ANNUAL SURVEY OF CASES IN COMMERCIAL LAW — 1957

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The year 1957 was not a fertile season of either precedent-setting or precedent-uprooting decisions of our highest court in the field of commercial law. Except for some isolated cases which occasionally enlivened the far-flung frontiers of our jurisprudence in commercial law, cases of the year under survey have elicited either reiteration of well-settled rules or cast illuminating explanation of doctrines which have otherwise oscillated in doubt and ambiguity. While this dearth of decisions by our Supreme Court may be a cause for regret in that it has not breathed fresher life into our case law, it may, on the other hand, be evidence that our people have chosen to settle controversies amicably beyond the ambit of our courts or, better still, that they had sought competent legal advise before embarking into the sometimes tricky field of commercial transactions.

CORPORATION LAW

A. Corporate Capacity

Corporations, unlike partnerships and other associations, are not created solely by mutual agreement of the associates. Corporate rights and privileges, particularly the right to set in a separate capacity, to sue, the liability to be sued in the corporate name, and the limited personal liability of the associates, are generally granted only on substantial compliance with certain statutory conditions.[1] Under our jurisdiction, the most important of these conditions are the due execution of articles of incorporation setting forth certain required provisions,[2] the filing thereof with the Securities and Exchange Commission, and the issuance of the certificate of incorporation by the said Commission.[3] In the case of *Recreation and Amusement Association of the Philippines v. City of Manila et al*,[4] the Supreme Court upheld the dismissal of the complaint on the ground that the plaintiff had no capacity to sue. Although the complaint alleged that the plaintiff was a non-stock corporation, the record showed that it had not registered with the Securities and Exchange commission.[5] The court, citing authorities, said that the right to be and to act as a corporation is not a natural right or civil right of any person; such right as well as the right to enjoy the immunities and pri-

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The author acknowledges the invaluable assistance of Mr. Pablo Badong, the administrative assistant in the **Philippine Law Journal**.

1 See BALLANTINE ON CORPORATIONS, p. 68

2 See Section 6, Act 1459, otherwise known as the Corporation Law

3 See Section 11, Act 1459

4 GR L-7922, Feb. 22, 1957

5 The Court observed that most probably the owners and operators of such pinball machines met, put up their set of officers and thus an association was formed, after which they merely folded their arms and exerted no further effort to effectuate the necessary registration that would bestow juridical personality upon it.

vileges resulting from incorporation constitute a franchise, and a corporation, therefore, cannot be created except by or under a special authority from the State. When there is no legal organization of a corporation, the association of a group of men for business or other endeavors does not absorb the personality of the group and merge it into the personality of another separate and independent entity which is not given corporate life by the mere formation of the group. Such conglomeration of persons is incompetent to act as a corporation, cannot create agents, or exercise by itself authority in its behalf. The plaintiff in this case, not being a corporation duly registered in accordance with law, had therefore no legal capacity to sue,[6] The contention that such capacity to sue should be granted to the plaintiff as a civil association was brushed aside by the Court because the plaintiff did not claim to be a civil association but a corporation.[7]

B. Right After Dissolution

Under Section 77 of our Corporation Law, a corporation which has been dissolved continues as a body corporate for three years after such dissolution, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs. In the case of *Cebu Port Labor Union v. States Marine Corporation, et al,*[8] the plaintiff, a duly registered labor association, filed a petition with the Court of First Instance for "recognition of stevedoring service and injunction" against the States Marine Corporation, et al. It alleged that it was awarded a contract for the exclusive right of loading and unloading of the cargoes of the vessel M/V BISAYAS formerly owned by Elizalde & Co., though at the time of the filing of the petition it was owned and operated by the States Marine Corporation; that said vessel would soon resume its voyage and that it came to the knowledge of said petitioner that the stevedoring work would be given by the respondent corporation to the other respondents in violation of the agreement and/or understanding had between the manager of the respondent corporation and the president of the petitoiner Union. Respondents presented a certification from the Securities and Exchange Commission to the effect that on October 17, 1952, a resolution dissolving the States Marine Corporation was duly registered in said Office, so that when the petition against said corporation was filed on September 12, 1952, the States Marine Corporation was no longer in existence. The respondent therefore asked the Court that proper substitution or amendment of the petition be made. The petitioner however relied

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6 RULES OF COURT, Rule 8, sec. 1 (c). The term "lack of legal capacity to sue" means either that the plaintiff does not have the necessary qualifications to appear in the case x x x or when he does not have the character or representation which he claims, as when he is not a duly appointed executor or administrator of the estate he purports to represent, or that the plaintiff is not a corporation duly registered in accordance with law. 1 MORAN, COMMENTS ON THE RULES OF COURT, 168 (1952)

7 A contrario, it seems to be suggested that if plaintiff's allegation were that it was a civil association rather than that it was a corporation, the action might have prospered. Thus, Justice J. B. L. Reyes, in his concurring opinion, declared: "x x x It seems to me that the real reason warranting dismissal of the appeal is the fact that plaintiff is not the real party in interest (since it does not own the machines in question) and therefore has no cause of action. **But I reserve my vote on the question of plaintiff's juridical personality, for the reason that although it has been duly organized under the Corporation Law, it may be considered a civil association.** (Boldface supplied)

8 GR L-9350, May 20, 1957

on the provision of section 77 of the Corporation Law to support its inclusion of the corporation as party respondent. The Court ruled that even a cursory reading of the provision invoked would convey the idea clearly manifested in the limitation "but not for the purpose of continuing the business for which it was established", that the three-year period allowed by the Corporation Law is only for the purpose of winding up its affairs. Petitioner prayed that it be declared to have the right to the stevedoring work in question "thereby *respecting* the contract entered into by petitioner Elizalde & Co. and subsequently enforced and continued by respondent States Marine Corporation." It appearing that the said Marine Corporation was already dissolved at the time said petition was filed, and the vessel subject to the agreement having changed hands, it cannot be compelled now to respect such agreement specially considering the fact that it cannot even be made a party to this suit.[9]

C. Ultra Vires Acts

It is a well-known and settled rule that a corporation has only such powers as are expressly conferred upon it by its charter or the law of its creation or other statutes; and such as are implied from the express powers or incidental to the existence of the corporation.[10] This rule was applied by the Supreme Court in the case of *Japanese War Claimants' Association of the Philippines, Inc. v. Securities and Exchange Commission,*[11] wherein petitioner corporation brought to said Court for review an order of the Securities and Exchange Commission which prohibited it, among others, from registering war notes and reparation claims, as well as from collecting fees therefor.[12] It was argued that the registration of war notes and the collection of fees were not prohibited by the Corporation Law and the authority of the petitioner to engage therein was implied from its purposes set forth in its articles of incorporation.[13] The Supreme Court, in brushing away this contention, said that the articles of incorporation of the petitioner, although it authorized collection of fees from members, did not authorize the corporation to engage in the business of registering and accepting war notes for deposit and collecting fees

9 Act 1459, Sec. 77: "Every corporation whose charter expires by its own limitations or 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 so 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.

10 See Fletcher, vol. 2, pp. 1756-1757. Also Sec. 2, Act 1459.

11 GR L-8987, May 23, 1957

12 The order of the Securities and Exchange Commissioner was evidently promulgated under the authority of section 1 (b) of Republic Act No. 1143 which reads:

"(b) To penalize any violation of or noncompliance with any terms or conditions of any certificate, license, or permit issued by the Commission or of any order, decision, ruling or regulation thereof, by a fine of not exceeding two hundred pesos per day for every day during which such violation or default continues; and the Commissioner is hereby authorized and empowered to impose and collect such fine after due notice and hearing."

13 "(1) To consecrate and sanctify in a strong and militant organization in the furtherance of the financial conditions of its members towards the attainment of their claims;

"(2) To take a position which is only secondary and complementary to that of our constituted government in campaigning for the welfare of our people, especially when it is to demand redemption of currency from foreign country;

"(3) To work for, and to make due representations with, the United States and Japanese Governments, for the redemption and/or for the future payments of the Japanese war notes (mickey mouse);

"(4) To instill the ties of comradeship through this and noble gesture of goodwill between our people and country with the people and countries of the United States and Japan;

"(5) To do any and all acts and things which are naturally incidental or arising out of the purpose or any others."

from such services. Neither did the association have any authority to accept and collect fees for reparation claims for civilian casualties and other injuries. This was considered by the Court as beyond any of the powers of the association embodied in its articles and as having absolutely no relation to the avowed purpose of the association to work for the redemption of war notes. The Supreme Court therefore held that since the aforementioned acts are *ultra vires*, the Securities and Exchange Commission was acting within its powers in prohibiting the petitioner from exercising them.

D. Corporation Sole — Nature and Purpose

In the case of *Roman Catholic Apostolic Administration of Davao, Inc. v. Land Registration Commission and the Register of Deeds of Davao City,*[14] a deed of sale of a parcel of land located in Davao City was executed in favor of the Roman Catholic Administration of Davao, Inc., a corporation sole organized and existing in accordance with Philippine Laws, with a Canadian Bishop as incumbent. The question arose as to whether this corporation sole could acquire private agricultural land, bearing in mind that the bishop incumbent was not a Filipino citizen.[15] In deciding the case, the Court first discussed the nature and purpose of a corporation sole. Quoting from authorities, it stated that "a corporation sole is a special form of corporation usually associated with the clergy. Conceived and introduced into the common law by sheer necessity, this legal creation which was referred to as 'that unhappy freak of English law' was designed to facilitate the exercise of the functions of ownership carried on by the clerics for and in behalf of the church which was regarded as the property owner. (See 1 Bouvier's Law Dictionary, p. 682-683). A Corporation sole consists of one person only, and his successors (who will always be one at a time), in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the King is a sole corporation; so is a bishop or dean, distinct from their several chapters (Reid v. Barry, 93 Fla. 849, 112 So. 846)."

Holding in favor of the corporation sole, the Court cited provisions in the Corporation Law[16] covering this kind of corporations.

14 GR L-8451, December 20, 1957

15 The Court cited Article XIII, Sections 1 and 5 of the Philippine Constitution.

16 "Section 154. For the administration of the temporalities of any religious denomination, society, or church, and the management of the estates and properties thereof, it shall be lawful for the bishop, chief priest, or presiding elder of any such religious denomination, society, or church to become a corporation sole, unless inconsistent with the rules, regulations, or discipline of his religious denomination, society, or church or forbidden by competent authority thereof."

"Section 157. From and after the filing with the Securities & Exchange Commissioner of the said articles of incorporation, verified by affidavit of affirmation as aforesaid and accompanied by the copy of the commission, certificate of election, or letters of appointment of the bishop, chief priest, or presiding elder, duly certified as prescribed in the section immediately preceding, such bishop, chief priest, or presiding elder, as the case may be, shall become a corporation sole, and all temporalities, estates, and properties of the religious denomination, society, or church theretofore administered or managed by him as such bishop, chief priest, or presiding elder shall be held in trust by him as a corporation sole, for the use, purpose, behoof, and sole benefit of his religious denomination, society or church, including hospitals, schools, colleges, orphan asylums, parsonages, and cemeteries thereof. x x x."

"Section 163. The right to administer all temporalities and all property held or owned by a religious order or society or by the diocese, synod, or district organization of any religious denomination or church shall, on its incorporation, pass to the corporation and shall be held in trust for the use, purpose, behoof, and benefit of the religious society, or order so incorporated or of the church of which the diocese, synod, or district organization is an organized and constituent part."

Under such provisions, the Court observed that the bishop or any other authorized person who constitutes the corporation sole is not the owner of the properties but is only the administrator thereof and holds said properties only in trust for the use of his religious denomination or church. In addition, the Court said: "It can also be said that while it is true that church properties could be administered by a natural person, problems regarding succession to said properties can not be avoided to rise upon his death. Through this legal fiction, however, church properties acquired by the incumbent of a corporation sole pass, by operation of law, upon his death not to his personal heirs but to his successor in office. It could be seen, therefore, that a corporation sole is created not only to administer the temporalities of the church or religious society where he belongs but also to hold and transmit the same to his successor in said office."

E. Foreign Corporation's Right To Sue

The familiar rule that a foreign corporation, although not licensed to do business here, may sue before our courts on an isolated transaction,[17] was reiterated in the case of *Eastboard Navigation Ltd. v. Juan Ysmael & Co. Inc.*[18] In this case, the plaintiff, a foreign corporation, entered into a contract of charter party with the defendant. Differences arose as a result of said contract and this action was brought for recovery thereon. One of the many arguments advanced by the defendant was that plaintiff had no capacity to sue because it was a foreign corporation doing business here without a license therefor. It appears that sometime in the past, the plaintiff had entered into a contract with the National Rice and Corn Corporation to carry rice cargo from abroad to the Philippines. The Court held that these two isolated transactions do not constitute engaging in business in the Philippines within the purview of the Corporation Law so as to bar plaintiff from seeking redress in our courts.

BANKING

A. Central Bank Act; Scope Of Section 34

In the case of *People v. Exconde*,[19] the accused had been convicted by the lower court of violation of Circular No. 37 of the Central Bank limiting to ₱100.00 the amount of Philippine currency that an outgoing passenger could have on his person. Such circular was adopted pursuant to Section 34 of the Central Bank Act providing for the proceedings upon violation of regulations enacted pursuant thereto. The accused argued that said Section 34 refers solely to regulations under Article IV, Chapter B of the Central Bank Act

17 Marshall-Wells Co. v. Elser & Co., 46 Phil. 70; Pacific Vegetable Oil Corp. v. Singzon, GR L-7919, April 29, 1953
18 GR L-9090, September 10, 1957
19 GR L-9820, August 30, 1957

concerning activities of the Department of Supervision and Examination of banking institutions and therefore Circular No. 37, which does not deal with such activities, is not valid. The Supreme Court, in rejecting said contention, held that the first paragraph of Section 34[20] is so broad in terms that it was evidently designed to establish penal sanctions for any and all violations of the Act as well as of the regulations legally issued by the Monetary Board. Besides, the Supreme Court noted, there being no other sanctioning provision elsewhere in the Act itself, the contention if upheld, would lead to the result that, with the exception of Article IV, Chapter B, all other provisions of the Central Bank Act could be violated with impunity.

B. Trust Corporations — When Governed By General Banking Act

In the case of *Juanita T. Stegner & Philippine Trust Co. v. Capt. Erine Stegner*,[21] the Philippine Trust Corporation was appointed as trustee in the will of W. A. Stegner. However, upon application of the said company itself and by agreement of the parties, the Court appointed it as guardian, not as trustee, of the properties of the minor heirs. Having assumed office as "guardian" of the properties of the wards, the Court held that in the management of the funds of said minors, the company should be governed by the provisions of the Rules of Court on guardianship and not by the rules on trust corporations under the Corporation Law (which has been replaced by the General Banking Act with respect to trust corporations). Hence, although under the General Banking Act, a trust corporation would ordinarily not need the consent of the court in investing its trust funds in transactions authorized by the law, it would need such consent if it is merely acting as a guardian and not as a trustee, of such funds.

SECURITIES ACT

Under Section 4 of the Securities Act, no securities may be sold without previous registration with and/or license from the Securities and Exchange Commission, unless said securities are exempt or are sold by virtue of exempt transactions. In the case of *Benedicto et. al. v. Philippine Finance and Dev. Co. Inc.*,[22] plaintiffs had bought shares from the defendant corporation on October 23, 1947. Later, the plaintiffs learned that the issue of the shares was illegal inasmuch as no permit was secured as provided by Section 4 of the Securities Act. This action was therefore brought to annul the sale and to recover the value of the shares plus damages. One of the defenses of the defendant was that the action had already prescribed

20 Rep. Act 265 (Central Bank Act, June 15, 1948), sec. 34, par. 1. "Proceedings upon violation of laws and regulations — Whenever any person or entity wilfully violates this Act or any order, instruction, rule or regulation legally issued by the Monetary Board, the person or persons responsible for such violation shall be punished by a fine of not more than twenty thousand pesos and by imprisonment of not more than five years."

21 GR L-8532, October 11, 1957

22 L-8695, May 31, 1957

because while the law[23] gives the purchaser the right to void a sale in violation of its provisions, it at the same time limits the time for bringing the action for that purpose to "two years from the date of such sale." In the present case, the sale was consummated upon the payment of the purchase price, i.e., on October 23, 1947. The Supreme Court held that as the action for annulment was not brought until November 2, 1949 or two years and 10 days after the *consummation* of the sale[24] the lower court did not err in upholding the defense of prescription.

NEGOTIABLE INSTRUMENTS LAW

Rate Of Exchange Of Foreign Bills Of Exchange

The case of *Philippine National Bank v. Jose C. Zulueta*[25] involved a draft drawn in New York but payable in the Philippines. The plaintiff bank sought the reimbursement in Philippine currency of the amount in dollars advanced by it through its New York agency to meet the above-mentioned draft drawn against the defendant and accepted by the latter for a valuable consideration. The issue presented was whether the plaintiff had the right to add to the amount of the draft the excise tax of 17% provided for under Republic Act 601 which took effect on March 28, 1951, or after the draft had already been accepted by the defendant and after it had already matured. In arriving at its decision, the Court made first an observation to the effect that the draft was negotiable in spite of the fact that the amount payable was expressed in dollars for it could be discharged with pesos of equivalent amount. Since it was a negotiable instrument, it was therefore governed by the Negotiable Instruments Law. However, the latter law contains no particular provision on the question of what rate of exchange should be paid. The Court therefore applied general principles applicable and held that "the rate of exchange in effect at the time the bill should have been paid" controls.[26] This, according to the Court, is in consonance with the provisions of the Bills of Exchange Act of England and could be taken as enunciating the correct principle, inasmuch as our Negotiable

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23 Securities Act, Sec. 30. "**Remedies** — (a) Every sale in violation of any of the provisions of this Act or wherein the purchaser shall have relied upon any statement which was at the time and in the light of the circumstances under which it was made false and misleading with respect to any material fact contained in any application, report, or document filed pursuant to this Act or any rule or regulation thereunder, shall be voidable at the election of the purchaser; and the person making such sale and every director, officer or agent of or for such seller, if such director, officer, or agent shall have personally participated or aided in any way in making such sale, shall be jointly and severally liable to such purchaser in an action in any court of competent jurisdiction upon tender of the securities sold or of the contract made, for the full amount paid by such purchaser, with the interest, together with all taxable court costs and reasonable attorney's fees: **Provided**, that no action shall be brought for the recovery of the purchase price after two years from the date of such sale: **And Provided, further**, That no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed within thirty days from the date thereof to accept any offer in writing of the seller to take back the security in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to date of repayment, such interest to be computed: x x x."

24 The "date of the sale" from which, under section 30 of the Securities Act, the computation of the two-year period of prescription is reckoned, is not the perfection of the sale, but, as appears from the language of the Court, from the "consummation" thereof. This is of course most favorable to the plaintiff, since the perfection would naturally precede the consummation of the contract.

25 GR L-7271, Augus 30, 1957

26 11 C.J.S. 264

Instruments Law practically copied the American Uniform Negotiable Instruments Law which in turn was based largely on the bills of Exchange Act of England of 1882.[27]

The plaintiff bank insisted that the 17% excise tax should be paid by the defendant because the latter had promised to pay in dollars. The facts showed however that the defendant had made no such promise but had agreed to pay the *equivalent* of the amount in Philippine currency. The Court however said that if it is admitted that the defendant had agreed to pay in dollars, then Republic Act No. 429 should be applied, with the result that his obligation "shall be discharged in Philippine currency measured at the prevailing rates of exchange *at the time the obligation was incurred.*" As defendant's obligation was incurred before the creation of the 17% tax, even if he had agreed to pay in dollars, he may not be validly burdened with such tax because the law imposing it would then have the effect of impairing the obligations already existing at the time of its approval.[28]

The ruling in the *Zulueta* case was reiterated in *Philippine National Bank v. Union Books Inc.*.[29] The drafts involved in this case were also issued before the approval of the law imposing the 17% tax on foreign exchange. But did the defendant's liability thereon attach before or after such law took effect. The Court ruled that since the drafts were negotiable foreign bills of exchange, when the drafts were unconditionally accepted by defendant as drawee, the latter became primarily liable thereon for their respective values. It was only at this time that the obligation on the drafts was incurred by the defendant. And since this acceptance took place before the effectivity of said law, the 17% foreign exchange tax cannot be imposed on the defendant, although the drafts were collectible at a later date, after the date of effectivity of the said law.

Meaning Of Sale Of Foreign Bill Of Exchange

The question of what constitutes a sale of a foreign bill of exchange was discussed in the case of *Philippine National Bank v. Union Books, Inc., supra.* The Supreme Court upholding the opinion of the Central Bank, opined that sales of exchange take place neither on the establishment of letters of credit, nor on the negotiations by the correspondent banks of drafts drawn against such letters of credit, but upon payment by the importer of said drafts, and that until such payment is effected, no sale of foreign exchange takes place.

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27 Westminster Bank v. Nassoor, 58 Phil. 855. The rule laid down here was distinguished from the decision in Liberty National Bank v. Burr, 270 Fed. 251, 11 C.J.S. 264, in the sense that this case seems not to have taken into account the Bills of Exchange Act above referred to. Furthermore, it related to a bill expressly made payable in a foreign country, which is not the case here.

28 But see dissenting opinion of Justice J. B. L. Reyes, concurred in by Justices Labrador, Endencia, Concepcion, who was of the view that the case was one of loan and that Zulueta being a debtor in bad faith "by his obdurate refusal to pay a just debt", should bear the added cost of the depreciation of the pesos in relation to the dollar brought about by the enactment of Republic Act No. 601. Code of Commerce, Article 312, par. 1; Hawes v. Wooloock, 26 Wis. 629, 635.

29 GR L-8490, Aug. 30, 1957

INSURANCE LAW

Right Of Subrogation And Effect Thereof

That our jurisdiction has taken a sharp departure from American jurisprudence with respect to the subrogation of the insurer in the place of the insured is lucidly illustrated in *Philippine Airlines Inc. v. Heald Lumber Co.*[30] Sometime prior to June 4, 1954, the Lepanto Consolidated Mines chartered a helicopter belonging to plaintiff. Plaintiff had insured the helicopter for ₱80,000 and the life of the two officers managing the helicopter for ₱20,000 each, with several London insurance companies. The helicopter crashed when it collided with defendant's tramway steel cables. Plaintiff was paid the value assumed by the insurance companies, which totalled ₱120,000. Aside from this sun, plaintiff sustained additional damages totalling ₱103,347.82 which were not covered by insurance. Plaintiff brought this action to recover not only the sum of ₱103,347.82 not covered by insurance but also the amount of ₱120,000 which represents the amount of damages covered by insurance, and which had already been collected from the insurance companies. The plaintiff argued that it brought the suit upon its own account with respect to the former sum but in the capacity of trustee for the insurance companies as regards the latter amount. The issue raised was whether the plaintiff was the real party in interest with respect to the claim of ₱120,000 covered by the insurance, it having already collected said amount from the insurance companies. The Supreme Court stated that while American statutes lay down the rule that the insured is the real party in interest who shall bring the action in case where an insurance covers only a portion of the loss, the rule on the matter is different in the Philippines. In this jurisdiction, the Court said, the rule is set forth in Article 2207 of the new Civil Code.[31] Under this provision, if property is insured and the owner receives the indemnity from the insurer, the insurer is deemed subrogated to the rights of the insured against the wrongdoer and if the amount paid by the insurer does not fully cover the loss, then the aggrieved party is the one entitled to recover the deficiency from said wrongdoer. Evidently, the Court concluded, under this legal provision, the real party in interest with regard to the portion of the indemnity paid is the insurer and not the insured.[32]

CHATTEL MORTGAGE LAW

As between a prior mortgage executed over a motor vehicle, registered under the Chattel Mortgage Law only, without annotation

30 GR L-11497, Aug. 16, 1957

31 CIVIL CODE Art. 2207. If the plaintiff's property has been injured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of 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. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

32 The Court cited the REPORT OF THE CODE COMMISSION 73. With respect to the contention that the PAL was acting as trustee of the insurance company, the court overruled it stating that in this jurisdiction, before a person can sue for the benefit of another under a trusteeship, he must be "a trustee of an express trusts."

thereof in the Motor Vehicles Office, and a subsequent registration of the vehicle in the Motor Vehicles Office accompanied by actual possession thereof, which should prevail? This question was answered in the case of *Olaf N. Borlough v. Fortune Enterprises Inc.*.[33] This case was essentially a contest between Fortune Enterprises Inc. and Olaf N. Borlough over the same motor vehicle. The former claimed a right over the said motor vehicle by virtue of a chattel mortgage duly recorded under the Chattel Mortgage Law but which was not recorded with the Motor Vehicles Office. Borlough, on the other hand, claims ownership over the said motor vehicle by act of purchase and possession, duly recorded under the Motor Vehicles Law. The Supreme Court noted that the Revised Motor Vehicles Law is a special legislation enacted to "amend and compile the law relative to motor vehicles," whereas the Chattel Mortgage Law is a general law covering mortgages of all kinds of personal property. The Court observed that the former is the latest attempt to assemble and compile the motor vehicle laws of the Philippines, all the earlier laws having been found to be very deficient in form as well as in substance.[34] It had been designed primarily to control the registration and operation of motor vehicles.[35] According to the Court, therefore, the recording provisions of the Revised Motor Vehicles Law should be complementary to those of the Chattel Mortgage Law. As the law stands, a mortgage in order to affect third persons should not only be registered in the Chattel Mortgage Registry, but also in the Motor Vehicles Office as required by section 5(e) of the Revised Motor Vehicle Law. The Court therefore held that the chattel mortgage in question here, while valid between the parties, was ineffective against a subsequent innocent purchaser.

INSOLVENCY LAW

The case of *Velayo v. Shell Co. of the Phil. Is. Ltd.*[36] involves a motion for reconsideration of an earlier decision of the Supreme Court,[37] in which it was held that the CALI, through its assignee in insolvency, was entitled to recover damages from the defendant because it acted in bad faith and betrayed the confidence and trust of the other creditors, by taking advantage of its knowledge that the CALI had a plane in California, in entire disregard of all moral inhibitory tenets in trying to outmaneuver the other creditors. The defendant was ordered in said case to pay the value of the plane as compensatory damages and an equal amount as exemplary damages or, in effect, double the value of the plane.[38] In the decision on the motion for reconsideration, the Court admitted that in fixing the amount of the damages, it was influenced by Section 37 of the Insolvency Law[39] under which the indemnity provided is double the

33 GR L-9451, March 29, 1957
34 Villar and De Vega, Revised Motor Vehicles Law 1.
35 Act No. 39992, sec. 2
36 GR L-7817, promulgated on July 30, 1957
37 Velayo v. Shell Co. of the Phil. Ltd., GR L-7817, October 31, 1956
38 See Aquino, Ramon C., Annual Survey in Civil Law — 1956, 32 Phil. L. J. Supp. to 2, 167, 168 (1957)
39 Insolvency Law, sec. 37. "If any person, before the assignment is made, having notice of the commencement of the proceedings in insolvency, or having reason to believe that insolvency proceedings are about to be commenced, embezzles or disposes of any of the money, goods, chattels, or effects of the insolvent, he is chargeable therewith, and liable to an action by the assignee for double the value of the property sought to be embezzled or disposed of, to be received for the benefit of the insolvent estate."

value of the property. However, in this second decision, the majority of the Court, believing that the Civil Code provisions on damages should be applied,[40] fixed the amount of exemplary damages at ₱25,000 stating that the value of the plane might be quite high.[41] The result therefore was that the assignee in insolvency would recover actually less than double the value of the plane.

TRANSPORTATION

A. Common Carriers In General

1. *Common carriers of passengers—*

a. *Negligence a question of fact — burden of proof*

Under the New Civil Code, a common carrier is obliged to exercise extraordinary diligence in the performance of the contract of carriage.[42] Whether or not the carrier has exercised the diligence required by law is a question of fact which addresses itself to the judgment of the trial court which hears the witnesses and the evidence. The case of *Cesar L. Isaac v. A. L. Ammen Trans. Co. Inc.*[43] illustrates this point quite clearly. The plaintiff boarded the defendant's bus as a paying passenger, but before reaching his destination, the bus collided with a pick-up car which was coming from the opposite direction and as a result, his left arm was completely severed. It appeared from the evidence that the bus, immediately prior to the collision, was running at a moderate speed because it had just stopped at a school zone. The pick-up car was at full speed and was running outside of its proper lane. The bus driver, upon seeing the manner in which the pick-up was then running, swerved the bus to the very extreme right of the road until its front and rear wheels had gone over the pile of stones or gravel situated on the side of the road. Said driver could not move the bus farther right and run over a greater portion of the pile, the peak of which was 3 feet high, without endangering the safety of his passengers. The plaintiff claimed that the defendant's driver was negligent in not stopping the bus and wait for the pick-up car to pass. The trial court dismissed the case and held for the defendant. Although the Supreme Court admitted that the plaintiff's contention appeals more to the sense of caution that one should observe in a given situation to avoid an accident or mishap, it held that such however can not always be expected from one who is placed suddenly in a predicament where he is not given enough time to take the proper course of action as he should under ordinary circumstances. The Court therefore affirmed the decision of the trial court in favor of the defendant bus

40 Articles 19, 21, 2229, 2234, 2142 and 3143 of the New Civil Code. Some members of the Supreme Court entertained doubt as to the applicability of section 37 of the Insolvency Law.

41 The court also said that exemplary damages should not be left to speculation but reduced to a fixed and certain amount.

42 Article 1733, Civil Code. "Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the good and for the safety of the passengers transported by them, according to all the circumstances of each case.

"Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6 and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756."

43 GR L-9671, August 23, 1957.

company, which succeeded in proving to the satisfaction of the court that it had exercised due diligence in averting the mishap. In the presence of such proof, there can be no liability because a carrier is not an insurer against all risks incident to travel.[44]

Although the general rule is that negligence is not presumed but is a matter of proof on the party alleging it, this is not true in the case of common carriers, who have the burden of proving the presence of diligence.[45] The law itself creates a presumption of negligence on the part of the carrier.[46] Thus, in the case of *Sy v. Malate Taxicab & Garage Co. Inc.*,[47] the court held in favor of the plaintiff after the defendant carrier had failed to appear and present evidence to overcome the presumption of negligence.[48]

b. *Contributory negligence—*

If the passenger is guilty of contributory negligence, although the carrier will not be exempted from liability, it will reduce the amount of damages which may be recovered in the case.[49] In the case of *Isaac v. Ammen Trans. Co., supra,* the court said that a passenger who places his arm outside the window of the bus is negligent *per se.*[50]

c. *Negligence or acts of employees beyond scope of authority—*

Under Article 1759 of the New Civil Code, the common carrier is liable for death or injuries to passengers through the negligence of wilful acts of employees, although such employees have acted beyond the scope of their authority or in violation of orders. In the case of *Villanueva Vda. de Bataclan et. al. v. Mariano Medina,*[51] the defendant's bus with several passengers was speeding when one of its tires burst. The bus began to zig-zag until it fell into a canal and turned turtle. Four passengers were trapped inside, still alive. In response to the cries for help, men with a lighted torch approached the overturned bus. The driver and the conductor, knowing fully well that gasoline had leaked from the tank and had soaked the area, failed to warn the rescuers not to bring the lighted torch near the bus. The bus caught fire almost immediately, and all the four passengers as well as the bus were burned. It appeared also that the defendant owner of the bus had repeatedly instructed the driver to change his tires because they were already worn out and that in spite of such orders, the driver had not done so. The Supreme

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44 See also Strong v. Iloilo-Negros Air Express Co., 40 O.G. (12th supp.) No. 18, 269; Lasam v. Smith, 45 Phil. 657

45 Ynchausti Steamship Co. v. Dexter and Uson, 41 Phil. 289; Mirasol v. Robert Dollar Co. 53 Phil. 124

46 Article 1735 of the New Civil Code provides: "In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5, of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in article 1733."

47 GR L-8937, November 29, 1957

48 See also Isaac v. Ammen Trans. Co. Inc., supra.

49 Article 1762 of the Civil Code provides: "The contributory negligence of the passenger does not bar recovery of damages for his death or injuries, if the proximate cause thereof is the negligence of the common carrier, but the amount of damages shall be equitably reduced."

50 In this case, it will be remembered, the carrier was not considered negligent, and the court discussed the plaintiff's "contributory negligence" only for the purpose of stressing the point that the defendant was not liable. If the bus company had been held negligent, the plaintiff's contributory negligence would serve only to mitigate its liability.

51 GR L-10126, October 22, 1957

Court held the defendant owner civilly liable for all damages due to the death of the passengers. The negligence of the driver and conductor in failing to caution the rescuers was attributable to the employer.

d. *Proximate cause*

In the same case of *Bataclan v. Medina*, it was contended by the defendant that although it could be held liable for the *injuries* to the dead passengers, it could not be liable for the *death* of said passengers, because it was the fire and not the overturning of the bus which caused the death. The overturning of the bus, according to the defendant, caused only injuries and not death of the passengers. Apart from the negligence of the driver in failing to warn the rescuers not to bring the lighted torch near the bus, the Court cited the rule of "proximate cause"[52] in overruling the defendant's contention. The Court said: "x x x x, we do not hesitate to hold that the proximate cause of the death of Bataclan was the overturning of the bus, this for the reason that when the vehicle turned not only on its side but completely on its back, the leaking of the gasoline from the tank was not unnatural or unexpected, that the coming of the men with a lighted torch was in response to the call for help, made not only by the passengers, but most probably, by the driver and the conductor themselves, and that because it was very dark (about 2:30 in the morning), the rescuers had to carry a light with them; and coming as they did from a rural area where lanterns and flashlights were not available, they had to use a torch, the most handy and available; and what was more natural than that said rescuers should innocently approach the overturned vehicle to extend the aid and effect the rescue requested from them. In other words, the coming of the men with the torch was to be expected and was a natural sequence of the overturning of the bus, the trapping of some of its passengers, and the call for outside help."

2. *Common carriers of goods—*

As in the case of common carriers of passengers, a common carrier of goods is obliged to exercise extraordinary diligence in the care and handling of the goods.[53] And this duty lasts until the time the goods are delivered, actually or constructively, by the carrier to the consignee, or to the person who has the right to receive them.[54]

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52 The Court quoted the definition found in Vol. 38, p. 695 of the American Jurisprudence: Proximate cause is ". . . 'That cause, which in natural and continuous sequence, unbroken by an efficient intervening cause, produces the injury, and without which the result would no have occurred.' And more comprehensively the proximate legal cause is that acting first and producing the injury, either immediately or setting other events in motion, all constituting a natural and continuous chain of events, each having a close casual connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some persons might probably result therefrom."

53 See Articles 1733 and 1735

54 See Article 1736

Goods carried from foreign countries must be delivered to the customs authorities for inspection. As a general rule, this delivery to the customs does not relieve the carrier from its duty of vigilance because this is not delivery, actual or constructive, to the consignee.[55] So that damages occurring to the goods while in the possession of the customs authorities would be borne by the carrier. An exception to this rule was laid down by the Supreme Court in the case of *Lu Do & Sy Ym Corporation v. Binamira*.[56] Although the Court agreed that delivery to the customs authorities is not delivery to the consignee because the goods are under the control of the Government and the consignee exercises no dominion over them, it believed that the parties may agree to limit the liability of the carrier. In this case, the bill of lading provided that the responsibility of the carrier shall cease when the goods are taken into the custody of customs of other authorities. The Court held that this stipulation is valid and not contrary to morals or public policy and should therefore be given full force and effect.

B. Admiralty

Carrier's lien on goods transported—

Under Article 665 of the Code of Commerce, the cargo is specifically liable for the payment of freightage expenses. This merely means that the carrier has a lien on the goods carried by it in order to satisfy the freightage. This rule was applied in the recent case of *National Rice and Corn Corporation v. Macadaeg*.[57] The Overseas Factors loaded on the SS "Ocean Trader" the rice it had agreed to supply the plaintiff corporation. When the ship arrived in Manila, its owners and agent refused to allow the rice to be unloaded without the freight being first paid. The plaintiff claimed that the freight was already included in the purchase price paid by it to the Overseas Factors and that therefore it was not the one liable to pay it. The Court held that even if this contention be true, it would not free the *cargo* from the carrier's lien under Article 665 of the Code of Commerce, if the freight has not in fact been paid by the shipper. And even the fact that a bond may have been given for the payment of such freight does not make it compulsory for the carrier to deliver the cargo before the freight has actually been paid.

C. Public Service Act

1. *Necessity and convenience of the public controlling—*

Before a certificate of public convenience is granted to a public service operator, the Public Service Commission has to ascertain whether it will promote the interests of the public in a "proper and suitable manner."[58] The necessity and convenience therefore of the travelling public will be the primary considerations in the granting

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55 See Cordoba v. Warner Barnes & Co., 1 Phil. 7. In this case, however, the question of whether there was delivery or not was important to determine the applicability of Article 366 of the Code of Commerce, under which claims for damages to goods which cannot be seen from the exterior thereof must be filed within 24 hours after delivery of such goods.

56 GR L-9840, April 22, 1957

57 GR L-9025, September 27, 1957

58 Section 15, Public Service Act

of the certificates of public convenience. This principle was reiterated in the following recent cases: *Laguna Tayabas Bus Co. v. Public Service Commission,*[59] *Maclang v. Public Service Commission,*[60] *Bachrach Motor Co. Inc. v. Hipolito,*[61] *Laguna Tayabas Bus Co. & Batangas Trans. Co. v. Vegamora,*[62] *Guico v. Bachrach Motor Co. Inc.,*[63] and *Lanuza v. Lat and Beltran.*[64]

2. *The Old Operator doctrine—*

So long as the first licensee keeps and performs the reasonable rules and regulations of the Commission and meets the reasonable demands of the public, it should more or less have a vested and preferential right over a person who seeks to acquire another and later license over the same route.[65] In the recent case of *Heras v. Tengco,*[66] the Court ruled that as the old operator had not abandoned nor had the intention to abandon a part of his original authorized route and as the volume of the passengers was sufficient to warrant both the old operator's increase of his equivalent and the granting of a certificate to a new operator, the old operator should not be deprived of a part of his authorized route.

The mere fact that the new operator had filed his application prior to the old operator's application for additional trips will not in itself be sufficient to prevent the approval of the latter.[67] And an applicant is not necessarily entitled to preference just because it was his evidence, rather than the other applicant's, that established the fact that there was still need for additional service, for "whose evidence it was that proved such need is not important. What is important is whose operation would best subserve the public interests."[68]

The "old operator" doctrine is however not absolute. In the recent years, it has suffered many modifications, for way above the governmental policy of protecting the old operator is the paramount consideration of public convenience. Thus, the rule of giving preference to the old operators applies only when it is the old operator who offers to meet the needed increase in services and not after another operator had already made the offer, because the rule can protect only those who are vigilant in meeting the needs of the travelling public.[69] Neither is it applicable to grantees of temporary certificates.[70]

3. *Provisional permits—*

The power of the Public Service Commission to issue provisional permits in connection with the application for certificate of public

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59 GR L-10903 January 18, 1957
60 GR L-9566, February 4, 1957
61 GR L-9278, April 26, 1957
62 GR L-9445, April 29, 1957
63 GR L-9570, July 29, 1957
64 GR L-9555, July 31, 1957
65 Batangas Transportation Co. v. Orlanes, 52 Phil. 455
66 GR L-9039, January 30, 1957
67 Guico v. Estate of Buan, GR L-8729, August 30, 1957
68 Ibid.
69 Buan v. La Mallorca, GR L-8729, Feb. 28, 1957; Halili v. Floro, GR L-9465, October 25, 1957.
70 Pascua & Erudiso Trans. Co., Inc. v. Concepcion, GR L-4312, August 15, 1957

convenience has been upheld by the Supreme Court when said Commission cannot decide the case within a short time and there is an urgent public need for the service applied for.[71] This is specially true when the case is half-finished and its termination seems remote because of repeated postponements and delays caused by the oppositors.[72]

In the more recent case of *De Leon v. Public Service Commission and Tengco,*[73] the Court upheld the issuance of a provisional permit because of the existing public need for the continuance of the service the respondent desired to extend, and it was very probable that the hearing would take considerable time to finish.

4. *Increase of trips—*

Before an established common carrier may be permitted to increase its trips, he must positively show the public need for it. He must prove first, that he has regularly undertaken all his authorized trips; second, that his buses are always sufficiently loaded with passengers; and third, that many travelers can not be conveniently accommodated.[74]

5. *Extension of certificate—*

May a certificate of public convenience which has already expired be renewed or extended? In the case of *La Mallorca & Pampanga Bus Co. Inc. v. Reyes,*[75] the Supreme Court held that it may, if public necessity and convenience require it. Besides, the Court observed that the applicant in this case had been operating before the oppositors began operating their lines and that said applicant had made considerable investment in her transportation business and her buses were still in good running condition.

6. *Registered owner liable for injuries —*

The case of *Erezo et. al. v. Jepte*[76] reiterates the well-settled rule that the registered owner of a certificate of public convenience is liable for injuries or damages suffered by passengers or third persons caused by the operation of the vehicles covered by the certificate, even if the latter had already been transferred to a third person, if the vendee has failed to register the sale with the Public Service Commission.[77] The basis of this doctrine is the right of the public to assume that the registered owner is the actual owner. It will oftentimes be difficult for a passenger who has been injured to prove who the actual owner of the vehicle is. In justice to him therefore, the registered owner should be held directly liable to the passenger, without prejudice to the right of the former to recover from the person to whom he had sold it.

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71 Javellana v. La Paz Ice Plant & Cold Storage Co. 64 Phil. 893
72 Ablaza Trans. Co., Inc. v. Ocampo et al., GR L-3563, March 29, 1951
73 GR L-11100, April 29, 1957
74 GR L-9746, Nov. 29, 1957
75 GR L-8982, August 30, 1957
76 GR L-9605, September 30, 1957
77 Vda. de Medina v. Crescencia, GR L-8194, July 11, 1956; Roque v. Malibay Transit Inc., GR L-8561, Nov. 18, 1955; and Montoya v. Ignacio, GR L-5868, December 29, 1953.

7. Findings of facts by the Public Service Commission—

The findings of facts by the Public Service Commission, when reasonably supported by evidence, are conclusive upon the appellate court which cannot weigh the conflicting evidence and substitute its own conclusion in lieu of those made by the Commission. The Supreme Court, therefore, will not set aside conclusions of facts, except when it clearly appears that there is no competent evidence to support the same. This principle was repeatedly applied by the Supreme Court this last year, as held in the following cases: *Espiritu v. Los Baños,*[78] *Bachrach Motor Co. Inc. v. Hipolito,*[79] *Lanuza v. Lat & Beltran,*[80] *Guico v. Bachrach Motor Co. Inc. & Pangasinan Trans. Co. Inc.,*[81] and *Laguna Tayabas Bus Co. & Batangas Transportation Co. v. Vegamora.*[82]

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78 GR L-7151, July 30, 1955
79 GR L-9278, April 26, 1957
80 GR L-9555, July 31, 1957
81 GR L-9570, July 29, 1957
82 GR L-9445, April 29, 1957

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