COMMERCIAL LAW—1958

JOSE C. CAMPOS, JR.*

CORPORATION LAW

A. *Who may exercise the corporate power to sue and be sued?*

Blackstone enumerated the power to sue and be sued in the corporate name as one of the attributes of a corporation; and among the incidental or implied powers which have been attributed to corporations from the earliest period is the power to sue and be sued.[1] This power is, however, expressly conferred by our Corporation Law.[2] Yet a logical question that may arise in this regard is: Who is to exercise this corporate power to sue and be sued?

The case of *Republic v. Phil. Resources Development Corp.*[3] provides the answer. In this case, the president of the corporation was the defendant in a suit for the recovery of a sum of money. His defense was payment, alleging a conveyance by him unto the plaintiff of certain goods. The corporation, however, sought to intervene in this suit upon its claim that it was the owner of the said goods. Plaintiff opposed the corporation's "motion for admission of complaint in itervention" on the ground, *inter alia*, that the counsel appearing for the corporation has no authority to represent it and/or sue in its behalf. In resolving this issue, the Court observed that the claim of the corporate counsel that a resolution to proceed against the defendant (its president) in the pending suit had been unanimously adopted by the stockholders of the corporation, had not been refuted. The Court further observed that the power of a corporation to sue and be sued in any court is lodged in the board of directors which exercises its corporate powers.[4] Even granting, the Court went on to point out, that counsel had not actually been authorized by the board of directors to appear for and in behalf of the corporation, the fact that counsel was the secretary-treasurer of the corporation and a member of the board of directors and that the other members of the board were the president and his wife, who should normally initiate the action to protect the corporate properties and interests are the ones to be adversely affected thereby, a single stockholder under such circumstances may sue in behalf of the corporation.[5]

B. *Manager is not an officer of the corporation*

Gurrea v. Lezama, et al.[6] is a case of significance in Corporation Law because it rules, categorically, that a manager or general manager is not an officer of the corporation. The plaintiff in this case instituted the action to have a resolution of the Board of Directors of the La Paz Ice Plant & Cold Storage Co., Inc., removing him from his position of manager of said corporation declared null and void and to recover damages incident thereto. Plaintiff predicates his case upon the ground that the said resolution was adopted in contravention of the provisions of the by-laws of the corporation, of the Corpora-

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[1] 9 FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS 28 (Perm. ed.).

[2] Act No. 1459, as amended, Sec. 13, par. 2

[3] G.R. No. L-10141, January 31, 1958.

[4] Citing Act No. 1459, as amended, Sec. 28.

[5] Evangelista v. Santos, G.R. No. L-1721, May 19, 1950; Everett v. Asia Banking Corp., 49 Phil. 512 (1926); Pascual v. Del Saz Orozco, 19 Phil. 82 (1911). See 2 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES. 739-741 (8th ed., 1958). This is known as a derivative suit.

[6] G.R. No. L-10556, April 30, 1958.

tion Law and of the understanding, intention and agreement reached among its stockholders.

Section 33 of the Corporation Law provides: "Immediately after the election, the directors of a corporation must organize by the election of a president, who must be one of their number, a secretary or clerk who shall be a resident of the Philippines x x x and such other officers as may be provided for in the by-laws." The by-laws of the instant corporation in turn provide that in the board of directors there shall be a president, a vice-president, a secretary and a treasurer, and that with the exception of the president, the officers of the corporation may be removed or suspended by the affirmative vote of ⅔ of the paid-up shares of the corporation. The controversy therefore revolved about the simple issue: whether plaintiff could be legally removed as manager of the corporation merely by resolution of the board of directors or whether the affirmative vote of ⅔ of the paid shares of stock was necessary for that purpose.

The Court rendered judgment against the plaintiff upon the reasoning that those only are to be regarded as officers of a corporation as are given that character either by the Corporation Law or by the corporation's by-laws, and that the rest can be considered merely as employees or subordinate officials. Relying on American authorities, and insisting, as against the contrary claim of the dissenting opinion of Justice Bengzon, that it is upholding the prevailing view in American jurisprudence, the Court stressed the following considerations to support its holding that plaintiff, as manager, is not an officer of the corporation: (1) the fact that the by-laws do not mention the manager as among the officers of the corporation; (2) the fact that plaintiff was appointed manager by the board of directors and, as such, served at the pleasure of said board, and was to perform such functions only as are delegated to him by the board in the manner of an *alter ego* of the board; and (3) Section 33 of the Corporation Law which provides that only those enumerated in the Charter or in the by-laws are considered officers.[7]

The strong dissent of Justice Bengzon (concurred in by Justice Labrador), which takes the view that plaintiff, as manager, is "an officer" of the corporation, rests upon these considerations: (1) the Congressional viewpoint as manifested in statutes holding the manager criminally responsible for violations thereof by the corporation; (2) the manager is mentioned in the by-laws as one of the administrators—which means officers; (3) the nature of the position and functions of a manager; (4) an implied admission on the part of the Supreme Court itself as indicated in the holding[8] that by virtue of his position, the manager could validly make reasonable contracts of employment binding on the corporation, and in its Rules which recognize in him power to represent the corporation as an officer; and (5) the history of the instant corporation which bears out an intention on the part of the stockholders to have the manager removed only by a two-thirds vote.[8a]

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[7] The Court relied heavily on the following quotation from a Corporation Law treatise:
"The word 'manager' implies agency, control, and presumptively sufficient authority to bind a corporation in a case in which the corporation was an actual party. It has been said that such agent must have the same general supervision of the corporation as is associated with the office of cashier or secretary. *By whatever name he may be called, such managing agent is a mere employee of the board of directors and holds his position subject to the particular contract of employment; and unless the contract of employment fixes his term of office, it may be terminated at the pleasure of the board.* x x x The manager, like any other appointed agent, is subject to removal when his term expires and on the request of the proper officer he should turn over his business to the corporation and, where he refuses to comply, he may be restrained from the further performance of work for the corporation." 3 THOMPSON ON CORPORATIONS 209-210 (3rd ed.) (Italics supplied by the Court).

[8] Yu Chuk v. Kong Li Po, 46 Phil. 608 (1924)

[8a] The other dissent, by Justice Alex Reyes, is noteworthy particularly because it takes exception to the theory of the majority that as the manager is appointed by the Board of Directors he may be suspended or removed by the Board "under such terms as it may see fit and

C. *Corporation by estoppel; liability of person acting in behalf of non-existent corporation*

In *Vda. de Salvatierra v. Garlitos*,[9] the Court had occasion to add a qualification to the well-known doctrine of corporation by estoppel. It appears that Manuela T. Vda. de Salvatierra leased a parcel of land to Philippine Fibers Producers Co., Inc., allegedly a corporation "duly organized and existing under the laws of the Philippines", as then represented by Segundino Q. Refuerzo, the President. For the lessee's non-compliance with some terms of the lease contract, the lessor Vda. de Salvatierra sued the Philippine Fibers Producers Co., Inc. *and* Segundino Refuerzo for accounting, rescission and damages. Judgment was ultimately given to the plaintiff and when attachment was sought to be levied on Refuerzo's properties, Refuerzo asked for the lifting thereof upon his disclaimer of any personal liability upon the contract of lease, especially as the complaint did not charge him personally. Plaintiff, however, countered by contending that her failure to specify Refuerzo's personal liability was due to the fact that all the time she was under the impression that the Philippine Fibers Producers Co., Inc., represented by Refuerzo, was a duly registered corporation as appearing in the contract, but a subsequent inquiry from the Securities & Exchange Commission proved otherwise. Under these facts, is there room for application of the doctrine of corporation by estoppel?

The Court ruled that there was none. While as a general rule, according to the Court, a person who has contracted or dealt with an association in such a way as to recognize its existence as a corporate body is estopped from denying the same in an action arising out of such transaction or dealing,[10] yet this doctrine may not be held to be applicable where fraud takes a part in the said transaction. In the case at bar, on plaintiff's charge that she was unaware of the fact that the Philippine Fibers Producers Co., Inc., had no juridical personality, Refuerzo gave no confirmation or denial, and the circumstances surrounding the execution of the contract lead to the inescapable conclusion that plaintiff Vda. de Salvatierra was really made to believe that such corporation was duly organized in accordance with law.

As regards Refuerzo's liability, the Court, taking into account his having acted in behalf of a non-existent organization which before the law had no personality, applied the principle in the law of agency that a person who acts as an agent without authority or without a principal is himself regarded as the principal, possessed of all the rights and subject to all the liabilities of a principal. Translated into a Corporation Law principle: a person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and obligations and becomes personally liable for contracts entered into or for other acts performed as such agent.[11]

In another case,[11a] however, a shipping firm was held estopped, in a suit for recovery of seaman's wages, from denying the existence of its corporate personality, because it had taken advantage of the plaintiffs' services and had had profited thereby.

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not as may be provided by the by-laws." Justice Reyes poses the provoking querry: "Under what principle of the corporation law could the pretense be justified that the board of directors may disregard the by-laws, when the validity of these is not questioned?"

[9] G.R. No. L-11442, May 23, 1958.

[10] Ohta Development Co. v. Steamship Pompey, 49 Phil. 117 (1926); Asia Banking Corp. v. Standard Products Co., 46 Phil. 144 (1924); Compania Agricola de Ultramar v. Reyes, 4 Phil. 2 (1904).

[11] Citing Fay v. Noble, 7 Cushing (Mass.) 188, as cited in 2 TOLENTINO, *op. cit.* 689-690 (5th ed.).

[11a] Madrigal Shipping Co., Inc. v. Ogilvie et al., G.R. No. L-8431, Oct. 30, 1958.

D. *Corporate acts must be recorded*

In a case[12] where the pivotal point was the question of whether the assumption by a third party of certain advances by the corporation to a stockholder was consented to by the corporation to constitute a novation,[13] the Court held that such consent was not given by the board of directors of the corporation, reasoning that corporate acts of a corporation must appear in its books or records and no such consent appears in the books or records of the corporation.

E. *Registration of assignment of membership certificate (in a non-stock corporation)*

Where a membership certificate in a non-stock corporation (a golf and country club) contains a condition to the effect that no assignment thereof "shall be effective with respect to the club until such assignment is registered in the books of the club, as provided in the By-Laws", it should be understood that there is no prescriptive period for the registration of said assignment. This was the holding in *Won v. Wack-Wack Golf & Country Club, Inc.*[14]

F. *Owners of matured shares are creditors of the corporation*

From the time that the shares of a stockholder have matured, he ceases to be a stockholder of the corporation and becomes its creditor for the value of his paid up shares.[15] This principle was reiterated in *El Hogar Filipino v. Angeles*,[16] where it was invoked to save shares which have matured before the war but which could not be paid by the corporation till thereafter, from the revaluation which was a condition imposed by the Central Bank for the reopening of the corporation's business.

G. *Piercing the veil of corporate fiction*

It is well settled that, even though there has been valid incorporation, the corporate personality of the body of shareholders will be disregarded when used to defeat public convenience, justify wrong, protect fraud, or defend crime. A disregard of corporateness may also be justifiable in any instance where a recognition of it would produce unjust or undesirable consequences inconsistent with the purpose of the concept of corporate personality.[17] This is the so-called doctrine of "piercing the veil of corporate fiction." The doctrine has led, logically and therefore inevitably, to the holding of parent corporations liable for the torts and contracts of their subsidiary corporations, in disregard of their separate corporate existence.[18] Thus, in *Madrigal Shipping Co., Inc. v. Ogilvie, et al.*,[19] the Court brushed aside the claimed distinction in the juridical personalities of the Madrigal Shipping Co., Inc. and the Madrigal & Co. because it found that the former was a business conduit of the latter. Disregarding the fiction of separate corporate existence, the Court held the real party responsible.[20]

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[12] Vda. de Pirovano v. De la Rama Steamship Co., Inc., G.R. No. L-6817, July 31, 1958.

[13] Express consent by the creditor is necessary to substitute another for the debtor. (Art. 1293, Civil Code)

[14] G.R. No. L-10122, Aug. 30, 1958.

[15] Yatco v. El Hogar Filipino, 67 Phil. 610 (1939). This rule is applicable only to a Building and Loan Association as a corporate form.

[16] G.R. No. L-11618, Sept. 30, 1958

[17] STEVENS, HANDBOOK ON THE LAW OF PRIVATE CORPORATIONS 95 (2d ed., 1949).

[18] See TELLER, CORPORATIONS 16-19 (1949 ed.).

[19] *Supra* note 11a.

[20] Accordingly, in connection with litigation as to responsibility for tort and contract obligations, to prevent the assimilation of the assets and liabilities of the subsidiary corporation with those of the parent, it is essential: (1) that there be separate financial units, with sufficient assets in the subsidiary to meet its ordinary purposes and liabilities; (2) that the transactions of each corporation be distinguished, and that there be separate systems of bookkeeping; (3) that, even though there be identical directors and managers, there must be an observance of the for-

H. *Effect of sale of entire stockholding*

Rio Grande Rubber Estate Co., Inc. v. Board of Liquidators, et al.[21] simply affirms the rather obvious proposition that where the stockholders of a corporation have sold their entire stockholding, they could not validly organize themselves into a board to act for the corporation inasmuch as they could no longer claim as stockholders because they have already disposed of all their stockholding.[22]

NEGOTIABLE INSTRUMENTS LAW

A. *Meaning of "I Promise to pay" signed by two or more*

Not infrequently, the resolution of a case involving a negotiable instrument hinges upon a construction of the instrument. And it is the function of the court to determine from an inspection of the instrument what it contains and means, especially in a dispute respecting the meaning and import of the characters appearing in the writing.[23] Thus, Section 17 of the Negotiable Instruments Law contains rules of construction for cases where the language of the instrument is ambiguous or there are omissions therein.

Philippine National Bank v. Osena, et al.,[24] is a case in point. It involved a promissory note signed by three persons and significantly containing the words "I promise to pay." One of the signers insisted that he was merely a guarantor. But the Court, citing Section 17 (g) of the Negotiable Instruments Law,[25] easily dismissed this claim and held him jointly and severally liable on the note as a co-maker thereof.[26]

B. *Payment by check or draft*

The well-established civil law principle that payment by promissory notes or commercial documents does not constitute valid payment unless they are cashed or when their validity is impaired thru the fault of the creditor,[27] found square affirmation in *Hidalgo, et al. v. Heirs of D. Tuazon, Inc.*[28] In this case, the drawing of drafts in favor of the creditor were held not to have the effect of payment for said drafts had neither been cashed nor impaired thru the creditor's fault.

A similar reiteration was made in a case decided a little later. This case,[29] citing a number of earlier rulings,[30] merely decided that a check intended to pay a debt, if refused by the obligee or creditor, is not a valid tender of payment.

INSURANCE LAW

A. *Right to reinstatement of policy; waiver of non-payment of premium*

Andres v. Crown Life Insurance Co.,[31] turned upon the issue of whether there was a perfected contract of reinstatement after the policy lapsed due to

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malities of separate meetings; (4) that there should be no public representation that the two organizations are one. STEVENS, *op. cit.* 87-88.

[21] G.R. N. L-11821, Nov. 28, 1958.

[22] This case also rules that new certificates of stock which have been secured by misrepresentation from the Securities and Exchange Commission, are not valid under Rep. Act No. 62 ("An Act to Require the Presentation of Proof of Ownership of Securities and the Reconstruction of Corporate and Partnership Records, and for other Purposes.").

[23] 7 AM. JUR. 814.

[24] G.R. No. L-10880, Jan. 31, 1958.

[25] "Where an instrument containing the words 'I promise to pay' is signed by two or more persons, they are deemed to be jointly and severally liable thereon."

[26] *Accord*, Phil. Nat. Bank v. Santos, (C.A.) 52 O.G. 10, 4695 (1956).

[27] "The delivery of promisory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired." (Art. 1249, par. 2, Civil Code).

[28] G.R. No. L-10871, June 27, 1958.

[29] Lapus Sy v. Eufemio, G.R. No. L-10572, Sept. 30, 1958.

[30] Court of First Instance of Tarlac & Samaniego v. Court of Appeals & Vicente, G.R. No. L-4191, April 30, 1952; Legarda v. Mialihe, G.R. No. L-3485, April 28, 1951; Cuaycong v. Rius, 47 O.G. 12, 6125 (1950); Villanueva v. Santos, 67 Phil. 648 (1939); Belisario v. Natividad, 60 Phil. 156 (1934).

[31] G.R. No. L-10874, Jan. 28, 1958.

non-payment of premiums. The policy was a joint 20-year endowment for ₱5,000.00, issued in favor of the plaintiff and his wife. As per a provision in the policy, the premiums were to be paid semi-annually, at ₱165.15 per semester. It was the premium for the semester beginning November 25, 1950 to May 25, 1951 which was not paid. The policy therefore lapsed for non-payment of premiums on December 26, 1950, upon expiration of the customary 31-day period of grace. In February, 1951, after notification by the Company that their policy had lapsed, plaintiff and his wife applied for its reinstatement and made a partial premium payment of ₱100.00. Later, the Company wrote the plaintiff requesting for the remittance of the balance of ₱65.15 and stating that, upon the receipt of the amount, there will be sent to him the Certificate of Reinstatement of the policy. On *May 5, 1951*, plaintiff remitted ₱65.00 for the balance on the semi-annual premium, which remittance was received by the Company on *May 11, 1951*. On May 15, 1951, the Company sent plaintiff an Official Receipt for ₱165.15 and enclosed therewith a Certificate of Reinstatement dated April 2, 1951. On June 7, 1951, plaintiff presented his Death Claim as survivor-beneficiary of his deceased wife, and enclosed therewith a Certificate of Death wherein it was shown that his wife died on *May 3, 1951*.

The Court ruled that there was no valid reinstatement, and stressed that the plaintiff did not comply with the terms for reinstatement as provided in the policy itself.[32] The policy required, among several other prerequisites for reinstatement, that all overdue premiums and other indebtedness in respect of the policy, together with interest at six per cent, compounded annually, should first be paid. Plaintiff's remittance of the balance of ₱65.00 was on May 5, 1951 (received by the Company on May 11)—two days after his wife died.[33]

The Court, moreover, refused to heed plaintiff's contention that the condition regarding payment of the premiums was waived by the insurance Company, invoking "the well settled rule that a waiver must be clear and positive, and intent to waive shown clearly and convincingly."[34] In the view of the Court, the bare promise made by the Company to give plaintiff's case every consideration did not import any decision to renounce the insurer's rights; and as to the Company's further promise to "work out an adjustment most beneficial" to the insured, the proposal is "obviously so vague and indefinite as to require further negotiations between the parties, for their criteria might differ as what would be the most beneficial arrangement."

B. *Incontestability of Reinstated Policy*

Section 184 (b) of the Insurance Law, in providing for the so-called "incontestable clause", ordains that an insurance policy, "shall be uncontestable after it shall have been in force during the lifetime of the insured for a period of two years from its date of issue, except for non-payment of premiums and except for violation of the conditions of the policy relating to the military or

[32] See Insurance Act (Act No. 2427, as amended), Sec. 184(j).

[33] The Court cited its decision in McGuire v. Manufacturer's Life Ins. Co., 48 O.G. 1, 114 (1950):

> "The stipulation in a life insurance policy giving the insured the privilege to reinstate it upon written application does not give the insured the absolute right to such reinstatement by the mere filing of an application. The Company has the right to deny the reinstatement if it is not satisfied as to the insurability of the insured and if the latter does not pay all the overdue premiums and all other indebtedness to the Company. After the death of the insured the insurance Company cannot be compelled to entertain an application for reinstatement of the policy because the conditions precedent to reinstatement can no longer be determined and satisfied."
>
> Where the policy requires compliance with certain conditions satisfactory to the insurer, there can be no reinstatement until insured has fully complied with the contract on his part; at least, in the absence of waiver or estoppel. 6 COUCH ON INSURANCE 4939.

[34] Citing the following cases: Jocson v. Capitol Subdivision, Inc., G.R. No. L-6673, Feb. 28, 1955; Lang v. Sheriff, 49 O.G. 8, 3323, 3329 (1953); Fernandez v. Sebido, 70 Phil. 151 (1940).

naval service in time of war." This clause, restricting as it does the defenses available to the insurer, is not inserted in the policy as a mere act of benevolence on the part of the insurer, but is put there as an inducement to prospective policyholders.[35] The law itself is very clear as to when the policy becomes incontestable—i.e., two years from its date of issue. A problem, however, may arise as to the application of this rule to the reinstated policy: whence then should the running of the two-year period be counted?

The answer is given in the case of *Soliman v. U.S. Life Insurance Co.*,[36] which emphasized that Section 184 (b) refers to the original policy, and does not apply when it lapses for non-payment of premiums and is reinstated. The rule as to reinstatement, said the Court as it cited the majority rule in the United States,[37] is that with regard to new requirements, the incontestability after two years will only run from the date of the reinstatement upon the theory that that the company should be given reasonable time to investigate and determine the truth of the new facts that may arise after the lapse of the policy.[38]

C. *Signing of insurance application in blank*

The problem arising from the circumstance where the applicant for insurance allows the insurance agent or the company's medical examiner, or whoever else, to fill in the blanks in the application form or in the accompanying health certificate although the applicant himself nevertheless affixes his signature thereon, had already been solved in the leading case of *Insular Life Assurance Co., Ltd. v. Feliciano, et. al.*[39] The *Feliciano* case holds that, under such circumstances, the insured is to be considered to have presumptively acquiesced to the statements contained in the form, for when he asked the company's agent or employee to fill the blanks for him, "he made them his own agents for that purpose, and he was responsible for their acts in that connection", and by his signature he vouches for the truth of the statements. Reiteration of this doctrine was made in the afore-discussed case of *Soliman v. U.S. Life Insurance Co.*[40]

PUBLIC SERVICE LAW

A. *Granting and cancellation of certificates of public convenience*

1. The following have been held not to be grounds for cancelling a certificate of public convenience:

a. the neglect or abandonment of the original holder of the certificate, where the same is already in the hands of a transferee; [41]
b. the failure to immediately operate the line subject of the certificate, because time must be given for the purchase of equipment and for the organization of the men to be employed on the line; [42] and

[35] VANCE, HANDBOOK OF THE LAW OF INSURANCE 819 (2d ed., 1930).
[36] G.R. No. L-11975, June 27, 1958.
[37] Citing 1 APPLEMAN, INSURANCE LAW AND PRACTICE 374-375.
[38] "Where the policy containing an incontestable clause has lapsed for nonpayment of premiums, or for other cause, and has been reinstated, it may become important to determine whether the incontestable period shall be computed from the date of reinstatement, or from the date of original issue. A distinction should be made, in computing the contestable period, between those defenses arising out of the provisions of the policy itself and those defenses arising out of transactions connected with the reinstatement. In the former case the contest period should begin, not from the date of reinstatement, but from the date of original issue. x x x But where the insurer's defense is based on some transaction connected with and resulting in the reinstatement, the running of the incontestable clause, as to this defense, should be computed from the date of reinstatement. x x x" VANCE, *op. cit.*, 825-826.
[39] 74 Phil. 468 (1943).
[40] *Supra* note 36.
[41] Batangas Trans. Co. v. Souza et al., G.R. Nos. L-8845 & 8846, Jan. 7, 1958.
[42] *Id.*

c. a decision cancelling the grantee's certificate of naturalization, where such decision had not yet become final.[43]

2. Voluntary and unauthorized abandonment of the services assumed to be performed in the certificate of public convenience is a ground for the cancellation of the said certificate.[44]

3. Factors considered in the granting of certificates of public convenience:

a. the fact that, in the case of bus lines, one long continuous trip serves the traveller's convenience better than several short trips, especially with the elimination of the cumbersome and expensive transfers from one bus to another at the terminals of the connecting lines; [45]
b. the fact that the grant would cause no ruinous competition; [46] and
c. the fact that present operators are unable to operate all their authorized units, and that the riding public is in bad need of their services.[47]

4. Prescription of action for cancellation.—Prescription as provided in Section 28 of the Public Service Act is available as a defense only in criminal or penal proceedings filed under Chapter IV of the Act, and not in cancellation proceedings based on Section 16(n).[48]

B. *Powers and jurisdiction of the Public Service Commission*

1. To grant a certificate of public convenience for ferry service.—Where a ferry lies entirely within the territorial jurisdiction of a municipality, previous approval of that municipality is necessary before the PSC can grant a private operator a certificate of public convenience for its operation.[49] But where the ferry service proposed is between two municipalities and serves as a continuation, by watercraft, of a national highway, the PSC has jurisdiction to entertain applications therefor without previous approval of the municipalities concerned. If local authorization were needed for the operation of such a ferry service, that authorization should more properly come from the provincial board since there are two municipalities involved.[50]

2. To adopt a policy against authorizing any reserve equipment for TPU operators.—The adoption of a policy by the PSC against authorizing any reserve equipment for the TPU operators is justified by the circumstances. It is not true that the denial of reserve equipment would make a TPU operator unable to render adequate, efficient and continuous service, because the Commission must have found that so many certificates have been issued that failure of some to render continuous service does not necessarily redound to public inconvenience.[51] In anwer to the charge that the Commission's policy denies equal protection of the law because the right to have reserves is granted operators with regular 25-year certificates, the Court remarked:

> ". . . TPU operators for a short period cannot claim privileges equal to those holding 25-year certificates. The certificates of such TPU operators are by nature limited to certain specified period of years, and the grant of reserves might later be used as a ground for extending the limited period of their certificates."

[43] Una v. Noche et al., G.R. Nos. L-18393-18395, Nov. 29, 1958.
[44] Regodon & Villareal v. P.S.C. & Laguna Tayabas Bus Co., G.R. No. L-11099, Sept. 23, 1958; Collector of Internal Revenue v. Estate of Buan & P.S.C., G.R. Nos. L-11438-11439 and L-11542-11546, July 31, 1958.
[45] Ammen Trans. Co. v. Desuyo, G.R. No. L-10372, May 14, 1958.
[46] *Id.*
[47] Red Line Trans. Co. v. Abrazado, G.R. No. L-11411, Oct. 31, 1958.
[48] Collector of Internal Revenue v. Estate of Buan & P.S.C., *supra* note 44.
[49] Mun. of Gattaran v. Doroteo Elizaga, G.R. No. L-4878, Mun. of Gattaran v. Fruto Elizaga, G.R. No. L-4879, May 8, 1952.
[50] Cababa v. P.S.C. et al., G.R. No. L-11186, Jan. 31, 1958.
[51] Manansala v. Heras et al., G.R. No. L-10582, April 30, 1958.

3. To provisionally approve transfers of certificates of public convenience.—The fact that the question of the validity of the transfer, or the title or ownership over the franchise, is pending determination in the courts, does not deprive the PSC of the power to approve the transfer provisionally where the conditions set by the law [52] are satisfied, in order to protect the public interest.[53]

4. Section 16(n) of the Public Service Act confers on the Commission the power to cancel and revoke a certificate where the holder has violated its provisions. Such power to revoke a certificate may be exercised by the Commission even without a formal charge filed by any interested party, with the only limitation that the holder be given his day in court.[54]

5. The PSC has no authority to require operators of a motor-launch ferry service, engaged in carrying or towing passengers or freight, to obtain a certificate of public convenience because the watercraft used are steamboats, motorboats or motor vessels. It is the Bureau of Customs, under Section 1139 of the Revised Administrative Code [55] that has jurisdiction over the same.[56]

6. To permit an operator a shorter route than he applied for.[57]

7. To approve sale of a franchise even if the vendor himself denies having made the sale. Courts are not the appropriate place wherein to obtain conveyance of a certificate of public convenience, with the concomitant privilege to operate a public service.[58]

8. The PSC has jurisdiction over public services which, though owned by the government, are operated by (because leased to) private parties. What the Public Service Act [59] has withdrawn from the control of the PSC is not a particular ice plant or public service, but those operated by the Government of the Philippines. The exemption is not in favor of the government ownership but of government operation, and operation of government property by a lessee is not government operation protected by the mantle of governmental immunity.[60]

C. *"Old Operator" doctrine*

An operator of a bus line cannot oppose an application to operate on the same line, where said operator does not operate the line in his own right but is a mere lessee of certificates of public convenience granted to others.[61]

D. *Transfers of franchises*

1. The mere fact that at the time of the sale of a certificate of public convenience, the said certificate was still pending approval in the PSC, does not necessarily make the sale void where the certificate sold was in fact granted.[62]

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[52] Public Service Act (C.A. No. 146, as amended), Sec. 20(g).

[53] Dagdag v. P.S.C., G.R. No. L-11940, July 25, 1958, citing Montoya v. Ignacio, G.R. No L-5868, Dec. 29, 1953 and Orianes & Banaag Trans. Co. v. P.S.C., 57 Phil. 634 (1932).

[54] Collector of Internal Revenue v. Estate of Buan & P.S.C., *supra note* 44.

[55] "Sec. 1139. GENERAL JURISDICTION OF BUREAUS.—The general duties, powers, and jurisdiction of the Bureau of Customs shall include:

xx xx xx

"(b) The general supervision, control and regulation of the coastwise trade and in the carrying or towing of passengers and freight in the bays and rivers of the Philippines." (Revised Administrative Code).

[56] Brown v. Suezo, G.R. No. L-12544, Aug. 25, 1958, citing Public Service Act, Sec. 13(a) & (b) and Javellana et al., v. P.S.C. et al., G.R. No. L-9088, April 28, 1956.

[57] Batangas Trans. Co. v. Adarlo, G.R. No. L-10858, Sept. 30, 1958.

[58] Garcia v. Bonifacio & Peña, G.R. No. L-11163, Sept. 30, 1958.

[59] "Sec. 14. The following are exempted from the provisions of the preceding section:

"(a) Ice and refrigeration plants and the other public services operated in the Philippines by the Government of the United States for its exclusive use and not to serve to persons for hire or compensation;

"(f) Public services owned or operated by any instrumentality of the National Government or by any government-owned or controlled corporation." (Public Service Act, C.A. No. 146 as amended by C.A. No. 454).

[60] Castro et al. v. Ice & Cold Storage Industries of the Phil. et al., G.R. No. L-10147, Dec. 27, 1958.

[61] Rizal-Manila Transit, Inc. v. Victorino, G.R. No. L-10625, Mar. 22, 1958.

[62] Del Rosario v. Vergara & P.S.C., G.R. No. L-11643, April 28, 1958.

2. Considering that as per provision of Section 20(g) of the Public Service Act, the only factors to be considered by the Commission in approving or disapproving a transfer of a franchise are (1) that there is a just and reasonable ground for the transfer, and (2) that the same is not detrimental to the public interest, these elements are satisfied where the franchise was sold at public auction and where the buyer's ability and experience to operate the service in question shows that the transfer would not be detrimental to the public interest.[63]

3. The controlling factor in the approval of a sale or transfer of a franchise is not priority of a sale over another, but that one sale is more stable or certain and more satisfactory and therefore, superior, to another.[64]

E. *Nature of franchise to operate within specified territory*

A privilege or franchise to sell ice within a specified territory, even if not exclusive, is a valuable property right entitled to protection against unauthorized competition. While such a franchise does not exclude authorized competitors, it is exclusive as against all who compete without proper authority so much so that such unauthorized competition is tortious.[65]

F. *Procedure in public service cases*

1. Failure to notify an operator of an application for bus services is not ground for the setting aside of the decision granting the application, where the operator who was not notified was not a registered operator in the PSC, and where said operator never intervened all through the time that the application was pending hearing or pending decision, notwithstanding the fact that both the application and the order setting it for hearing were published.[66]

2. The party aggrieved by a decision of the PSC may avail of either of two remedies: (1) petition for review under Section 35 of the Public Service Act, and (2) petition for certiorari under Rule 67 of the Rules of Court, as per provision of Section 35 of the Public Service Act itself. The distinction between these two remedies lies in that while the basis of a petition for certiorari is that the inferior tribunal is without, or has exceeded, its jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy, a petition for review is the remedy where the ground for the appeal is that there was no evidence before the Commission to reasonably support its order or decision, or that the same is contrary to law.[67]

3. The Supreme Court may, in reviewing decisions of the PSC, also review questions of fact as Rule 43, Section 2 of the Rules of Court denies review of questions of fact only in cases of appeals from decisions of the Securities and Exchange Commission, and neither does Section 35 of Public Service Act prohibit such review.[68]

4. It is a well-settled rule that the Supreme Court will, as a general rule, not disturb the findings of fact of the PSC unless it really appears that the same are not sufficiently supported by the evidence.[69]

[63] Dagdag v. P.S.C., *supra* note 53.
[64] *Id.*, citing Aucal Autocalesa Co. v. Ablaza, 66 Phil. 24 (1938).
[65] Castro et al. v. Ice & Cold Storage Industries of the Phil. et al., *supra* note 60, citing 1 COLMANN ON UNFAIR COMPETITION AND TRADEMARKS 768.
[66] Manila Railroad Co. v. Pangasinan Trans. Co., G.R. No. L-10152, July 31, 1958.
[67] Collector of Internal Revenue v. Estate of Buan & P.S.C., *supra* note 44, citing Ishi v. P.S.C., 68 Phil. 428 (1938) and Manila Railroad Co. v. Ammen Trans. Co., Inc., 43 Phil. 266 (1925).
[68] Batangas Trans. Co. v. Reyes, G.R. No. L-10629, Oct. 31, 1958.
[69] Batangas Trans. Co. et al. v. Laguna Tayabas Trans. Co., G.R. No. L-9185, Dec. 27, 1958, citing several cases.

COMMON CARRIERS

Liability for damages caused by defect of equipment

The law requires of common carriers "extraordinary diligence." Article 1733 of the Civil Code puts this requirement thus: "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 goods and for the safety of the passengers transported by them, according to all the circumstances of each case." And as if to make the requirement more emphatic, Article 1755 of the same Code, referring particularly to the safety of passengers, makes this further statement: "A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances."

The high incidence of vehicular mishaps (as the layman would call them) in these days of advanced technology and heavy mechanization, has provoked much litigation, and thus the deeply-felt need for some clear-cut definition and minute pin-pointing of the liabilities of common carriers—especially as regards the safety of their passengers. A major issue, for instance, has cropped up calling for a definitive statement of the rule on the carrier's liability due to mechanical defects in his vehicle. Is the carrier liable for damages caused by such mechanical defects?

The answer would naturally depend upon the test of "utmost diligence." Our Supreme Court gave its definition in *Necesito, etc. v. Paras, et al.*[70] In this case, the damages were attributable to the fracture of the right steering knuckle, which was defective in that its center was not compact but "bubbled and cellulous." It was established that the steering knuckle had been subjected by the carrier to regular 30-day inspections. The Court held that the carrier had not exercised "utmost diligence." In support of this holding, the Court cited an array of American authorities to the effect that the carrier, while not an insurer of the safety of his passengers, should nonetheless be held to answer for the flaws of his equipment if such flaws are at all discoverable. The carrier is duty-bound, elucidated the Court, to provide safe and suitable equipment, and it cannot pass this responsibility to the manufacturer of such equipment with whom the passenger has no privity and who, in law, is deemed the agent or servant of the carrier. The Court observed that the only test applied by the carrier to the steering knuckle was a purely visual inspection during every thirty days, to see if any cracks developed.

> ". . . It nowhere appears that either the manufacturer or the carrier at any time tested the steering knuckle to ascertain whether its strength was up to standard, or that it had no hidden flaws that would impair that strength. . . . a visual inspection could not directly determine whether the resistance of this critically important part was not impaired. Nor has it been shown that the weakening of the knuckle was impossible to detect by any known test; on the contrary, there is testimony that it could be detected."

The Court therefore refused to consider the knuckle's failure as a fortuitous event to exempt the carrier from responsibility.[71]

GENERAL BONDED WAREHOUSE ACT

A. *Operators of rice mills must secure licenses*

The General Bonded Warehouse Act (Act No. 3893, as amended) requires those engaged in the business of receiving rice for storage to first secure a

[70] G.R. Nos. L-10605-10606, June 30, 1958, motion to reconsider denied on Sept. 11, 1958. For an incisive comment on this decision, see Comment, Badong, Pablo B., *Observations on the Necesito Decision*, 33 PHIL. L. J. 662 (1958).

[71] Citing Son v. Cebu Autobus Co., G.R. No. L-6155, April 30, 1954 and Lasam v. Smith, 45 Phil. 657 (1924).

license therefor from the Director of the Bureau of Commerce and Industry, and the granting of said license is conditioned, *inter alia*, upon the applicant's filing of a sufficient bond.[72] The law is said to be in response to the demands of public policy or public interest that the rights of the owners of the rice—which is our main staple—be duly protected. In *People v. Versola*,[73] the defendant was convicted of operating a rice mill without a license, in violation of the Act. The defendant, owner and operator of a rice mill enclosed within a structure or "camarin" (6 by 8 meters), insists that said structure is used for milling purposes only, not for the storage and deposit of palay or rice. In upholding his conviction, the Supreme Court cited Section 2 of the Act, and this section provides that for purposes of the Act, the business of receiving rice for storage shall include "any contract or transaction wherein the rice delivered is to be milled for and on account of the owner thereof." Moreover, the Court, taking a down-to-earth view of the matter, noted that in the ordinary course of business, rice-milling cannot be accomplished without keeping the palay for some time in the mill, and hence, without storing said commodity. "Hence, one way or the other, there is a form of storage, the duration of which may vary, depending upon circumstances."

B. *Bonded warehouseman not obliged to issue "quedans"*

Though it is desirable that receipts issued by a bonded warehouseman should conform to the provisions of the Warehouse Receipts Law, said provisions are not mandatory and indispensable in the sense that if they fell short of the requirements of the Warehouse Receipts Law, then the commodities delivered for storage become ordinary deposits and will not be governed by the provisions of the Bonded Warehouse Act. Under Section 1 of the Warehouse Receipts Law, one would gather the impression that the issuance of a warehouse receipt in the form provided by it is merely permissive and directory and not obligatory:

> "Section 1. *Persons who may issue receipts.*—Warehouse receipts may be issued by any warehouseman."

and the Bonded Warehouse Act as amended permits the warehouseman to issue any receipt, thus:

> ". . . 'receipt' as any receipt issued by a warehouseman for commodity delivered to him." [74]

C. *Surety's liability under bond unaffected by warehouseman's failure to issue "quedans"*

Section 7 of the Bonded Warehouse Act provides that as long as the depositor is injured by a breach of any obligation of the warehouseman, which obligation is secured by a bond, said depositor may sue on said bond. In other words, the surety cannot avoid liability from the mere failure of the warehouseman to issue the prescribed receipt. "The obligation of the surety covers the duty of the warehouseman to issue the prescribed receipt, as well as the other duties imposed upon him by the statute." [75]

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[72] The bond is conditioned "to respond for the market value of the rice actually delivered and received at any time the warehouseman is unable to return the rice or to pay its value." (General Bonded Warehouse Act [Act No. 3893], Sec. 4).

[73] G.R. No. L-5707, March 27, 1958.

[74] Gonzales v. Go Tiong & Luzon Surety Co., Inc., G.R. No. L-11776, Aug. 30, 1958.

[75] *Id.*, citing Anderson v. Krueger, 212 N.W. 198 at 199 (1927).
The Court merely offered this statement by way of an alternative or added support for its holding the surety liable, since it already held previously that the Bonded Warehouse Act does not require the warehouseman to issue a warehouse receipt of a prescribed form.

CARRIAGE OF GOODS BY SEA ACT

Civil Code provisions on prescription inapplicable to cases governed by Carriage of Goods by Sea Act

Reiterating an earlier ruling,[76] the Supreme Court, in the case of *Yek Tong Lin Fire & Marine Ins. Co., Ltd. v. American President Lines, Inc.*,[77] held that in a case governed by the Carriage of Goods by Sea Act, the general provisions on prescription in the Civil Code should not be made to apply, as such application would have the effect of extending the one-year period of prescription fixed in the law. "It is desirable that matters affecting transportation of goods by sea be decided in as short a time as possible; the application of the provisions of Article 1155 of the new Civil Code would unnecessarily extend the period and permit delays in the settlement of questions affecting transportation, contrary to the clear intent and purpose of the law."

CHATTEL MORTGAGE LAW

Chattel mortgagee may recover deficiency judgment

Article 2141 of the Civil Code provides that the Civil Code provisions on pledge "insofar as they are not in conflict with the Chattel Mortgage Law, shall be applicable to chattel mortgages." Article 2115 (a provision on pledge) in turn precludes the creditor from recovering deficiency judgment after foreclosure sale of the thing pledged. In *Ablaza v. Ignacio*,[78] however, the Court pointed out the inapplicability of this Article 2115 to chattel mortgages which it held to be inconsistent with the Chattel Mortgage Law. Section 14 of the Chattel Mortgage Law provides for the payment of any excess from the proceeds of any foreclosure sale, to the mortgagor. The Court's conclusion was arrived at to avoid the obviously absurd situation where the mortgagor is entitled to the excess while the mortgagee cannot recover deficiency, taking particular note of the fluctuations in the values of chattels.[79]

TRADEMARKS LAW

Registration of trademark, not conclusive evidence of validity

In *People v. Lim Hoa*,[80] which was a prosecution for unfair competition under Article 189 of the Revised Penal Code, the accused was charged with giving his product the general appearance of a competitor's product. The trial court granted the motion to quash on the ground, *inter alia*, that the trademark of the accused was registered in the Patent Office. According to the trial court, the accused, as "the owner and patentee of the trademark x x x" he had, under the provisions of Section 20, Republic Act No. 166, "the exclusive right to use the same in connection with goods, business or services specified in his certificate", and that the same "is prima facie evidence of the validity of the registration in his favor and of the legality of the acts he had committed by virtue of said authority". In reversing the lower court's decision and remanding it for further proceedings, the Supreme Court stressed that the certificate of registration of the accused's trademark is—in the very language of the lower court—"*prima facie* evidence of the validity" of such registration, and therefore such evidence is *rebuttable*, not conclusive. Further, the Court considered the fact that accused's registration of his trademark was more than a year

[76] Chua Kuy v. Everett Steamship Corp., G.R. No. L-5554, May 27, 1953.
[77] G.R. No. L-11081, April 30, 1959.
[78] G.R. No. L-11466, May 23, 1958.
[79] Citing Manila Trading & Supply Co. v. Tamaraw Plantation Co., 47 Phil. 513 (1925).
[80] G.R. No. L-10612, May 30, 1958.

later than that of his competitor, to have weakened his alleged "exclusive right". It is well settled that "one may be declared unfair competitor even if his competing trademark is registered." [81]

USURY LAW

Collection of advance interest

By way of *obiter dictum* in a case,[82] the Supreme Court dismissed the claim that the payment of interest for three months in advance is usurious, because the Usury Law [83] allows collection of interest for *one year* in advance as long as it does not exceed the lawful rates fixed therein.

ADMIRALTY LAW

Seamen contracted per voyage cannot be dismissed save for cause

In *Madrigal Shipping Co., Inc. v. Ogilvie, et al.*,[84] several persons were engaged as seamen to man a boat from Japan to Manila. The contract with them, by its own terms, "expires on the arrival of this boat at the port of Manila." However, upon the ship's arrival in Hongkong it was found that repairs had to be made on her before she could proceed on her voyage to Manila, so the originally contracted seamen were dismissed, replaced by a crew of Chinese nationality, and paid their respective salaries up to the date of their dismissal. Hence, this suit to collect their salaries and subsistence allowances from the date of their dismissal to the time when the vessel arrived in the port of Manila. The Court gave judgment in favor of the seamen, considering that their services were for a determinate time or voyage.[85]

BANKING LAW

Time when irrevocable letter of credit becomes consummated contract

To resolve the issue of whether an irrevocable letter of credit was subject to the payment of the 17% special excise tax imposed by Republic Act No. 601, as amended, the Supreme Court, in *Belman Cia., Inc. v. Central Bank of the Phil.*,[86] had first to determine when an irrevocable letter of credit becomes a consummated contract. The Court said:

> "An irrevocable letter of credit granted by a bank, which authorizes a creditor in a foreign country to draw upon a debtor of another and to negotiate the draft through the agent or correspondent bank or any bank in the country of the creditor, is a consummated contract, when the agent or correspondent bank or any bank in the country of the creditor pays or delivers to the latter the amount in foreign currency, as authorized by the bank in the country of the debtor in compliance with the letter of credit granted by it. It is the date of the payment of the amount in foreign currency to the creditor in his country by the agent or correspondent bank of the bank in the county of the debtor that turns from executory to executed or consummated contract. It is not the date of payment by the debtor to the bank in his country of the amount of foreign exchange sold that makes the contract executed or consummated, because the bank may grant the debtor extension of time to pay such a debt. . . ."

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[81] Citing Alexander & Co. v. Ang, G.R. No. L-6707, May 31, 1955; Parke Davis & Co. v. Kin Foo, 60 Phil. 926 (1934); Ed. A. Keller & Co. v. Kinkwa Meriyasu Co., 57 Phil. 262 (1932); Yebana Co. v. Chua Seco & Co., 14 Phil. 534 (1909).

[82] Lerma v. Reyes & Enriquez, G.R. No. L-12081, May 30, 1958.

[83] Act No. 2655, as amended, Sec. 6.

[84] *Supra* note 11a.

[85] "If the contracts of the captain and members of the crew with the ship agent should be for a definite period or voyage, they may not be discharged until after the fulfillment of their contracts, except by reason of insubordination in serious matters, robbery, theft, habitual drunkenness, or damage caused to the vessel or its cargo through malice or manifest or proven negligence." (Code of Commerce, Art. 605).

[86] G.R. No. L-10195, Nov. 29, 1958.