claim shall be admitted only at the time of the receipt. After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered."

[89] G.R. No. L-7311, Sept. 30, 1955.

[90] In the case of Roldan v. Lim Ponzo, 37 Phil. 285 (1917), the same Court held that Art. 366 "has no application in cases wherein the goods entrusted to the

C. CARRIER IS NOT LIABLE FOR ACTS DONE BY EMPLOYEE WHILE NOT IN LINE OF DUTY.

As a rule, a passenger is entitled to protection from personal violence by the carrier or its agents or employees, since the contract of transportation obligates the carrier to transport a passenger safely as far as human care and foresight can provide.[91] But under the law, this responsibility extends only to those acts that the carrier could foresee or avoid through the exercise of the degree of care and diligence required by the circumstances.[92] Where an employee of the carrier shoots a passenger because of personal grudge which the employee has against the passenger, the shooting is "caso fortuito" within the meaning of Article 1105 (Old Civil Code), being both unforseeable and inevitable under the given circumstances. The resulting breach of contract of carriage of a passenger was, according to the Supreme Court in the case of *De Gillaco, et. al. v. Manila R. R.*,[93] excusable. The Court reasoned out that considering the vast and complex activities of modern railroad transportation, to require of the carrier that it should guard against all possible misunderstanding between each and every one of its employees and every passenger that might chance to ride in its conveyances at any time, is "demanding diligence beyond what human care and foresight can provide."[94] Another point raised in the same case is the extent of the carrier's responsibility for death or injuries to passengers caused by strangers.[95] The Court held that the carrier was not liable where the crime resulting in death to a passenger was committed by an employee who has no duties in connection with the transportation of the victim. "The crime stands on the same footing as if committed

---

carrier are not delivered to the consignee by the carrier in pursuance of the terms of the contract of carriage."

[91] Art. 1755, Civil Code.

[92] Arts. 1755 and 1763, Civil Code.

[93] 51 O.G. 5596 (1955).

[94] The facts of the present case took place in 1946 so that the old Civil Code was still made applicable. In the light of the new Civil Code, Republic Act No. 386, the carrier, in order to be absolved from liability for death of or injuries to passengers through the negligence or wilfull acts of its employees, must exercise the utmost diligence of a very cautious person with due regard to all the circumstances. The fact that the employee acted beyond the scope of his authority or in violation of orders is not a defense.

[95] When the employee shot the passenger, he was on his way to the office of the carrier to report for duty. His duties were to be performed in a different route of the carrier other than where he shot the passenger. The Court was of the opinion that the employee was in the "position of another would-be-passenger, a stranger also waiting transportation and not that of an employee assigned to discharge any of the duties that the carrier had assumed by its contract with the deceased (passenger)."

by a stranger or co-passenger, since the killing was not done in line of duty," the Court further stated.[96]

IX. PUBLIC SERVICE ACT.

A. CHANGE OF ROUTE MAY BE GRANTED WITHOUT NEED FOR CANCELLATION OF ORIGINAL CERTIFICATE OF PUBLIC CONVENIENCE.

May the route covered by a certificate of public convenience be changed without securing the cancellation of the certificate of public convenience originally issued? In the case of *Heras and Heras v. De Guia*,[97] the Supreme Court answered the foregoing issue in the affirmative. The Court held that the application for a change of route amounts to a petition for cancellation of the authority to operate the route under the certificate as originally issued simultaneously with the grant of authority to operate a new route. When the Public Service Commission approved the new route applied for, it, in effect, withdrew the authority of the grantee to operate the original route. There is no legal support to the proposition that the former certificate of public convenience must first be cancelled before a new one, for a modified route, could be applied for.

B. OWNER OF JEEPNEY WHO LEASES IT TO ANOTHER WITHOUT THE APPROVAL OF THE PSC CONTINUES TO BE LIABLE.

In the case of *Timbol v. Osias, et al.*,[98] the Supreme Court once more affirmed the principle laid down in a previous case [99] that the owner of a jeeney who leases it to another without securing the approval of the Public Service Commission continues to be its operator in contemplation of law and as such, continues to be responsible for the consequences incident to its operation. The approval of the lease by the Commission is necessary in order that the franchise or certificate authorizing operation of the jeepney may not be infringed.[100] The approval by the Commission is not, however, a mere

---

[96] Under Art. 1763, Civil Code: "A carrier is responsible for injuries suffered by a passenger on account of wilful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act tof omission." Unless the carrier could prove that it exercised the diligence of a good father of a family in preventing the killing of the passengers, it could not be absolved from liability, granting that the employee was a stranger when he killed the passenger. The fact that the employee was allowed to carry his service weapon fully loaded while not in line of duty and before reporting for duty should have been taken into account in considering the degree of responsibility of the carrier.

[97] G.R. No. L-7581, Oct. 24, 1956.

[98] G.R. No. L-7547, April 30, 1955.

[99] See Montoya v. Ignacio, G.R. No. L-5868, Dec. 29, 1953.

[100] According to the Court in the case of Montoya v. Ignacio, *supra* note 88, the "franchise (or certificate of public convenience) is personal in nature and any transfer

formality. The last clause of section 16, paragraph (h) of the Public Service Act means that even if the approval has not been obtained, the transfer or lease is valid and binding between the parties although not effective against the Public Service Commission and the public. Approval is necessary for the protection of the public interest.

C. FAILURE TO REGISTER AND OPERATE EQUIPMENT REQUIRED BY THE CERTIFICATE OF PUBLIC CONVENIENCE IS GROUND FOR CANCELLATION.

A certificate of public convenience to operate a public service is granted whenever the service authorized will promote the public interest in a proper and suitable manner.[101] A grantee of a certificate who fails to comply with his commitment under the terms of the certificate without justifiable reasons fails to serve public interest. In the case of *Paredes v. Public Service Commission*,[102] the Court aptly stated that "an operator who unjustifiably abandons his service for two or three years by not registering the necessary equipment forfeits his right to said equipment and the service authorized him" under the certificate of public convenience. A public service operator assumes a commitment which cannot be taken lightly, nor be made dependent on whim or caprice for behind it lies the paramount interest of the public.

D. A PERSON ENGAGED IN AGRICULTURE WHO LEASES MOTOR VEHICLE TO ANOTHER FOR HIRE FOR THE SAME PURPOSE IS NOT OPERATING A PUBLIC SERVICE.

Is a person engaged in agriculture who owns a motor vehicle but leases the same for compensation to another who uses the same for the same purpose, included within the meaning of the phrase "public service" as defined by section 13, paragraph (b) of the Public Service Act? A law recently passed by Congress amending said section of the Public Service Act excludes a person engaged in agriculture, not otherwise a public service, who owns a motor vehicle and leases it for compensation to a third party also engaged in agriculture and for use by the latter for the same purpose, from the jurisdiction of the Public Service Commission. Such person is not considered as operating a public service.[103]

---

or lease thereof (or rights thereunder) should be notified to the Commission so that the latter may take the proper safeguards to protect the interest of the public.

[101] §§ 15 and 16(a), Public Service Act. Batangas Transportation Co. v. Orlanes, 52 Phil. 455 (1928).

[102] G.R. No. L-7111, May 30, 1955.

[103] Rep. Act No. 1270. 51 O.G. 3344.