SURVEY OF 1959 SUPREME COURT DECISIONS IN COMMERCIAL LAW

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While this year has seen no precedent-setting decisions in Commercial Law, it has witnessed numerous applications, reiterations and clarifications of former decisions and legal provisions conspicuously reflecting the parts of Commercial Law which are intricately entangled with the more active phases of our economy. This is more particularly noticeable in Banking Law (i.e. Central Banking) where businessmen struggle to secure the much-needed foreign exchange for either survival or expansion; and in the field of Public Service Law as the country faces a rapid physical contraction by the installation of modern means of communication and transportation.

CORPORATION LAW

Election of Directors; Judicial Interpretation

Whether the courts have the power to appoint an election committee to take charge of the elections of a board of directors was the question involved in the case of **Board of Directors & Election Committee of the SMB Workers' Savings and Loan Association, Inc. et al v. Tan, de Castillo et al.**[1] After setting aside the election of the new board of directors, the respondent court ordered a new election, and upon ex parte motion of the plaintiff, appointed a new election committee to supervise and conduct the elections in lieu of the incumbent committee. The new body was composed of representatives of the defendant, the plaintiff, and of the court. The defendant contended that this was in excess of its jurisdiction.

The Court held that courts in the exercise of its equity jurisdiction, may appoint such a committee, it having been shown that the election committee provided for in Section 7 of the by-laws of the association that conducted the elections annulled by the respondent court, if allowed to act as such, may jeopardize the rights of the respondents-plaintiffs.[2] The provisions of the Corporation Law with respect to the appointment of a master by the court to conduct the elections of the board of directors exclusively refers to a situation "when...there is no person authorized to call a meeting, or when the officer authorized to do so fails, refuses, or neglects to call a meeting..."[3]; thus, the Supreme Court's recourse to equity.

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1 GR No. L-12282, March 31, 1959
2 Citing 18 CJS 270
3 Section 26, Act No. 1459 as amended (Corporation Law)

NEGOTIABLE INSTRUMENTS LAW

Valuable Consideration

The determination of what constitutes value becomes decisive when the problem pivots on whether the holder is a holder in due course or not. The definition in the law gives sufficient leeway in its application: "Value is any consideration sufficient to support a simple contract."[4] Thus, the courts have considered the following, among others, as constituting valuable consideration: an agreement not to contest a will; receiving a bill or note as security for a debt; dismissal of a pending suit; and payment by a payee of an indebtedness of the maker to a third person.[5]

The recent case of Walker Rubber Corporation v. Nederlandsch Indische and Handelsbank N. V. and South Sea Surety & Insurance Co. Inc.[6] gives another illuustration of what constitutes valuable consideration. The facts are as follows: Association Finance Corporation was the owner of several pounds of camelback rubber which it mortgaged in favor of the Nederlandsch Bank on March 4, 1949.[7] It then entered into a contract of sale with the Walker Corporation, drawing upon the latter a draft for ₱14,000.000 which bore the acceptance of the vendee on its face. Walker as principal and South Sea as surety, then executed a performanc bond with respect to said contract. When the draft was presented to Nederlandsch Bank for discount, the latter first inquired, and received a favorable answer, from the South Sea Surety that the draft was covered by the bond, and "it could be presented to it for payment should the drawee fail to honor it." Thereafter, the Bank authorized the delivery of the mortgaged camelback rubber then stored in its bodega. When the draft was presented for collection, it was dishonored by Walker Corporation by virtue of an agreement of rescission of the contract of sale under which the Association Finance Corporation released the Walker Corporation as vendee from its liability as an acceptor. Whether the Nederlandsch Bank is a holder in due course or not would determine its right to enforce payment on the draft.

The Court held that the delivery to the vendee of the rubber and the release thereof from the bank's possession (the relinquishment of its mortgage lien) and the performance bond executed to guarantee the payment of the draft, is the consideration for the draft which made the holder bank a holder in due course. "The mortgage lien was as good, if not better than ownership itself. By virtue of a mortgage, the bank could have caused the rubber to be sold to satisfy the debt covered by the mortgage, and if the proceeds are insufficient, it could have demanded a deficiency judgment that could be enforced against any other property of the mortgagor." The Bank was therefore, not merely an agent for collection, but a holder in due course entitled to payment on the draft and against whom the defense of rescission of contract could not be available.

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4 Section 24, Act No. 2031 (Negotiable Instruments Law)
5 Gopengco, Commercial Law Reviewer, 1959 ed., p. 32, citing Botton v. Harris, 193 Pac. 1058: Ogden, 125-126; Hermann v. Gregory,, 115 SW 809
6 GR No. L-12502, May 29, 1959
7 The mortgage contract is therefore governed by the old Code.

CODE OF COMMERCE

Letters of Credit; Consummation

As to when the sale of foreign exchange is deemed consummated under an irrevocable letter of credit is not a novel question. The problem arose when Republic Act 601 took effect on March 28, 1951, imposing a special excise tax on the sale of foreign exchange but expressly made applicable only to those issued or still executory on the date of the approval (effectivity) of the Act. In the case of **PNB v. Philippine Surety and Insurance Co.**[8], the Court cited its holding in the 1958 case of **Belman Compania Incorporada v. Central Bank of the P.I.**[9]

> "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 thru the agent or correspondent bank or any bank in the country of the creditor is a consummated contract when the agent or correspondent 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 not the date of payment by the debtor to the bank in his country of the amount in foreign currency sold that makes the contract consummated because the bank may grant in the debtor extension of time to pay."

SECURITIES ACT

SEC Jurisdiction

The Securities and Exchange Commission, in deciding the question whether to authorize a mining corporation to issue 8,500,000 shares of stock having an aggregate value of ₱850,000.00 allegedly constituting the unpaid balance of the price which such company agreed to pay for certain mining claims ceded to it, has the authority to: (1) pass upon the merits of the contract of conveyance of the mining claims as consideration for the original issuance of the shares; (2) determine whether or not such issuance would amount to issue of "watered" stock because they would not be supported by proper consideration, or that there was fraud in the continued disposition of shares to the public if the claims were not paid for, or paid for in excess of their true value, all well within the Commisison's authority to inquire into, specially in view of its power to revoke the license to sell speculative securities (a term that includes shares of mining corporation) under Section 12 of the Securities Law. This would also be pursuant to Section 16 of the Corporation Law which provides that "no corporation shall issue stocks or bonds except for actual cash or porperty actually received by it at a fair valuation equal to their value or for profits earned and not distributed." This becomes particularly significant in this case in view of the fact that the mining properties referred to were estimated by the Bureau of Science as worth only ₱150,000 for being undeveloped, instead of P1,000,000. as originally claimed by the company.[10]

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8 GR No. L-12698, March 23, 1959.
9 GR No. L-10295, November 29, 1958
10 Frimm, et al v. Ato-Big Wedge Mining Co. et al, GR No. L-11887, December 29, 1959

INSURANCE LAW

Maturity of Life Insurance Policy

Under Section 165, "an insurance upon life may be made payable on the death death of the person, or on his surviving a specified period, or otherwise contingently on the continuance or cessation of life." Thus in an endowment policy, the policy matures upon the death of the insured occurring while the policy is in force (prior to the expiratioon of the stipulated period), or upon the expiration of the term set forth in the policy, in which case the proceeds are immediately payable to the insured himself. In the former instance, the proceeds are payable within sixty days after the filing of the proof of death, unless there is sufficient ground for the insurer to contest such claim, all pursuant to Section 91-A of the Insurance Act.

A proper interpretation and correlation of the above-mentioned provisions became pertinent when the insurer, National Life Insurance Co. of the PI in the case of De Fernandez, et al v. National Life Insurance Co. of the PI[11] sought to apply the Ballentyne scale to the proceeds of a ₱10,000 policy under which it admitted its liability, but contesting the amount thereof. Adjustments under the Ballantyne scale are called for where the "'debtor could have paid this obligation at any time during the Japanese occupation but actually pays after liberation."[12]

It appeared that Juan Fernandez was insured with defendant company for ₱10,000 for the period July 15, 1944 to July 14, 1945. He died on November 2, 1944 while the policy was in force. On August 1, 1952, the beneficiaries filed their claim with the insurer, followed by the presentation of the proofs of death insured on July 9, 1954. The issue thus raised was: Should the Ballantyne scale be used? The beneficiaries opposed the adjustment on the basis of Sectiono 91-A and a clause in the policy that the Company will pay "...upon receipt and approval at its Home Office of due proofs of title of claimant and of the prior death of insured." They alleged that the filing of the proof of death is a condition precedent to the demandability of the obligation of the insurer to pay the proceeds; hence, the Ballantyne scale should not apply because the obligation became payable when they presented their claim in 1952.

The Court upheld the stand of the insurance company, holding that the sixty-day period provided for in Section 91-A is merely procedural to enable the determination of the amount payable and the interest to which beneficiaries are entitled to collected in case of unwarranted refusal to pay; and to allow the insurer sufficient time to verify the fact of death. The filing of the proof is not determinative of maturity otherwise absurd results would follow should the "proved" dead insured turn out to be alive. The death, and therefor, the maturity, occurred while the insurer was still open for business, maintaining business tranaction with both the bank and it customers. Inasmuch as it could have processed and paid the proceeds during the Japanese time, closing only on November 2, 1944, the Ballantyne scale should apply.[13]

11 GR No. L-9146, January 27, 1959

12 Valero v. Sycip, GR No. L-11119, May 23, 1958

13 The Court distinguished this case from the holding in Londres v. National Life Insurance Co., GR L-5921, March 29, 1954, in these terms: "..Altho' the policy matured during the Japanese occupation, the proceeds were paid in the present legal tender because before that eventuality the company was not yet in a position to pay the value of the policy for the simple reason that it has not yet opened."

Rescission; By Stipulation

While the Insurance Act provides several grounds for the rescission of the contract of insurance, this does not preclude the parties from stipulating on the mutual right of either to terminate the conract without or with cause as long as such an agreement does not run counter to law, public policy etc. The question which usually arises regarding such a provision revolves around the specific time when the rescission occurs.

In a certain case,[14] the policy read: "This insurance may be terminated at any time at the request of the insured, in which case the Company will retain the customary short period rate for the time the policy has been in force. This insurance may also at any time be terminated at the option of the Company on notice to that effect being given to the insured in which case the Company shal be liable to repay on demand a ratable portion of the premium for the unexpired term from the date of the cancelment." It apeared that plaintiff wrote a letter to insurer requesting concellation of the policy, sworn to before a notary which defendant received on May 10, 1952. Plaintiff did not return the policy neither did he demand the return of the proportionate premium. There was absolutely no communication between them until plaintiff suffered loss by fire, where upon he sent a telegram to the defendant, claiming payment thereof. It was only then that he was informed that the policy had been cancelled.

The Court read the provision of the policy as one giving both parties an option to terminate the contract at any time, and did not need the approval, consent or concurrence of the other thereto. The Court recognized the difference between the termination of a policy at the instance of the insured and the termination at the policy at the instance of the insurer. The insured need only request such a termination (retaining a right to demand a return of the unexpired premium), but the insurer must give notice and refund a portion of the premium paid. But still, the return of the premium is not however a prerequisite to the effectivity of the notice. The contract is, ipso facto, terminated upon receipt of the notice by the insured who retains the right to demand a refund of the premium as per schedule.[15]

Rescission; By provision of law

Under Section 26, "Concealment whether intentional or unintentional, entitles the injured party to rescind a contract of insurance."

The Court once again applied this provision in the case of **Yu Pang Cheng v. Court of Appeals et at.**[16] It appeared that insured gave negative answers to the questions set forth in his applications: Have you ever had any of the following diseases or symptoms — Gastritis, ulcer of the stomach, any diseases of that organ; Vertigo dizziness, fainting spells or unconsciousness; cancer, tumor, ulcers of any kind; have you ever consulted any physician? The insured on January 29, 1950 was confined at the Chinese General Hospital complaining of anemia, abdominal pains, tarry stools, dizziness and bleeding peptic ulcer. His history stated that he had been suffering these symptoms since a year ago.

14 Paulino v. Capital Insurance and Surety Co. Inc., GR No. L-11728, May 15, 1959.

15 The Court discounted the holding in the case cited by plaintiff of Buckley v. Citizen's Insurance Co., 81 NE 165, which involved the exercise of the option by the insurer and the subsequent unconditional return of the policy by the insured, which was considered by that court as a waiver to treat the policy in force until a refund is made.

16 GR No. L-12465, May 29, 1959.

On September 5, 1950, he made his application; and on December 21, 1950, he was brought to the St.Luke's Hospital where he died on February 27, 1951 of "Infiltrating medullary carcinoma, grade 4, advance cardiac of the lesser curvature, stomach metastases spleen."

The Court upheld the defense of the insurer, and declared the policy ineffective on the ground of concealment, stating that the negative answers deprived the insurer of the opportunity to make the necessary inquiry as to the nature of the past illness. Citing the case of **Argente**, it concluded:... "If the policy was procured by fraudulent representations, the contract of insurance apparently set forth therein was never legally existent. It can only be assumed that had the true facts been disclosed, by the assured, the insurance would never have been granted."[17]

CHATTEL MORTGAGE LAW

Extinguishment

A chattel mortgage, like any other contract, can be extinguished by any of the methods provided in Article 1231 of the New Civil Code, one of which is novation. This was illustrated in a recent case, thus. It appeared that the Vet Bros. and Co. Inc. mortgaged to Movido its rights, title and interest and participation in a complete sawmill with all its accessories to secure the payment of a loan of ₱15,000.00 plus interest, the same, being registered. When the mortgagee brought an action for the recovery of an amount totalling ₱13,-494.35, including interest and damages, a compromise agreement was entered into, terminating the dispute and renouncing their respective claims for damages and any other claim in connection with the subject-matter, which agreement was approved by the court embodied in its judgment. Later, the Vet Brothers, with other parties duly mortgaged the sawmill (subject of the chattel mortgage) in favor of the Rehabilitation Finance Corporation (RFC). With the principal obligation remaining upnaid at its maturity, the RFC petitioned for the sale of the property, which was then sold and the proceeds turned over to it. Movido's third-party claim assertinng a prior superior right as mortgagee was disregarded. After the sale, armed with a writ of execution only then acquired, Movido brought an action against the RFC and the sheriff.

The Supreme Court, in dismissing his action, held: "A mortgagee who sues and obtains a personal judgment against the mortgagor upon his credit waives thereby his right to enforce the mortgage securing it. By instituting Civil Case No. 441 in the Court of First Instance to recover the ₱13,494.35, and securing a judgment in his favor upon the compromise agreement entered into between them, appellant abandoned his mortgage lien on the chattels in question. The rule in **Tion v. Valdez**[18] and **Matienzo v. San Jose**[19] relied upon by appellant has been abandoned in **Bachrach Motors Co. v. Icarangal**[20] and **Manila Trading Co. v. Co Kim.**[21] The Court however, did not hold as error Movido's action in attempting to go against the defendant's property with the only modification that such action should have been brought by him, not as one who has a prior superior lien as mortgagee, but one who has secured a personal

17 Citing Argente v West Coast Life Insurance Co. 51 Phil. 723
18 48 Phil. 910.
19 GR No. L-39510, June 16, 1934.
20 68 Phil. 287.
21 71 Phil. 448.

judgment and armed with a writ of execution. His error lay in the fact that he should have secured and presented the writ of execution before the public auction sale was carried out.

PATENT LAW

Law Practice before Patent Office

Whether the Director of the Patent Office has the power to require members of the Philippine Bar to undergo an examination before they could practice before the Philippine Patent Office was the issue involved in the case of **Philippine Lawyers' Association v. Agrava, Director.**[22] The case arose when the Director issued an order to hold an examination "for the purpose of determining who are qualified to practice as patent attorneys before the Patent Office, to cover patent law, jurisprudence, and rules of practice; those qualified to take the examinations being the members of the Philippine Bar, engineers, and other persons with sufficient scientific and technical training." The contention of the Association was to the effect that the members of the Bar were already duly qualified to practice therein.

The Court held that practice the Patent Office constitutes a practice of the law, the authority over it being exclusively vested in the Supreme Court. In support of such a holding, the Court declared that all the business in the office has to be conducted, and all orders and decisions of the Director have to be rendered, in accordance wiht the Patent Law as well as other laws including the Rules and Regulations promulgated by the Patent Office in accordance with law. Also, practice before this body involves the interpretation and application of other laws and legal principles as well as the existence of facts to be established in accordance with the law of evidence of facts to be established in accordance with the law of evidence and procedure.[23] In addition, the Director exercises quasi-judicial functions[24] and therefor, it is logical to conclude that the members of the Bar should be allowed to practice therein without further examination because of their legal knowledge.[25]

TRADE-MARK LAW

Issue in Cancellation

In actions for cancellation of a label covered by supplemental registration, two facts usually raised in issue are: (1) whether or not the label or trade mark of respondent constitutes a valid trade-mark as defined by law; (2) whether or not the registration of respondent's trade-mark in the supplemental register had been obtained thru fraud and false representation. But in order that these two facts might produce cancellation, it is indispensable that "they be coupled with a showing that the maintenance of respondent's trade-mark on the register would damage the petitioners.[26] The continuance of the respondent's label trade-mark would damage petitioners only if the marks were similar. Hence, there was a necessity of a finding of similarity or dissimilarity," notwithstanding the fact that both parties in the case may have stipulated impliedly the similarity of the two label trade-marks involved, thus apparently

22 GR No.L-12426, February 16, 1959.
23 Examples of this are Sections 8 and 61 of the Patent Law, Republic Act 165, as amended.
24 Citing Am. Jurisprudence 537; 60 C.J.S. 460.
25 The Court held that while the US Patent Law authorizes the Commissioner to require those who wish to practice before it some necessary qualifications, Section 78 of R.A. 165 is silent on the point.
26 Section 19-A, par. 5, R.A. 166, as amended.

removing it as an issue in the case. This was the Court's ruling when the party whose trade-mark was sought to be cancelled appealed the decision, notwithstanding its being favorable to him, on the ground that the lower court erred in basing its decision on the fact of dissimilarity, alleging that this was not an issue because both parties had impliedly stipulated on the similarity.[27]

CARRIAGE OF GOODS BY SEA ACT

Statute of Limitations

In the case of **Sveriges Angfartygs Assurance Forening v. Qua Chee Can**,[28] the Court had occasion to interpret the applicability of Section 3, paragraph 6, Title 1 of the Carriage of Goods by Sea Act. The Court held that this provision refers to "the action that the shipper must commence against the carrier or ship within one year from delivery of the goods or the date when the goods should have been delivered to recover loss or damage to the goods shipped." This does not therefore apply to the case at bar which involves the following facts: Plaintiff is the insurer of two vessels against loss or damage to cargo which it intends to carry. Defendant, in August and November 1947 loaded the two vessels with copra of a certain stated amount. Relying on the defendant's statement, the vessel's agent issued two bills of lading in favor of consignees. It turned out that the defendant (allegedly) did not load all it stated. The consignees filed a claim against the owners of the vessels and the defendant Qua in a foreign court. The case against the latter was dismissed for lack of jurisdiction. By way of amicable settlement, the ship owners paid to the consignees, and in turn demanded a refund from plaintiffs herein as insurers. After payment, the insurers commenced this action against the defendants as subrogees. The Court held that the basis of the above interpretation, the case is not barred by the Act's statute of limitations, but is apparently covered by the ordinary prescriptive perod of actions based on a written contract. The transactions were made in August and November 1947, and the complaint was filed in August 1954.

BANKING LAW

Central Banking

The Central Bank is responsible for the administration of the monetary and banking system of the Philippines with the objectives of maintaining its monetary stability and of preserving the international value of the peso and its convertability into other freely convertible currencies.[29] For the latter purpose, it is required to hold foreign exchange "with a view to meeting demands on the Bank for such currencies in case of an adverse balance value of the peso. While the Philippines has already dollar reserves against the domestic monetary circulation, it is also required of the Central Bank to maintain reserves in gold and foreign exchange to have the same always available at any time for active use as international currency.[30] This situation is inevitable because "different countries have their own legal tender currencies, and because of this variety of currencies, it is recognized and conceded that pratically all imports (in case

27 La Estrella Distillery Inc. v. Director of Patents et al, GR No. L-11818, July 31, 1959.

28 This provides: "In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date..."

29 Section 2, Central Bank Act, R.A. 265.

30 Congressional Records; Central Banking, M.. de Kocke, 1946, cited in Congressional Records, deliberations on Section 67; Section 68, Central Bank Act.

of an adverse balance of payments) represent a demand, potential or otherwise, for foreign exchange by the country concerned."[31]

When the international stablity of the peso is threatened[32] because of the deterioration in the reserve position of the Central Bank, the Monetary Board may impose direct restriction on exchange operations. This, it has done. The existence of the crisis in 1949-50 which called for the decision to subject to license all transactions in gold and foreign exchange (pursuant to Section 74 of the CB Act), and the continuance of such a crisis to date, has been taken judicial notice of by the Supreme Court.[33]

To implement its decision, the Monetary Board has issued several circulars, among them: Circular 21 which provides that any person desiring to export gold in any form, including jewelry whether for refining abroad or otherwise must obtain a license from the Central Bank. Its validity was upheld in a case which involved foreign creditor who came to the Philippines to collect a debt, not knowing whether he would be paid in peso or in gold. When he attempted to remove surreptitiously the gold paid him, he was apprehended and convicted, the Court holding that the the Circular does not contemplate a consummated exportation, otherwise the purpose would be defeated if penal sanction were deferred until both "prohibited" article and wrongdoer have left this jurisdiction.[34] Circular[31] punishes any person, who thru misrepresentation of facts obtains an excessive allocation of foreign exchanges[35] as by overpricing a vessel which is licensed to purchase in order to get the necessary dollars, and the difference in price sold in the blackmarket.[36]

In the aforementioned cases, the Supreme Court upheld the statutory validity[37] of the circulars involved by saying that the requirement of Presidential approval of the decision to subject such transactions in gold and foreign exchange is presumed to have been satisfied in the absence of proof to the contrary; that while the exercise of the authority is commensurate with the emergency sought to be remedied, the temporary character of such a measure need not be stated on its face (neither the specific duration of the same which no one can anticipate with reasonable certainty) so long as it is actually issued to combat an exchange crisis, and which may be presumed in the absence of any evidence to the contrary, and which in fact, is herein taken judicial notice of; and lastly, only the decision of the Central Bank to impose a license is subject to presidential approval, the circulars implementing such a decision not being similarly required.

Under CB Circular 45, "any person or entity who intends to import or receive foods from any foreign country for which no foreign exchange is required will be required of the banks, to apply for a license from the Monetary Board to authorize such importation." This is another measure designed to prevent the undue depletion of our dollar and other foreign exchange reserve. The question which has thus been raised is: Does the Central Bank have the power to regulate "no-dollar imports"? This was the issue involved in two recent cases, one involving several hundred crates of onions, and the other, packages

31 Pascual v. Commissioner of Customs, GR No. L-10978, June 30, 1959.
32 Section 70, R.A. 265.
33 People of the Philippines v. Jolliffe, GR No. L-9553, May 13, 1959.
34 Ibid.
35 People of the Phil. v. Henderson III, GR No. L-10829, May 29, 1959.
36 People v. Koh etc., GR No. L-2407, May 29, 1959.

of foreign-made candies from Hongkong[38], and neither being covered by a license or a release certificate issued by the Central Bank.

The Supreme Court, speaking thru Justice Padilla held the same as illegal importations, stating:

> "It is a recognized general mercantile practice that importations involved the sale of foreign exchange. Different countries have their own legal tender currencies, and because of this variety of currencies, it is recognized and conceded that practically all imports represent a demand, potential or otherwise, for foreign exchange by the country concerned. Importations of merchandise payable in services or in kind are negligibly few and isolated. They are an exception to the general mercantile practice. This being so, importations that do not invlove of foreign exchange must be showed or proved. In default of such showing, it is safe to assume that the importation in question involve the sale of foreign exchange for which the petitioners did not obtain the corresponding dollar allocation or foreign exchange license from the Central Bank as required by Circular No. 45."

Going still further, the Court continued:

> "Even granting that the importation in question does not require the immediate sale of foreign exchange, their importaion into the Philippines from another country will ultimately require the sale of foreign exchange. The currency of one country is not the legal tender of another. To pay for imports, traders have to avail themselves of foregin exchange which is the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another. Every import goods or merchandise requires an immediate or future demand for foreign exchange...[39]"

In case of violations of the Central Bank circulars as illustrated above, the Commissioner of Customs has the power under Section 1363 of the Revised Administrative Code to order the forfeiture of the goods of prohibited importation or exportation.[04] It has been so held in a case wich involved the forfeiture of gold bars (subject of an attempted illegal exportation) that the term "merchandise" in the Code is "broad enough to embrace not only those declared prohibited at the time of its adoption but also all commodities or articles that may be subject of activities undertaken in violation of subsequent laws and considering that the circulars have the force and effect of laws... the carrying on of transactions... without complying with the requirements of Circulars 21, 20, and 42 makes these undertkings illegal... and the articles become prohibited, subject to forfeiture under 1363 (f) of the Rev. Administrative Code."[41]

It is the policy of the Central Bank in the granting of dollar or other foreign exchange allocations, to deal only with its authorized agent banks. This has been embodied in CB Circular 44 which provides that all applications for foreign exchange shall be made thru the authorized agents banks which are the only parties authorized to deal with the Central Bank. It also provides

38 Acting Commissioner of Customs v. Leuterio, GR No. L-9142, October 17, 1959; Pascual v. Commissioner of Customs, GR No. L-10979, June 30, 1959; reiterated in Commissioner of Customs v. Pascual, GR No. L-9836, November 18, 1959.

39 Ibid.

40 Carreon Tong Tek etc. v. Commissioner of Customs, GR No. L-11947, June 30, 1959.

41 The Pascual and Leuterio cases which resulted in forfeiture pursuant to the same section, involved prohibited importations.

that under no circumstances should any applicant, his agent, or his representative follow up an application with the Central Bank. Thus, a contract upon which an agent sought to collect, entered into between an applicant and one who stands to work for a dollar allocation: preparing, filing, and working for its approval, for a consideration of ten per cent (10%) of the allocation when approved, is not valid.[42] The Court, citing with approval the lower court's decision, held the contract void in the light of Article 1409, Section 14 of the Central Bank Charter, and the provisions of the Central Bank Act itself. It concluded by saying: ..."the exigencies of public welfare require that the proceedings for the determination of said applications be conducted in the most impersonnal and impartial manner to forestall favoritism, the commission of other irregularities in relation thereto or at least, to minimize the opportunities therefor or the possibility thereof..."

Building and Loan Associations

Building and loan associations are governed by Sections 39 to 55, Chapter VI of the General Banking Act. In the case of **El Ahorro etc. v. Aquino**[43], the Court had occasion to point out its distinct characteristics. It appears that Aquino obtained a loan of ₱1000. from the Association before the war, and to secure payment of said loan, he mortgaged a house and a lot. He now alleges that he has paid the whole amount inspite of which the sheriff threatens to foreclose. The defendant in turn alleges that in accordance with the contract of mortgage, Aquino became a mortgagor-stockholder, and as such, he has all the obligations of a mortgagor and at the same time a stockholder, one of the terms of said contract being that his monthly installments shall be credited partly to the loan's monthly interest, and the balance, as installments on ten shares of said association. The latter's book value became negligible because of the war losses of the association. The issue then was: Is he a mere obrrower or martgagor, or both? As a mere mortagor, he can not be held responsible fo rthe losses incured by the corporation.

The court declared plaintiff an **accionista-prestatario** (stockholder-mortgagor) from the express terms of the contract. Both the contract and the law expressly provides that the indebtedness shall be paid with the installments paid on the shares together with the dividends, and that the loan given shall be considered paid only when the installments paid on the shares and the dividends thereon had reached their par value. So long as the shares did not reach their par value, the payment of the indebtedness cannot be considered satisfied, and whatever losses may be suffered must be borne by any stockholder in proportion to his subscription. It is "not a bank... within the association, such profits and losses for a stockholder to receive dividends but he freed from the losses."

PUBLIC SERVICE LAW

Transportation; Qualifications of Applicant

The Public Serice Commission has the authority to determine the qualifications of an applicant for a certificate of public convenience and necessity for the operation of a public service. One of this is the requirement of Philippine citizenship.[44] Only Filipino or American citizens in the case of individuals,

42 Tee v. Tacloban Electric and Ice Plant Co., Inc. etc., GR No. L-11980, February 14, 1959.
43 GR No. L-11741, March 18, 1959.
44 Section 16(a), Act 446.

and to local judicial entities, sixty per cent (60%) of whose paid-up capital stock is owned by them, satisfy the requirement. Hence, even if an applicant is registered as an alien in the Bureau of Immigration, the Public Service Commission should be deemed vested with authority to determine whether he is actually citizen or not, but which decision is however appealable to the courts. Where the Commission makes a finding that an applicant is a citizen but an appeal results in a reversal of such finding, the Commission can revoke at anytime any certificate issued on the strength of such new holding.[45]

The fact that the applicant is already an operator under a lease agreement does not constitute a bar to his application on the same lines covered by the lease. "The primary considerations a finding by the Commission that public interest and convenience requires a given service and that parties may not by agreement deprive the Commission of its power" to grant or to withold a certificate in order to meet the public need.[46]

Approval/Consent of the PSC

Any transfer of rights under a certificate of public convenience must of necessity be approved or consented to by the Commission in order to be binding against the latter and against third persons in so far as responsibility of the grantee under the franchise is concerned. This is true even if such a transfer is made pursuant to a compromise agreement approved by the court. Its effectivity is conditioned on the Commission's approval.[47] The requirement similarly applies to any sale of a public service vehicle even without conveying therewith the authority to operate the same.[48] What the law contemplates in the provision of Section 20 (g) as exceptions to the requirement "may refer only to such property that may conceivably be disposed of by the carrier in the ordinary course of its business, like junked equipment or spare parts." The reason behind such a requirement has been stated by the Court thus: "Otherwise, it would be easy for him by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person or to one who possesses no property with which to respond financially for the damages or injury, and usually, a victim of recklessness is without means to discover or identify the person actually causing the injury or damage."[49]

However, this requisite should be correlated with the provisions of the Revised Motor Vehicle Law (Act 3992) under which the vendee is required to register the motor vehicle purchased by him[50] and is prohibited from displaying the dealer's plate on said vehicle. Where the buyer fails to register the vehicle in his name, and secure a plate for himself, and where it appears that the dealer reported the sale to the Motor Vehicles Office, the buyer is liable for any resulting liability for injury inflicted because the dealer is no longer the owner and had compliedly strictly with the provisions of the law regarding registration.[51]

Basis for the Grant

Authority to operate a public service vehicle may be granted if there is satisfactory showing that it would promote public interest and convenience in

45 Section 16(m), Act 446; Zamboanga Transportation Co., Inc. v. Lim & PSC, GR No. L-10975, May 27, 1959.
46 Zarate etc. v. Rizal-Manila Transit Inc., GR No. L-11301, May 29, 1959
47 Dagdag v. Flores et al, GR No. L-11554, May 27, 1959.
48 Section 20(g), Commonwealth Act 146, Flores v. Miranda, GR No. L-12163, March 4, 1959.
49 Erezo v. Lepte, GR No. L-9605, September 30, 1957.
50 Section 5(a) and Section 6(a), Act 3992, Motor Vehicles Law.
51 Francisco v. de la Serna et al, GR No. L-12245, August 31, 1959.

a proper and suitable manner and would not result in cutthroat or ruinous competition[52]. The grant should refer only to that line applied for and which has been shown to be in need of such service.[53]

Old Operator's Rule

The rule that a prior operator should be given preference should be borne in mind by the Public Service Commission in deciding whether or not to grant a certificate to a new applicant with respect to a line already covered by a certificate.[54] And "it has been ruled that the granting of preference to an old operator applies only when said old operator has made an offer to meet the increase in traffic, and not when another operator, even a new one... has made an offer to serve the new line or increase the service on said line.[55] While it is true that the old operator is entitled to preference in the improvement of the service as well as protection against ruinous competition, they are in a position to fulfill the public demand, because the primary consideration is not after all their private interest but the public interest and convenience.[56]

Procedure; Technical Rules of Evidence

The public Service Commission is not bound by the technical rules of legal evidence and in the conduct of its hearings and and investigations[57] and therefor, the non-appearance of a petitioner may be held to constitute a waiver on their part to cross-examine the applicant and as indicative of their loss of interest in unholding their right to the service granted them.[58]

Finding of Fact

"Where upon a full hearing, the public Service Commission makes findings of fact, and there is a material conflict in the evidence, the findings need not be disturbed where the same is reasonably supported by sufficient evidence".[59] Morover, "the Supreme Court is not required to examine the proof de novo and determine for itself whether or not preponderance of evidence really justify the conclusion therein."[60] The Court is merely required to determine whether the evidence of record substantially supports the conclusion of the Commission.[61] However, the Supreme Court may, in come instances, take cognizance of facts which may have been overlooked by the Commission and which are sufficiently decisive as to change the result of the Commission's findings.[62]

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52 A. L. Ammen Transportation Co., Inc. v. Soriano, GR No. L112350, May 26, 1959.
53 De la Paz v. PSC, GR No. L-13833-34, August 31, 1959.
54Parang etc. v. Salamida etc., GR No. L-12442, May 14, 1959.
55 Isidro v. Ocampo, GR No. L-12331, May 29, 1959.
56 Zarate etc. v. Rizal-Manila Transit Inc., GR No. L-11300, May 29, 1959. In this case, the Supreme Court cited with approval the holding of the Public Service Commission in this wise: "We do not see how the fact that a party is the lessee of a line bars him from applying for a certificate of its own in the same line. Even in cases where the owner of a certificate has sold it subject to the condition that he could not apply for a similar service on the same line sold by him, it has been held that such an argument does not bar the seller from applying, and that the Commission, if it finds that there is a public need for the new service applied for, may properly grant the certificate requested..."
57 Section 29, Commonwealth Act 146.
58 Redi Taxi Inc. etc. v. Santos etc., GR. No. L-12264, May 29, 1959.
59 A.L. Ammen Transportation Co., Inc. v. Soriano, GR No. L-12350, May 26, 1959; Zarate v. Rizal-Manila Transit Inc., GR No. L-11300, May 29, 1959; Pangasinan Transportation Co. v. Times Transporation Co., Inc., GR No. L-13080, December 29, 1959.
60 Bachrach Motors Co. v. Guico, GR No. L-12619, August 28, 1959.
61 Ibid.
62 Bautista v. PSC etc., GR No. L-12705, October 30, 1959.

Recent decision[63] have enunciated the Supreme Court's policy to give more weight to the testimony of the Public Service Commission's agents, otherwise known as checkers for the following reasons: "(1) the parties' witnesses are not entirely free from bias; (2) because the parties' witnesses do not make the observation of the volume of traffic during a certain fixed period so as to get the average, but at hours when they actually board the bus."[64] Also, the records of the checkers have been held to be more reliable and conclusive because they contain the actual number of passengers riding on buses on the lines subject of a new application and are not mere opinions or conclusions of witnesses casually observing the buses as they pass by. This becomes particularly useful in cases where the testimonies of the witnesses submitted by both parties conflict and those of the checkers tally.

However, the testimonies of the checkers may not be as conclusive in cases where, in addition to other salient facts, such checkers did no board the buses and make an actual count of the passengers, but merely observed the buses passing by.[65]

Others

The Public Service Commission is denied the power to require a certificate of public convenience or prescribe a definite route or lines service of steamboats, motorships, and steamships if the same are playing between different islands, whatever used in ferry or interisland or coastwise trade even with a definite route. And the Javellana case[66] has laid down some characteristics which constituted the service in that cases as one of interisland service and beyond the jurisdiction of the Commission: the service is between two islands, more or less of great distance (44 kilometers in that case), more or less turbulent and dangerous waters of the open sea. However, the above decision "did not intend to make the circumstances existing in the said route as the absolute minimum necessary to classify a particular water transportation service as interisland. The matter depends mostly on the surrounding conditions of the trips, and the Commission's judgment must be accorded preponderant weight." Thus, the Court cited responodent's counsel with approval.

A franchise granted by the municipal council and approved by the Provincial Board in case of an application for a certificate of public convenience and necessity to operate a telephone service in a certain locality is necessary. Once the same is granted, the municipal council has no right to revoke the same unless there is a valid reason for so doing because it is a contract between the grantor and the grantee; and the fact that the grantee has not installed the service pending the grant of the certificate by the Commission, and later, the approval of the Chief Executive is not a valid reason, otherwise, the installation would have been premature.[76]

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63 Lopez v. BT Co. etc., GR No. L-12029, April 30, 1959; Luzon-Tayabas Bus Co. v. M. Ruiz Highway Transit Co., GR No. L-11933, November 28, 1959.
64 Citing Guico v. Bachrach Motors, GR No. L-9570, July 29, 1957
65 Halili v. Aldea, GR No. L-13433, December 29, 1959.
66 52 O.G. 6196.
67 Papa & Atanacio v. Santiago, GR No. L-12433, February 28, 1959.