COMMERCIAL LAW

DEMETRIO L. HILBERO *

BITTY G. VILIRAN **

In Commercial law, most of the cases of the year under survey are but reiterations of well-settled rules and principles. This is particularly noticeable in the field of public service where the powers, jurisdiction and decisions of the Public Service Commission are the usual subjects of litigations. The year is not, however, completely devoid of new principles which are of legal significance. There are also a few cases which lay down rules which have not been previously made, plus a number of important cases which resolve the doubts and ambiguities of some of our commercial law doctrines.

USURY LAW

In *Camus v. Court of Appeals, et al.*[1] the Supreme Court made two important pronouncements:

(a) Where a promissory note is long overdue, the defense of usury does not in any way affect the maturity and demandability of the debt, but if sustained would only reduce the creditor's recovery; and

(b) Payment by a solidary debtor does not extinguish the defense of usury available to his co-debtor. The latter still set up that defense against his co-debtor when he is sued by the latter.

CHATTEL MORTGAGE LAW

Reasonable Description Rule:—

Section 7 of Act 1508 does not demand a minute and specific description of every chattel mortgaged in the deed of mortgage but only requires that the description of the properties be such as to enable the parties in the mortgage, or any other person, after reasonable inquiry and investigation to identify the same.

The limitation found in the last paragraph of Section 7 of the Chattel Mortgage Law on "like or substituted properties" makes reference to those "thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged", not to those already existing and originally included at the date of the constitution of the chattel mortgage. (*Saldana v. Philippine Guaranty Company, Inc. et al.*)[2]

SOCIAL SECURITY ACT

Compulsory Coverage; Two-Year Requirement:—

Section 9 of R.A. No. 1161 as amended (Social Security Act of 1954) provides:

---

* Member, Student Editorial Board, PHIL. LAW JOURNAL, 1961.
** Member, Student Editorial Board, PHIL. LAW JOURNAL, 1960-1961.
[1] G.R. No. L-13125, February 13, 1960.
[2] G.R. No. L-13194, January 29, 1960.

"Coverage in the System shall be compulsory x x x Provided, That the commission may not compel any employer to become a member of the System unless he shall have been in operation for at least two years x x x ".

In *Laguna Transportation Co. Inc. v. Social Security System*,[3] an unregistered partnership originally commenced the operation of its business as a common carrier on April 1, 1949. But, the partners converted their partnership into a corporate entity by registering its articles of incorporation with the Securities and Exchange Commission on June 20, 1956.

Held: "said entity as an employer engaged in business, was already in operation for at least 3 years prior to the enactment of the Social Security Act on June 18, 1954 and for at least two years prior to the passage of the amendatory act on June 21, 1957." The fact that it was registered only on June 20, 1956 does not exempt such company from compulsory membership under Section 9. While it is true that a corporation once formed is conferred a juridical personality separate and distinct from the persons composing it", such legal fiction "cannot be extended to a point beyond its reasons and policy, and when invoked in support of an end subversive of this policy, will be disregarded by the Courts". (13 Am. Jur. 160).

To hold it otherwise "would defeat, rather than promote the ends for which the Social Security Act was enacted."

MARITIME LAW

Determination of Contractor's Liability Does Not Require Application of Maritime Law:—

The *International Harvester Company v. Aragon and Yaras and Co*,[4] is authority for the rule that "suit of the consignee against the sea carrier for damages to goods transported over the seas aboard a vessel involves maritime commerce and jurisdiction." The scope of maritime law was again put in issue in the case of *Atlantic Mutual Insurance Co. v. Manila Port service et al.*[5]

It appears that the Atlantic Mutual Insurance Company had insured 180 cartons of cotton piece goods which were unloaded into the custody of the Manila Port Service. Those were in turn delivered to the consignee. The consignee, however, found that the goods were damaged. The shipper claimed, and thereafter received from the Atlantic Mutual Insurance Company an insurer, the value of loss. The Insurance Company brought this action before CFI of Manila against the Manila Port Service to recover damages. The defendant moved to dismiss for lack of jurisdiction, the amount demanded being less than ₱2,000. Opposing the motion, Plaintiff took the stand that the subject matter of the complaint arose from admiralty and maritime commerce. Granting the motion, the court dismissed the suit, declaring itself without jurisdiction.

Issue: Whether the action pertained to the admiralty jurisdiction of the First Instance.

Held: The case of *International Harvester Company v. Aragon and Yaras, supra*, does not apply in this case. That doctrine in Aragon case is not applicable "because the suit here is directed against the arrastre service for damages presumably suffered after the carriage by sea had ended at the Manila Pier upon delivery of the goods to the Manila Port Service. The rule appli-

[3] G.R. No. L-14606, April 28, 1960.
[4] 84 Phil. 364.
[5] G.R. No. L-15618, November 29, 1960.

cable here is the decision in *Macondray and Co. v. Delgado Brothers Inc.*[6] where this court held the matter did not refer to admiralty jurisdiction. This court explained there, as custodian of the goods it had received, it was defendant's duty, like that of any ordinary depository, to take good care of said goods and to turn the same over to the party entitled to its possession x x x. The only issues raised are: (1) whether or not defendant had fully discharged its obligation to deliver the goods, and (2) in the negative case, the amount of indemnity due the plaintiff therefor. The determination of these questions does not require the application of any maritime law and cannot affect either navigation or maritime commerce. The foreign origin of the goods is (under the attending circumstances) immaterial to the law applicable to the settlement of the dispute and rights of the parties.

PUBLIC SERVICE LAW

Jurisdiction of Public Service Commission:

As a general rule, "the Commission shall have jurisdiction, supervision and control over all public services and their franchises, equipment, and other properties . . ."[7] Stating it in another way the Supreme Court held in *Regalado et al. v. The Provincial Constabulary Commander of Negros Occidental*,[8] "The Public Service Commission has only jurisdiction over persons engaged in public utilities, or over a public utility which holds a certificate of public convenience, and not over persons who are not engaged in public utilities . . ."

The petitioners in the *Regalalo case* are engaged in deep-sea fishing business. Although their fishing boats are fishing far beyond the territorial limits of Cadiz, Negros Occidental, they dock their fishing boats in said municipality. Instead of buying ice from Cadiz, they bought it from Bacolod City where they can buy at cheaper price, and send it to Cadiz. The Public Service Commission, thru the Provincial Constabulary Commander decided to prevent the entry of said ice to said municipality under the pretense that the same is in violation of Sec. 156 of its Revised Order No. 1, which provides that "no ice produced by any operator shall be sold directly or indirectly outside of its authorized territory." Hence this appeal.

The issue was whether the Commission has authority to prevent the entry to municipality of Cadiz of the ice bought by petitioners from Bacolod City.

Held: On July 25, 1958, the respondent Commission clarified Sec. 156 of its Revised Order No. 1 by saying that said section "prohibits an ice plant operator from selling his ice even within the limits of his authorized territory to any person if he knows that that person will use or resell that ice outside of the operator's authorized territory, and that an operator's ice must be sold only to the public of his authorized territory so as to avoid unlawful competition and safeguard the interests and convenience of said public."

Thus, the purpose of Sec. 156 is dual in character: first, to prevent unlawful competition between ice operators, and second, to make certain that the full production of a given plant is always available for the use of the public which that operator is obliged to serve. In this sense, the issuance of said Revised Order No. 1 is valid, it being an exercise of the supervision and con-

[6] G.R. No. L-13118, April 28, 1960.
[7] Sec. 13, C.A. No. 146.
[8] GR. No. L-15300, May 18, 1960.

trol which the Commission has over all public services conferred upon it by Sec. 13 of Act 146. But, Petitioners bought the ice not to be sold within the territory of another operator but for the exclusive use of their fishing business which was not within the territorial jurisdiction of any ice opeator even if incidentally it has to pass through the municipality of Cadiz because their fishing boats are docked there and, then, respondent Commission has only jurisdiction over persons engaged in public utilities, or over a public utility which holds a certificate of public convenience, and not over persons who are not engaged in public utilities, except perhaps those who may violate any valid regulations it may promulgate under the law (*Iloilo Ice & Cold Storage Co. v. Public Utility Board*, 44 Phil. 551; *Iloilo Commercial & Ice Co. v. PSC*, 56 Phil. 28).

And even then, these persons to be dealt with need be given their day in court. It is therefore, evident that Petitioners do not come within the purview of Revised Order No. 1. And even if they do, they were not given their day in court, for the Commission has taken action against them without giving them an opportunity to explain their purpose of buying ice from Bacolod.

Powers of the Public Service Commission:

I. Authority to Grant Certificate of Public Convenience:

Where the actual ice plant operators could not sufficiently supply the needs of the public, the granting of authority to new applicants to operate ice plant in the area involved, is proper (*Silva v. Cabrera*),[9]

a. Factors to Consider in Grant of Certificate:

1. *Increase of Population*—"When as early as in 1950 the Public Service Commission had found public necessity for the operation by Respondent of auto-trucks from Laguna to Manila and back, it stands to reason that such public necessity continued to exist some seven years after in the absence of evidence to the contrary, and there being also positive evidence of increase in the population and business in the area covered by the certificate. (*Laguna Tayabas Bus Company v. M. Ruiz Highway Transit, Inc.*)[10]

2. *Other factors*—Rayala, holder of an emergency certificate of public convenience, applied for a regular certificate. Petitioner, a pre-war operator filed an opposition alleging that as it had already resumed its pre-war service, the conditions that warranted respondents emergency certificate no longer existed. *Held:* Petitioner's resumption of operation is not the only factor to be considered. The changes brought about by the last war, the complications of rehabilitation, the economic and industrial strides and the increase in population are few factors to be considered in determining whether or not respondent's application should be granted. (*A. L. Ammen Transportation Co., Inc. v. Rayala*)[11]

b. Factual Findings of Commission Final:

Whether public necessity and convenience warrant the putting up of additional service is a question of fact and the finding of the Commission when supported by sufficient evidence, should be left undisturbed. (*Manila Yellow Taxicab Co. v. Castelo*).[12] The court "will not substitute its discretion for that of the commission on question of fact and will not interfere

[9] G.R. No. L-12446, May 20, 1960.
[10] G.R. Nos. L-11933-34, February 29, 1960.
[11] G.R. No. L-10371, May 30, 1960.
[12] G.R. No. L-13910, May 30, 1960.

in the latter's decision unless it clearly appears that there is no evidence to support it. (*Santiago Ice Plant v. Lahoz*).[13]

The proposed service of respondents having been shown to be warranted by public necessity and convenience, this court will not, in view of the substantial evidence in support thereof, disturb the findings of the Commission. (*Halili v. De la Paz*).[14]

The Commission found that the services rendered by respondents are satisfactory. This conclusion is based on the testimony of respondent and his witness tending to establish the sufficiency and efficiency of their services in the past, and the need for the increase of the same to meet the growing demand of the public for ice, and on the other hand, the absence of evidence, other than Petitioner's own testimony, to prove the alleged negligence and indifference of respondents to the needs of the public. There being evidence to sustain the Commission's findings, this Court will not substitute its judgment for that of the former. (*Ramos v. Lat*).[15]

And, in reviewing the decision of the commission, this court is not required to examine the proof *de novo* and determine for itself whether or not the preponderance of evidence really justifies the conclusions therein. As the evidence of record in the present case substantially supports the findings of the commission, the same may not be reviewed by this court. (*Pangasinan Transportation Co. v. Nastor*).[16]

c. Preference in the Grant of Certificate:

1. "*Old Operator 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.[17] This rule "applies only when said old operator has taken steps to meet the increased demand in traffic." [18]

"Old Operator Rule", When Not Applied—It does not apply "when another operator even a new one, has made the offer to serve the new line or increased the service on said line." [19]

After the expiration of its corporate life, a corporation grantee of certificate of public convenience to operate ice plant has no juridical personality to sue nor apply for a certificate of public convenience, for it is inacapable of receiving a grant. It can not even be regarded as a corporation *de facto*", hence the "prior operator" rule is inapplicable (*Buenaflor v. Camarines Sur Industrial Corp.*)[20]

Although petitioners had a certificate of public convenience prior to the filing of their application for increase of units, they were not "established" operators in the full sense of the word, for they secured their certificate barely two months prior to their application for increase of units." (*Valdez and Beltran v. P.S.C. and Rodriguez*).[21]

2. Priority of Filing:

Other conditions being equal, priority in the filing of the application for a certificate of public convenience becomes an important factor in the granting or refusal of a certificate. (*Benitez v. Santos*).[22]

---

[13] G.R. No. L-3661, Aug. 29, 1950.
[14] G.R. No. L-12316, May 25, 1960.
[15] G.R. Nos. L-14476 & L-15773, May 23, 1960.
[16] G.R. No. L-14117, April 30, 1960.
[17] Parang etc. v. Alamida, G.R. No. L-12442, May 14, 1949.
[18] Manila Taxicab Co. v. Castelo, *supra* not 6.
[19] Valero v. Parpana etc., G.R. Nos. L-15328-9, Oct. 31, 1960.
[20] G.R. Nos. L-14991-94, May 30, 1960.
[21] G.R. Nos. L-13837-38, May 30, 1960.
[22] G.R. Nos. L-12911-12, Feb. 29, 1960.

The rule where there are various applicants for a public utility over the same territory, is that priority of application, while an element to be considered, does not necessarily control the granting of a certificate of public convenience. The question to be considered in such cases is which applicant can render the best service, considering the conditions and qualifications of the applicants to furnish the same. But where other conditions are equal, priority in the filing of the application for a certificate of public convenience becomes an important factor in the granting or refusal of a certificate. (*Pineda v. Carandang*).[23]

In the earlier case of *Benitez v. Santos, supra,* Benitez filed her application first, followed by Lopez, and then by Santos. They all sought to operate 32 taxicab units. But, the Commission awarded the certificate of public convenience to Santos because in its opinion he is best qualified, considering that he is presently a taxicab operator of 87 units, and that he has the experience in the taxicab business.

Held: While it may be true that respondent (Santos) already has the experience in operating a taxicab business and owns a repair and maintenance shop, these considerations alone do not shift the preference in his favor. Experience and availability of garage facilities, although important, are not decisive in the instant case.

Priority in the filing of the application for certificate of public convenience is, other conditions being equal, an important factor in determining the rights of the public service companies. The further fact that Santos already owns 87 militates against his application, because giving the award to him would likely create a monopoly in this line of business. A monopolistic trend with its concomitant evils can only serve to prejudice public interest, stifling as it does enthusiasm and initiative on the part of those eager to learn. Prior experience, while itself useful, cannot create a vested right which could endanger the national economy.

d. Operators of Line in Private Subdivision:

Lines in private subdivisions cannot be operated without the consent of the owners, who have the right to determine the operator whom they would admit inside their subdivisions (*Estrella v. Public Service Commission et al.*).[24]

In the *Estrella* case, Antonio de Guzman filed an application for a certificate of public convenience to operate a TPU service on the lines (a) from Pasay Rotonda (Pasay City) to Forbes Park via Highway 54 and vice versa; and (b) from Pasay Rotonda to Forbes Park via Taft Avenue, Buendia Junction and Ayala Boulevard and vice versa. On July 21, 1956, Emiliana Estrella also filed an application for a new line and increase of units on her old line. The old line is Forbes Park, Makati, Rizal to Taylo (Pasay City) and the new line is from Pasay Rotonda to Forbes Park via Taft Avenue, Buendia, San Lorenzo Village and vice versa. Estrella appeared as oppositor at the hearing of de Guzman's application. As the trial could not promptly be terminated, the Commission granted a provisional permit to respondent de Guzman. Hence this petition.

Issue: Whether the Commission committed a grave abuse of discretion in granting the provisional permit in question.

---

[23] G.R. Nos. L-13270-71, March 24, 1960.
[24] G.R. No. L-12641, Sept. 30, 1960.

Held: There is no question that there is a public need for the lines granted to de Guzman; the Petitioner herself alleged the necessity of said lines in her application. A substantial reason given by the commission in granting provisional permit is the fact that de Guzman has the necessary permit from the owners of both Forbes Park and San Lorenzo Village to operate jitneys inside the subdivisions. Petitioner argues, however, that the whims and desires of private property owners cannot deprive the right of prior existing operators. The claim is without merit. Lines in San Lorenzo Village and Forbes Park cannot be operated without the consent of the owners. Certainly, the owners can choose whom to admit inside their subdivisions. . . . Petition dismissed.

II. Authority to Interpret Its Orders:

"It is especially the function of the Public Service Commission to interpret and decide the meaning of its own orders" (*Mateo v. Manila Electric Co.*).[25]

Unless actually without basis, the interpretation placed upon its orders by the Commission should not be disturbed by this Court. (*De Blanco v. Sta. Clara Transportation*).[26]

Public convenience is the paramount consideration that should guide the action of the Public Service Commission. (*Cebu Ice & Cold Stores v. Velez*).[27]

III. Authority to Extend Lines:

If the commission is satisfied that public service or convenience requires that extension of operating said lines, the Commission has the power to grant a certificate of public convenience for the operation of such extension lines. (*Red Line Transportation Co., Inc. v. Gonzaga*).[28]

IV. Authority to Permit Sub-Station:

The case of *Velasco v. Manila Electric Company*[30] involved a complaint against the MERALCO for violation of the latter's franchise and the Public Service Act. The charge is that the Company constructed an electrical sub-Station in Quezon City without having previously obtained the approval of the P.S.C. The defense of MERALCO is that the permit from P.S.C. is unnecessary because R.A. No. 150, giving it (MERALCO) authority to construct electric substations, did not mention any requisite permit from the Commission.

Held: R.A. No. 150 did not repeal Section 20(b) of the Public Service Law which requires an electric plant operator to obtain the authority of the Commission before making new installations or addition to its service. The MERALCO should make this addition required in R.A. No. 150 in accordance with Sec. 20(b) of the Public Service Law.

In the exercise of its regulatory authority, the Public Service Commission may inquire into the necessity of any addition to the systems of electric plant operators and disapprove it if the necessity for such addition is not established in order not to burden the customers with unreasonably excessive rates.

V. Authority to Dispose of Certificates:

The P.S.C. has the power to control, supervise and dispose of the certificates of public convenience for the promotion of public interest even if they are under judicial attachments. Such is the ruling in *Javier et al. v. De Leon.*[31]

---

[25] 58 Phil. 409
[26] G.R. No. L-14101, Aug. 31, 1960.
[27] 53 Phil. 309.
[28] G.R. No. L-10831, April 28, 1960
[29] G.R. Nos. L-13803 & L-131400, May 28, 1960.
[30] G.R. Nos. L-14035 & L-13990, Sept. 30, 1960.
[31] G.R. Nos. L-12483 & L-12896-97, Oct. 22, 1960.

Respondent Enrique de Leon is the holder of certificates of public convenience to operate 13 units on the Baliuag-Manila Line; 21 units on the Cabiao-Manila and Pulo (San Rafael)-Manila Lines; and 6 units on the Lupao-Manila line. Faced with imminent forfeiture of the 34 trucks which he operated on the lines on account of indebtedness to the Manila Trading and Supply Co., De Leon sold all his certificates of public convenience to Faustino for which an application for the approval of the sale was filed with the Public Service Commission. Due to the subsequent forfeiture of his 34 trucks, De Leon abandoned the operation of his lines without authority from the Commission. Subsequently, Victoria vda. de Tengco and the La Mallorca filed each an application to operate on the lines abandoned by De Leon, but the Commission denied the application on the ground that there were enough trips run therein, and so there was no pressing need for allowing additional trips. Advised of such ruling, petitioners (Javier et al.), who are also holders of certificates of public convenience on the same lines operated by De Leon, filed a petition for the cancellation of the certificates of De Leon on the lines which he abandoned completely. After hearing, the Commission order the cancellation of the certificates on the Baliuag- Manila line and the resumption of the Cabiao-Manila line. Petitioners filed petition for review (L-12483) praying for the cancellation of the Cabiao-Manila and Pulo (San Rafael)-Manila lines. Pending determination of the appeal, De Leon filed a motion for reconsideration of the decision. Acting on said motion, the Commission modified its decision by reviving the cancelled Baliuag-Manila line and imposing upon respondent (De Leon) fine in the amount of ₱1,000 which respondent paid. After hearing also the petition for the approval of the sale of De Leon's certificates to Cruz, and the sale to Trinidad, the Commission approved the provisional sale of the certificate to Trinidad. Javier and the other operators appealed.

Issue: Whether the Commission erred in reviving the Baliuag-Manila line of respondent De Leon after it has decreed its cancellation.

Held: x x x it appears that the commission reconsidered its original decision not merely on the basis of its desire to give the respondent an opportunity to recover part of his investment out of the proceeds of the sale of his certificates to Cruz, but on the strength of other factors which have intervened which to the commission appear sufficient to justify such action considering that respondent had acted on the matter without losing sight of the public interest. Thus, the Commission found that when respondent stopped the operation of the Baliuag-Manila line he had already sold his certificates to Cruz because of the financial reverses he had encountered which made it impossible for him to continue with the business and that immediately thereafter, he filed a petition for approval which the Commission already had before it when it acted on the motion for reconsideration. The Commission has also found that the reason why respondent could not continue with the operation of the line was not because of his fault or neglect but because his creditor decided to forfeit the 34 trucks he was operating in view of the non-payment of his indebtedness, which situation the Commission found to be beyond his control. The Commission also found the respondent was the original operator in the Baliuag-Manila line and during the long time of his operation he had been obeying diligently all his obligations except for some minor infractions.

Petitioners question the action of the Commission in considering the petition for provisional approval of the sale of the certificates when there were then pending before the Commission the motion for reconsideration filed by

petitioners and the several writs of attachments which were issued prior to said sale in other cases pending against respondent which have the effect of placing the certificates in *custodio legis*. On this point, the Commission ruled, and correctly, that the power of the Commission to control, supervise and dispose of the certificates of public convenience of public service operators for the promotion of public interest even if they are under judicial attachments, is already universally recognized in a long line of decisions. Besides, the matter under consideration is not a trial on the merits of the amended application itself but merely the application for a provisional remedy and whatever may be the action of the Commission will not prejudice the substantial rights and interests of creditors who shall always have the opportunity to be heard before the final disposition of the case on its merits.

Finally, petitioners contend that the Commission erred in approving the sale without benefit of publication for final approval of a deed of sale and not to an ex-parte petition for provisional approval and to sale of temporary certificates of 5 to 10 years life and not to those issued for a normal life of 25 years like the one herein involved. At any rate, the requirement contained in the memorandum order of the Commission regarding publication is merely directory which can be waived by the Commission if it finds good reasons for doing as to promote public interests. Decision Affirmed.

VI. Authority to Punish Violation of Franchise:

In the case of *Velasco v. Manila Electric Company*,[32] the defendant company was found guilty of violating its franchise by constructing an electric sub-station without previous approval by the Public Service Commission sentenced it to pay a fine of ₱200. Velasco appealed (L-14035) alleging that the fine was "ridiculously negligible." Is the punishment sufficient?

Held: Section 21 of the Public Service Act provides that "every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the Commission shall be subject to a fine of not exceeding two hundred pesos per day for every day during which such default or violation continuance x x x". This court has expressed disapproval of nominal or inadequate fines that will serve no purpose except to make a mockery of government regulation. Considering the extensive assets of Manila Electric Company, a fine of ₱200 would be purely nominal, especially in view of the relatively law value of the peso today. On the other hand, this Court is not satisfied that the Company acted in bad faith or willfully violated the aforesaid provisions. Everything considered a fine of ₱1,000 will adequately uphold public interests and serve the ends of equitable justice.

VII. Authority to Cancel Permit:

There can be no dispute that the law gives to the Commission ample power and discretion to decree the cancellation of a certificate of public convenience issued to an operator as long as there is evidence to support the same, as held by this Court in a long line of cases wherein it was even intimated that in matters of this nature so long as the action is justified this Court will not substitute its discretion for that of the Commission. (*Javier et al. v. De Leon, supra.*)

[32] *Supra*, Note 30. Also G.R. No. L-14035, May 31, 1960.

Persons Who Can Intervene in Proceedings Before P.S.C.:

A person has sufficient interest or personality to intervene, in any proceedings before the Public Service Commission if he has sustained, or is immediately in danger of sustaining an injury as a result of that action, and it is not sufficient that he has merely a general interest common to all members of the public but his interest must be of such nature as to be susceptible of evaluation. (*Calalang v. Intestate Estate of Tanjangco*)[33]

Petitioner, although not yet an operator of an ice plant, has, in view of having been granted a legislative franchise to operate such public utility, sufficient interest as would satisfy the above test and entitle her either to oppose respondent's application for an increase in the capacity of her existing plant, or to ask for an increase in the capacity of her existing plant, or to ask for a joint hearing of said application and her own application. Indeed, where petitioner was granted the franchise, it can be assumed that the Legislature had already made a *prima facie* finding of a public necessity for the operation of an additional ice plant service in Hagonoy, Bulacan, and of petitioner's possessing the necessary qualifications to operate such service. Under this franchise, petitioner has thus acquired the right to operate an ice plant, subject only to the conditions mentioned in the franchise act. Otherwise, the franchise will be just an empty gesture on the part of the Legislature, as the petitioner could have just as well applied to the Commission itself. The provisions of the franchise subjecting the grantee's operation to the terms and conditions imposed by the P.S.C. presupposed that the Commission would not arbitrarily deny petitioner's application for certificate of public convenience, but would act in accord with the facts and in the exercise of its sound judgment and discretion, with the end of accomplishing rather than frustrating the legislative will (Ibid.).

CIVIL AERONAUTICS

Substitution of Aircraft of Less Operational Gross Weight:

Nathaniel I. Gunn v. Civil Aeronautics Board[34] is a review on certiorari of certain orders of the Civil Aeronautics Board restricting to the Manila-Gasan (Marinduque) route the flight of a certain C-47 aircraft, leased and operated by the Philippines Aviation Development, an air transportation business owned by the late Paul I. Gunn.

It appears that during the pendency of this petition, the said aircraft crashed and was burned. Respondent P.A.L. contends that because of the loss of said plane, the case has now become moot. Petitioner, however avers that he has 3 other multi-engine aircrafts of the C-45 F type available for domestic air services. Said aircraft is smaller than a C-47 and having a maximum weight of 7,850 pounds.

Held: The controversy in the case at bar refers to the operation by the Philippine Aviation Development of a C-47 plane with an approximate gross weight of 29,000 pounds, specifically sought to be operated under petitioner's application for a permit filed with the Civil Aeronautics Board. Evidently, no aircraft of less maximum operational gross weight could be utilized under the permit so applied for. Incidentally, it is not disputed that the Philippine Aviation Development has an existing permit to engage in scheduled domestic

[33] G.R. No. L-16068, Nov. 29, 1960.
[34] G.R. No. L-13463, Oct. 31, 1960.

air transportation service between Manila and Gasan with authority of 12,500 pounds or less like planes of the C-45 F type. The alleged availability therefore of said C-45 F planes does not prevent this case from becoming moot. Petition dismissed.

INSURANCE LAW

Personal Accident, When Regarded as Life Insurance:

Rule 39, Section 12 of the Rules of Court provides in part: "Except as otherwise expressly provided by law, the following property, and no other, shall be exempt from execution: . . . (k) all moneys, benefits, privileges, or annuities accruing or in any manner growing out of any life insurance, if annual premiums paid do not exceed five hundred pesos, and if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and annuities so accruing or growing out of such insurance that said five hundred pesos bears to the whole annual premiums paid . . ."

Whether a personal accident insurance which "insures for injuries and or death as a result of murder or assault or attempt thereat" is life insurance within the above quoted Rule is resolved by the case of *Gallardo v. Morales*.[35]

In that case, the CFI of Manila sentenced Hermenegilda Morales to pay to plaintiff Francisco Gallardo the sum of ₱7,000. In due course, the corresponding writ of execution was issued and the Sheriff garnished and levied execution on the sum of ₱7,000 out of the 50,000 due from the Capital Insurance and Surety Company to said defendant Morales as beneficiary under a personal accident policy issued by said Company to defendant's husband who died by assasination.

Invoking Rule 39, Sec. 12(k) of the Rules of Court exempting from execution all moneys growing out of any life insurance, defendant asked the sheriff to quash and lift said garnishment or levy on execution. Upon denial of this request by the Sheriff, defendant filed a motion praying that the aforesaid sum be declared exempt from execution. This motion was denied, hence this appeal.

Held: In denying the claim for exemption set up by the defendant the lower court opined that an accident policy is fundamentally different from a life insurance policy; the former being an indemnity or casualty contract, while the latter is an investment contract.

It is not disputed that a life insurance is, generally speaking distinct and different from an accident insurance. However, when one of the risks insured in the latter is the death of the insured by accident, then there are authorities to the effect that such accident insurance may also be regarded as a life insurance (citing cases).

For this reason, and because Rule 39, Sec. 12(k) makes reference to "any life insurance" the exemption therein established applies to ordinary life insurance contracts, as well as those which, although intended primarily to indemnify for risks arising from accident, likewise insure against loss of life due, either to accident causes, or to the willful and criminal act of another which as such, is not strictly accidental in nature. Indeed, it has been held that statutes of this nature seek to enable the head of the family to secure his widow and

[35] G.R. No. L-12189, April 29, 1960.

children from becoming a burden upon the community, and, accordingly, should merit a liberal interpretation. Order reversed.

Ballantyne Scale of Values Applies in Policy Payable During Occupation:

The case of *Vda. de Fernandez v. National Life Insurance Co.*[36] is authority for the rule that if the insured died during the Japanese occupation, the proceeds of his policy should be adjusted according to the Ballantyne scale of Values. The case of the *Insular Life Assurance Ltd. v. Duat Vda. de Fernandez*[37] is but a reiteration of the same principle.

The insured, Fernandez died on November 2, 1944. On August 1, 1952, the widow, Teresa Duat Vda. de Fernandez filed a claim for the collection of the value of the policy. The Insular Life Assurance, Ltd. was willing to pay the full amount of the policy in accordance with the Ballantyne scale of values. Hence, the present action.

Held: The insured having died during the Japanese occupation, the proceeds of his policy should be adjusted accordingly for "the rule is already settled that where a debtor could have paid his obligation at any time during the Japanese occupation, payment after the liberation must be adjusted in accordance with the Ballantyne schedule (*Valero v. Sycip*, G.R. No. L-111119, May 23, 1958).

The delay in the presentation of proof of death does not make any difference, for it does not alter the date of maturity (November 2, 1944, date of death) of the policy nor the ability of the Company to pay the proceeds of the insurance during the Japanese occupation.

Violation of Warranty Entitles Insurer to Rescind:

The *General Insurance & Surety Corporation v. Ng Hua*,[38] the petitioner insured against fire, for one year, the stock in trade of the Central Pomade Factory owned by Ng Hua, the insured.

The policy in question contains this stipulation: "The insured shall give notice to the Company of any insurance or insurances already effected, or which may subsequently be effected covering any of the property hereby insured, and unless such notice be given and the particulars of such insurance or insurances be stated in or endorsed on this policy by or on behalf of the Company before the occurrence of any loss or damage, all benefits under this policy shall be forfeited." The face of the policy bore the annotation: "Co-Insurance Declared—NIL." It is not denied that Ng Hua had obtained fire insurance on the same goods, for the same period of time from the General Indemnity Co. When the loss occurred, Ng Hua sought to recover the amount of the policy, but the Petitioner refused to pay on ground of violation of warranty.

On appeal, the Court of Appeals referring to the annotation on the policy and overruling the defense, held there was no violation of the above clause, inasmuch as "Co-Insurance exists when a condition of the policy requires the insured to bear ratable proportion of the loss when the value of the insured property exceeds the face value of the policy"; hence there is no co-insurance here.

Held: Undoubtedly, Co-insurance exists under the condition described by the appellate court. But that is only one kind if co-insurance. It is not the

[36] 56 O.G. 3287.
[37] G.R. No. L-13023, Sept. 30, 1960.
[38] G.R. No. L-14373, Jan. 30, 1960.

only situation where co-insurance exists. Other insurers of the same property against the same hazard are sometimes referred to as co-insurers and the insuring combination as co-insurance. And considering the terms of the policy which required the insured to declare other insurances, the statement in question must be deemed to be a statement (warranty) binding on both insurer and insured, that there were no other insurances on the property. Remember it runs, "Co-Insurance Declared NIL" with emphasis on the last word. If "co-insurance" means what the Court of Appeals say, the annotation served no purpose. It would even be contrary to the policy itself which in its clause had made the insured a co-insurer for the excess of the value of the property over the amount of the policy. The annotation then, must be deemed to be a warranty that the property was not insured by any other policy. Violation thereof entitles the insurer to rescind under Sec. 60 of the Insurance Act. Such misrepresentation is fatal (citing *Sta. Ana v. Commercial Union Ass. Co.*)[39]

Furthermore, even if the annotation were overlooked, the insurer would still be free from liability because there is no question that the policy issued by General Indemnity has not been stated in nor endorsed on the policy issued by Petitioner. And as stipulated in the above-quoted provision of such policy "all benefit under this policy shall be forfeited."

MUTUAL AID ASSOCIATION

In Mutual Aid Societies, Member may Change Beneficiary:

It is a rule in insurance contracts that the insured cannot revoke a designation of beneficiary named in his policy unless he reserved his right to make a change. (*Gercio v. Life Ass. Co., 48 Phil. 53*). *Pascua v. The Employees' Savings & Loan Ass.* (G.R. L-142421, June 30, 1960), a case involving a mutual aid association gives just exactly the opposite rule when it comes to change of beneficiary in that kind of society.

Section 25 of the by-laws of the defendant association, of which the deceased Leoncio Pascua was a member provides that "whenever any active member of the association dies, all the other members shall contribute the sum of ₱5 each and the amount thus collected shall be payable to the beneficiary named in the membership application papers of the deceased member." In his membership application, the deceased designated his wife, the petitioners herein as his beneficiary. Later, however, the deceased made his son, Leoncio, Jr., born of intervenor herein, a co-beneficiary in equal share with his legal wife. After the death of Leoncio Pascua and upon the refusal of the association to deliver to her in full the fund benefits, Luz Pascua (wife) filed with the lower court the present action. The lower court decided against Luz.

Issue: Whether deceased has the power to change his beneficiary at will.

Held: Unlike in insurance contracts . . ., in mutual benefit societies like the defendant association, the rule is that a member has the power to change his beneficiary at will, so long as the Statutes or the rules and regulations of said society do not expressly prohibit such change. And, while the by-laws of the defendant association do not expressly authorize a member to change beneficiaries, it, however, does not also prohibit the making of such change.

Benefits from a mutual benefit association, like proceeds of an insurance policy, belong exclusively to the beneficiary and not to the member, who has

[39] 55 Phil. 329.

no property in them, but merely to appoint someone to receive them (46 C.J.S. 942). The disposition of such benefits, therefore, is not governed by the law on succession. Moreover, "an invalid or informal will, although inoperative as a bequest may constitute a sufficient designation of beneficiaries." (46 C.J.S. 945). Consequently, the probate of a valid will is not a condition precedent to the payment of mutual aid benefits to the beneficiaries designated in said will.

NEGOTIABLE INSTRUMENTS

Promissory Note is Recognition of Indebtedness:

Just what is the significance of executing a promissory note was explained in *S.V.S. Pictures, Inc. et al. v. Court of Appeals, et al.*[40]

Facts: For a consideration of ₱23,000 to be paid in installments, Jose Nepomuceno undertook to furnish to the S.V.S. Pictures, Inc., "a complete service of equipment and personnel" for the filming of a picture entitlel "Dalawang Anino" and to release to the latter six prints of said picture for exhibition. In fulfillment of the contract, the picture mentioned was delivered to the corporation. The latter, in turn, made partial payments to Nepomuceno. After an accounting it was found that there was still due Nepomuceno the sum of ₱6,000. The Corporation, represented by Ramon S. Sevilla and its president and general manager, Arsenio Santos, executed promissory notes for said amount. The notes were subsequently assigned to Ramcar, Inc. Upon the notes being dishonored, Ramcar sued the corporation and Ramon Sevilla for the total amount of the notes with legal interest from the filing of the complaint. The defendant set up the defense, among others, that the notes were void for want of consideration.

Held: The execution of the promissory notes in question for the satisfaction of the balance after a formal accounting, not only shows the consideration for the drawing of the notes but also a recognition of the indebtedness on the part of the makers thereof.

Prescription of Promissory Note:

Oral acknowledgments or oral promises to pay a debt, after the right of action had accrued, do not interrupt the period of prescription nor renew claimant's right of action (*Borromeo v. Zaballero*).[41]

In the *Borromeo* case the following dates were considered: From May 8, 1937 when the promissory for ₱2,800 matured, to September 14, 1955 when the claim was filed in the estate proceedings, a period of 18 years, 3 months and 75 days has elapsed. Deducting the moratorium period that interrupted the running of extinctive prescription for pre-war obligations, this leaves over 14 years and 11 months, which is in excess of 10 year prescriptive period provided by the Code of Civil Procedure.

It was contended that the oral promises and agreements to pay the indebtedness renewed or interrupted the period of limitation.

Held: Under Section 50 of the Code of Civil Procedure, the Law applicable when the note in question fell due in 1937 provides: "when payment has been made upon any demand founded upon contract, or *a written acknowledgment thereof or a promise to pay the same has been made and signed by the party*

[40] G.R. No. L-9075, Jan. 29, 1960.
[41] G.R. No. L-14357, Aug. 31, 1960

sought to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment, or promise." Therefore, only written acknowledgments could renew or interrupt the course of the period of limitation. The purpose of the law is to avoid uncertainty in the determination of the periods of limitation, not leaving it dependent on the fallacies of human memory.

An exception to the rule exists and thus oral promise or acknowledgment suffices to take the old obligation out of the operation of the Statute of Limitations where such new promise or acknowledgment has for its consideration not the mere oral obligation to pay the barred debt but a new contemporaneous consideration.

Crossed Checks: Holder in Due Course:

Where the drawer in drawing the check engaged that on due presentment, the check would be paid and that if it be dishonored, he will pay the amount thereof to the holder, such drawer did not become liable in the absence of due presentment. Such is one of the rulings in *Chan Wan v. Tan Kim et al.*[42]

This suit concerns the collection of 11 checks. The checks payable to "Cash or bearer" and drawn by Defendant Tan Kim upon the Equitable Banking Corp., were all presented for payment by Chan Wan to the drawee bank, but they were all dishonored due to insufficient funds, and or causes attributable to the drawer. Tan Kim declared without contradiction that the checks had been issued to two persons named Pinong and Muy for some shoes the former had promised to make and "were intended as mere receipts." The court declared to order payment because plaintiff failed to prove he was a holder in due course and the checks being crossed checks should not have been presented to the drawee for "payment," but should have been deposited instead with the bank mentioned in the 11 checks.

Issue: Whether Plaintiff is entitled to collect on the 11 checks.

Held: The Negotiable Instruments Law regulating the issuance of a negotiable check, the rights and the liabilities arising therefrom, does not mention "crossed checks." Act 541 of the Code of Commerce refers to such instruments. The Bills of Exchange Acts of England of 1882, contains several provisions about them and in *Philippine National Bank v. Zulueta* (55 O.G. 222), this Court applied said Bills of Exchange Act because the Negotiable Instruments Law, originating from England and codified in U.S.A. permits resort thereto in matters not covered by it and local legislation (Sec. 196, Neg. Inst. Law).

Eight of the checks here in question bear across their faces two parallel transverse lines between which these words are written: "non-negotiable—China Banking Corporation." These checks have, therefore, been crossed specially to the China Banking Corporation, and should have been presented for payment by China Banking Corporation, and not by Chan Wan. Inasmuch as Chan Wan presented them for payment himself, there was no longer proper presentment, and the liability did not attach to the drawer. It must be remembered, at this point, that the drawer in drawing the check engaged that "on due presentment, the check would be paid and that if it be dishonored . . . he will pay the amount thereof to the holder." Wherefore, in the absence of due presentments, the drawer did not become liable. Nevertheless, on the backs of the checks, there were endorsements which apparently shows that they had

[42] G.R. No. L-15380, Sept. 30, 1960.

been deposited with the China Banking Corporation and were, by the latter, presented to the drawer bank for collection, but as drawee bank had no funds, they were unpaid and returned, some of them stamped "Account Closed." While the records does not show how the checks reached the hands of Plaintiff, the trial court surmised that he got them after they had been thus returned, because he presented them in court with such "account closed" stamps. Naturally and rightly, the lower court held plaintiff not to be a holder in due course under the circumstances, since he knew, upon taking them up, that the checks had already been dishonored. Yet, it does not follow as a legal proposition, that simply because Plaintiff was not a holder in due course, Chan Wan could not recover on the checks. The Negotiable Instruments Law does not provide that a holder who is not a holder in due course, may not in any case, recover on the instrument. The only disadvantage of a holder who is not a holder in due course is that the negotiable instrument is subject to defenses if it were non-negotiable. As to what defenses defendant Tan Kim proved, the lower Court's decision did not mention any. Considering the deficiency of important details on which a fair adjudication of the parties' rights depends, in the interest of justice, the records of the case should be and is hereby returned to the Court below for additional evidence. Defendants not having appealed, their counterclaim must be and is hereby definitely dismissed.

CORPORATION LAW

Disregard of Corporate Personality; Liability of Corporation:

"While it is true that a corporation once formed is conferred a juridical personality separate and distinct from the persons composing it, it is but a legal fiction introduced for purposes of convenience and to subserve the ends of justice. The concept when invoked in support of an end subversive of this policy will be disregarded by the courts." The Supreme Court had another occasion to apply said principle in *Laguna Transportation Co., Inc. v. Social Security System.*[43] In this case it is not disputed that the Laguna Transportation Co., an unregistered partnership originally composed of 4 partners, with two others later converted the partnership into a corporate entity, by registering its articles of incorporation with the Securities and Exchange Commission on June 20, 1956. The firm name "Laguna Transportation Co." was not altered, except with the addition of the word "Inc." to indicate that petitioner was duly incorporated under existing laws. The registered partnership, using the same lines and equipment. There was in effect a change only in the form of the organization of the entity."

The Petitioner argues that since it was registered as a corporation only on June 20, 1956, it must be considered to have been in operation only on said date (not in 1949) and therefore it petitions the court "for a declaration that it is not bound to register as a member of the Social Security System, and not obliged to pay to the latter contributions required under the Social Security Act. . . ."[44]

The court ruled that the juridical personality should be disregarded. "To adopt petitioner's argument would defeat, rather than promote the ends for which the Social Security Act was enacted. An employer could easily circumvent the statute by simply changing his form of organization every other year,

[43] G.R. No. L-14606, April 28, 1960.

[44] The Social Security Act (R.A. No. 1161, as amended), Sec. 9 provides in part that covering in the system shall be compulsory provided that the Commission may not compel any employer to become a member of the System unless he shall have been in operation for at least two years.

and then claim exemption from contribution to the System, on the theory that as a new entity, it has not been in operation for a period of at least two years. Finally, the weight of authority supports the view that where a corporation was formed by, and consisted of members of a partnership whose business and property was conveyed and transferred to the corporation for the purpose of continuing its business, in payment for which corporate capital stock was issued, such corporation is presumed to have assumed the partnership debts, and is *prima facie* liable therefor. The reason for the rule is that the corporation is a mere continuation of the partnership."

Taking Advantage of the Benefits Afforded by Acts of the President is Implied Ratification:

The case of *Buenaseda v. Bowen and Co., Inc.*[45] reiterates the rule that the failure of the corporation to repudiate an unauthorized act of its agent, but on the contrary took advantage of the benefits afforded by said act makes such corporation liable.

It appears in the above-mentioned case that "Francisco U. Buenaseda was appointed managing director of the Bowen and Co., Inc. with authority to negotiate for and in behalf of the corporation with the Government for the securing of ECA order for paints. After proper negotiations, the corporation was given an award consisting of marine and industrial paints, for the importation of which, it was necessary to open a letter of credit with the Philippine National Bank. As the corporation did not have at the time the necessary funds to put up the required marginal deposit of ₱60,000, its president Godfrey Bowen, obligating the corporation and himself in his personal capacity, offered to pay Buenaseda 37½% of the profits to be realized from the sale of the materials, should he (Buenaseda) be able to obtain the amount necessary to cover the cash marginal deposit. Buenaseda accepted the offer and through his business connections, E. T. C. Montilla and Co. Inc. agreed and did put up the cash marginal deposit of ₱60,000. However, after part of the materials were sold, the corporation refused to pay Buenaseda the percentage promised to him. Hence, Buenaseda filed this action against the corporation and its president to recover the amount due to him. The lower court absolved the defendants from the complaint on the theory that the profits derived from the sale of the imported materials were property of the corporation and that the commitment made to Plaintiff by defendant Bowen was not approved by the Board of Directors of the defendant corporation, hence not binding on it. On appeal the Court of Appeals affirmed the decision.

Held: It is not here pretended that the Board of Directors of the defendant corporation had no knowledge of the agreement between Bowen and Plaintiff to the effect that the latter was to receive 37½% of the profits to be realized from the importation and sale of the procurement materials. Indeed, at the time the said agreement was made, the Board of Directors of the Corporation was composed of Geoffrey Bowen himself, his wife, Francisco U. Buenaseda and two others, with Bowen and his wife controlling the majority of stocks of the corporation. The Board did not repudiate the agreement, but on the contrary, acquiesced in and took advantage of the benefits afforded by said agreement and so by this ratification by the Board of Directors this binds the corporation even without formal resolution passed and recorded (*Zamboanga Trans. Co. v. Bachrach Motors*, 52 Phil. 244).

[45] G.R. No. L-14985, Dec. 29, 1960.

It is argued, however, that the profits of the corporation form part of its assets and payment of a certain percentage of the profits requires a declaration of dividends and or resolution of the Board of Directors. The argument is untenable. Although Plaintiff Buenaseda is a stockholder of the corporation, he does not, however, claim a share of the profits as such stockholder, but under an agreement between him and the president of the corporation which has been impliedly ratified by the Board of Directors. Decision reversed.

Shares of Stock are Personal Properties:

Although shares of stock of a corporation represent equities that may consist of real as well as personal properties therein, they are considered under applicable law and jurisprudence as intangible personal properties (*Collector of Internal Revenue v. Anglo-California National Bank.*[46]

In the above cited case, the Calamba Sugar Estate, a foreign corporation duly licensed to do business in the Philippines was notified by the Collector of Internal Revenue of an assessment for alleged deficiency income as supposedly based upon capital gains derived from the respondent's sale to the Pasumil Planters Inc. of 250,000 shares of the capital stock of the Pampanga Sugar Mills, and of a promissory note executed by the Pampanga Sugar Mills in the sum of $500,000. The parties stipulated that the negotiation, perfection and consummation of the contract of sale were all done in San Francisco, California, U.S.A. In an appeal by the respondent from the ruling of the collector, the CTA held that the capital gains obtained from the sale were income derived from abroad, and not subject to income tax.

Held: Although shares of stock of a corporation represent equities that may consist of real as well as personal properties, they are considered under applicable law and jurisprudence as intangible personal properties (Art. 472(2) Civil Code; Sec. 35, Act No. 1459). Section 24, NIRC levies income taxes on foreign corporations only on income derived from sources within the Philippines; and with respect to capital gains on the sale of personal properties Section 37(e) of the same Tax Code deems the place of sale as also the place or source of the capital gain. In ascertaining the place of sale, the determination of when and where title to the goods passes from the seller to buyer is decisive.

In this case, it admitted that the negotiation, perfection and consummation of the contract of the sale were all done in California, USA. It follows that title to the shares of stock passed from the vendor to the vendee at said place, from which time the incidents of ownership were vested on the buyer. The Collector, however, argues that the situs of the shares of stock of a corporation is considered to be domicile of the latter. But, in the instant case, this court is not concerned with the imposition of taxes upon the shares themselves, but on a sale effected abroad that resulted in capital gains, for which there is a specific provision of law (Sec. 37(e) NRC). There is a distinction between the situs of the personal properties and the situs of the income derived from the sale or exchange of such properties.

Government-Owned Corporations:

The case of *Aspillera et al. v. Manila Railroad Company*[47] involves a memorandum agreement between the Company and its employees. According to

[46] G.R. No. L-12476, Jan. 29, 1960.
[47] G.R. No. L-13964, Feb. 25, 1960.

said agreement, the salary differentials would only be payable when "funds for the purpose are available." In refusing to pay for the salary differentials, the Company reasoned out that it was losing in its business.

Held: In a going concern like the defendant Company, the availability of funds for a particular purpose is a matter that does not necessarily depend upon the cash position of the Company but rather upon judgment of its Board of Directors in the choice of projects, measures or expenditures that would be given preference or priority, or in the choice between alternatives. So if defendant was able to raise or appropriate funds to meet other obligations notwithstanding the fact that it was losing, it could have done likewise with respect to its debt to the Plaintiffs, an obligation which is deserving of preferential application because it is owed to the poor.

Naric Employees May Strike:

Although the NARIC is exercising governmental function (*Tabora v. Montelibano*),[48] Section 11 of RA No. 875 prohibiting strikes in the government does not apply.

NARIC Workers' Union v. Alvendia et al.,[49] the Supreme Court held: "Conceding that the respondent NARIC is an instrumentality of the Government, especially since the law creating it (R.A. No. 663) expressly declares the same to be so, yet its activities are not purely and exclusively governmental in nature. Thus, under the statute, the corporation is empowered to buy and sell rice and corn or its by-products; to give loans at reasonable terms and finance activities in the rice and corn industry; to borrow, raise or secure money. Now, under Section 11 of R.A. 875, the prohibition to strike is clearly limited to employees employed in governmental functions and not to those employed in proprietary functions of the Government. Since the work of the members of the petitioning union consists mainly in hauling goods at the respondent's warehouses, barges and piers, the same bears only a very remote relation to the governmental functions of respondent corporation, and the union members are not covered by the prohibition against strikes.

BANKING LAW

Deposit During the Occupation is Invalid Under Executive Order:

In the case of *Yek Tong Lin Fire and Marine Insurance Co. v. Philippine National Bank*,[50] the appellant Insurance Co. filed a claim against the estate of one Santos Chua Hong (deceased) for the payment of the sum of ₱3,000, plus interest. Such filing of claim was made before the war. During the war, appellant and the administratrix of the estate agreed to settle the claim extrajudicially, said settlement consisting in the payment to appellant of ₱2,000 in cash in full satisfaction of its claim. To carry out the settlement, it was agreed that the estate would sell to Judge Arsenio Santos a piece of real estate belonging to the estate and that, out of the proceeds of the sale, the sum of ₱2,000 would be paid to appellant. In conformity with the agreement, Judge Santos, as buyer, issued a check for ₱2,000. After liberation, appellant attempted to withdraw from appellee (PNB) the aforesaid amount, but appellee refused reasoning that since account was opened during the enemy occupation the de-

[48] 52 O.G. 3058.
[49] G.R. No. L-14439, March 25, 1960.
[50] G.R. No. L-14271, April 29, 1960.

posit was declared invalid by virtue of Exceutive Order No. 49, dated June 6, 1945.

Appellants contend that what was deposited by its counsel with the bank was not Japanese currency but pure Philippine currency because the check delivered to the bank was a check against the pre-war account of Judge Santos, hence it was already in the coffers of the bank at the time the deposit was made.

Held: Absolving the Philippine National Bank from liability, the Supreme Court said: "The contention (of appellant) has no merit. It has been shown that the check for ₱2,000 issued by Judge Santos was presented to the bank and received as a deposit and credited to the savings account of appellant's counsel during the Japanese occupation and as such presentation is tantamount to payment of the check just as if the currency had been paid over the counter and immediately redeposited. As a consequence thereof the amount of ₱2,000 was credited to the account of appellant's counsel under a pass book issued during the Japanese occupation. Being a deposit during the occupation, the same necessarily comes under Sec. 2 of Executive Order No. 49.

Temporary Character of Circular Need Not Be Stated on its Face:

While the authority of the Central Bank to subject all transactions involving foreign exchange to license is temporary in nature and may be exercised only during an exchange crisis, however, for the legality of the circular, it is not necessary that its temporary character be stated on its face, so long as the circular has been issued during an exchange crisis, for the purpose of combating the same. In the absence of evidence to the contrary, it is presumed that the provision of Sec. 74 R.A. 265, under the authority of which the circular in question was issued has been compiled with. (*People of the Philippines v. Lim Ho*).[51]

CB Circular No. 20 Is Valid:

Circular No. 20, par. 4(a) requires any person who received foreign exchange to sell it to the Central Bank or its authorized agents within one business day following the receipt of such foreign exchange, and prohibits the disposition without license by the bank of such foreign exchange except to disignated agents of the said Bank.

Paragraph 4(b) prohibits the purchase of foreign exchange, directly or indirectly, except from or through authorized agents of the Central Bank.

The purchase of foreign exchange, directly or indirectly, without the necessary license or permit from persons or entities other than the Central Bank or its authorized agents constitutes a violation of Circular 20 regardless of the length of possession of the said foreign exchange.

Attempted or frustrated exportation of foreign exchange is punishable (*People v. Francisco Tan*;[52] *People v. Lim Ho*;[53] *People v. Jolliffe*[54].)

Purposes of Circular No. 20:

In *People v. Francisco Tan*, supra, the court reaffirmed that Circular No. 20 was a valid exercise of the regulatory power delegated by the Central Bank Act. It is in harmony with the objectives sought to be achieved by the law—

[51] G.R. Nos. L-12091-92, Jan. 28, 1960
[52] G.R. No. L-9275, June 30, 1960.
[53] *Supra*, Note 51.
[54] G.R. No. L-9553, May 13, 1959.

among them, "To protect the international reserve of the Central Bank during an exchange crisis and, to give the monetary Board and the Government time in which to take constructive measures to combat such a crisis" (Sec. 74), to take such remedial measures as are appropriate "to protect the international stability of the peso, when the international reserve is falling."

Transactions in U.S. Bases:

The Central Bank has jurisdiction to license foreign exchange transactions in American bases in the country. (*People v. F. Tan,* supra).

Peso Bills Are "Merchandise"

The Philippine peso bills come within the concept of "merchandise" as this term is understood in Section 1363(f) of the Revised Administrative Code. That is the ruling in *Commissioner of Customs v. Capistrano.*[55]

The material facts of the case are as follow:

Booked as an outgoing passenger, appellee was subjected to a search and these were found in her possession Philippine (Central Bank) peso bills and U.S. dollar bills in excess of that allowed by the Central Bank regulations. The Collector of Customs ordered the forefeiture of the bills, which decision was affirmed by Commissioner of Customs. On appeal, the Court of Tax Appeals ruled that Central Bank Circulars Nos. 42 and 45 did not authorize the seizure and forfeiture of the bills carried in excess of that allowed by the Central Bank. The CTA further said that neither could Sec. 1363(f) of the Revised Administrative Code be invoked because said section referred merely to "merchandise of prohibited importation or exportation." Hence, this appeal.

Issue: Whether Philippine peso bills are subject to seizure and forfeiture.

Held: There is no doubt that Philippine money may be exported or brought out of this country. The Philippine peso bills come within the concept of "merchandise" as this term is understood in Section 1363(f) of the Revised Administrative Code. As defined by the same Code, "merchandise", when used with reference to importation or exportation, includes goods, wares, and in general anything that may be the subject of importation or exportation (Sec. 1419). It can not be gain said that money may be a commodity, an object of trade. In the same manner that in the Philippines the U.S. dollar bills which have ceased to be legal tender, are considered merchandise, the Philippine peso bills when attempted to be exported, as in the present case, may be deemed to have been taken out of domestic circulation as legal tender and treated as commodity. Hence, they may be forfeited pursuant to Central Bank Circular No. 37 in relation to Sec. 1363(f) of the Revised Administrative Code.

TRADE-MARKS LAW

Approval of Publication Does Not Divest the Director of Patents of the Prerogative to Dismiss an Application:

The principal contention of the Petitioner in *The East Pacific Merchandising Corporation v. The Director of Patents et al.*,[56] is that "once the publication of the application is approved by the Director of Patents, it becomes the latter's ministerial duty to issue the corresponding certificate of registration upon payment of the required fees".

[55] G.R. No. L-1075, June 30, 1960.
[56] G.R. No. L-14377, Dec. 29, 1960.

The facts of the case are as follow: On June 14, 1947, Marcelo T. Pua filed an application for the registration of the composite trade mark consisting of the word "VERBENA" and the representation of a Spanish lady. In 1953, Pua assigned his right to said trade-mark law (R.A. No. 166), and after the usual preceedings, the Director of Patents approved Petitioner's application for publication in the Official Gazette. On May 23, 1957, respondent Luis Pellicer filed an opposition to the application. Petitioner moved to dismiss the opposition. After due hearing on said motion, the Director of Patents denied the application as well as the opposition. Upon motion for reconsideration, however, the opposition was ordered reinstated. Hence the review.

The Supreme Court held that the contention of the Petitioner Corporation is untenable. It says, "In the proceedings for the approval of an application for registration, there are two steps; the first, is that conducted in the Office of the Director and taking place prior to publication; and the second, that conducted after publication, in which the public is given the opportunity to contest the application. It is the decision of the Director given to be heard, that finally terminated the proceedings and in which the registration is approved or disapproved (*Ong Ai Gui v. Director of Patents*, 51 O.G. 1848). Therefore, Petitioner's argument that once the publication is approved by the Director of Patents, it becomes the latter's ministerial duty to issue the corresponding certificates or registration upon payment of the required fees, is untenable.

The Director did not err in ruling on the registerability of the trade-mark in question. The opposition put in issue the registerability of the composite trade-mark applied for and petitioner impliedly met this issue in its motion to dismiss with the allegation that the word VERBENA has already attained a secondary meaning. When the incident was heard in the course of the proceedings, the Parties were expected, and were given the opportunity to submit arguments and present evidence to sustain their respective contentions. Moreover, the Director based its denial of the registration upon the provisions of R.A. 166 (Sec. 4), on the theory that the questioned trade-mark is generically descriptive or misdescriptive of the products, and that the representation of a Spanish lady is not only deceptively misdescriptive of the source or origin (the goods covered being produced in the Islands and not in Spain), but likewise common in trade. This the Director can do prior to the the publication. The fact that the Director instead caused the dismissal of the application only after its due publication is not a procedural error that is reversible on appeal. Neither did such publication divest the Director of the prerogative to dismiss the application.

. . . The Director of Patents could have reinstated the opposition even *motu propio*, with or without a valid motion for reconsideration, provided the same was done in due time or while he still had jurisdiction over the case (and the contrary has not been shown this case).

Trade-Mark Applied for Must Have Become Distinctive of Applicant's Goods:

Declaring the non-registerability of the trade-mark applied for in the *The East Pacific Merchandising Corporation v. Director of Patents*,[57] the court said: "The term VERBENA being descriptive of a whole genus of garden plants with fragrant flowers, its use in connection with cosmetic products, wherein

[57] *Ibid.*

fragrance is substantial import, evokes the idea that the products are perfumed with the extract of verbena flowers, or of some oil of similar aroma; and, regardless of other connotations of the word, the use of the term cannot be denied to other traders using such extract or oils in their own products. It follows that the Director of Patents correctly held the term to be non-registrable in the sense that petitioner company would be entitled to appropriate its use to the exclusion of others legitimately entitled, such as oppositor Pellicer. The denial of registration is further strengthened by the Director's express findings that petitioner does not use verbena essences in his products. The claim that Petitioner is entitled to registration because the term 'Verbena' has already acquired a secondary significance is without merit. The provisions of law (R.A. 166 Sec. 4)[58] requires that trade-mark applied for must have become distinctive of the applicants' goods, and that a *prima facie* proofs of this facts exists when the applicant has been in the substantially exclusive and continuous use thereof as a mark of tradename x x x for the five years next preceeding the date of the filing of the application for its registration."

The conclusion that Verbena has not become distinctive of applicant's goods was based on the findings that "the applicant and his assignor (Pua) only began use of the alleged mark in 1947, the same year when the application was filed; but such trade-mark had long been in use by respondent Pellicer on his own cosmetic products, and as a matter of fact, he is the holder of a certificate of registration from the Patents office for the trade-mark "LUPEL VERBENA".

Prohibition Against *Ex Post Facto* Legislation Does Not Apply to Trade-Mark:

"The question of trade-mark registerability being without any penal aspect, the prohibition against *ex post facto* legislation does not apply."[59]

No Half-Way Rule in Imitation of Trade-Mark:

As the policy of the law is to discourage all attempts at imitation of labels already used and registered, "there should be no half-way measures" in an application for trade-marks. The Director of Patents must either approve or disapprove the application. Such is the ruling of the Court in *Chuan Chow Soy & Canning Co. v. Director of Patents et al.*[60]

In this case, both the Petitioner and Respondent (Villapania) are engaged in the manufacture and sale of soy sauce. Since 1950, Petitoner has been using as trade-mark the words "Carp Brand Soy", printed in a distinctive style of lettering above the drawing of a fish on labels affixed directly to the bottle containing soy. For such trademark, the Patent Office issued Trademark Registration Certificate in 1953.

Respondent Villapania, on the other hand, had been using (since 1956) as trade-mark of her sauce the name of "Bangus Brand" written in the same distinctive style lettering as that of the Petitioner's "Carp Brand" above the drawing of a fish similar to the fish drawing on the trademark of the Petitioner.

When Villapania applied for registration of her trademark, the Director of Patents ordered the applicant to submit new drawings and facsimiles for the

[58] R.A. No. 166, Sec. 4 provides: "The owner of a trade-mark, tradename or service mark used to distinguish his goods, business or services from those of others shall have the right to register the same in the Patent Office, unless it consists of: . . . (e) a mark or tradename which, when applied to or used in connection with the goods, business or services of applicant is merely descriptive or deceptively misdescriptive or is primarily a surname."

[59] Supra, note 56.

[60] G.R. No. L-13947, June 30, 1960.

word "Bangus Brand." Respondent Villapania complied, and the same was published in the Official Gazette. But, she continued to use the labels similar to that of the Petitioner. So, Petitioner filed its opposition. The Director of Patents dismissed the opposition. Petitioner appealed.

Held: Petition should be granted. "When as in the present case, one applies for the registration of trade-mark or label which is almost the same or very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trade-mark. This is not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill. There should be no half-way measures as was done in the case by the ruling of the examiner who directed the respondent to amend or modify the label or trade-mark she sought to register by eliminating some portions thereof. The Director of Patents should as much as possible discourage all attempts at imitation of labels already used and registered to avoid confusion."