COMMERCIAL LAW

PURIFICACION VALERA-QUISUMBING *

I. PUBLIC SERVICE ACT (C.A. No. 146, as amended)

Defect of lack of notice cured by hearing on motion to reconsider.

Section 16 (M) of the Public Service Act provides that the Commission may amend, modify or revoke at any time any certificate whenever the facts and circumstances on the strength of which said certificate was issued have been misrepresented or materially changed. Subsection (N) further provides that the Commission may also suspend or revoke any certificate whenever the holder thereof has violated or wilfully and contumaciously refused to comply with any order, rule or regulation of the Commission or any provision of the Act. An important requisite to the validity of any of these acts, however, is notice and hearing.

In the case of *Flash Taxicab Co., Inc. v. Cruz*,[1] the Court held that the lack of notice and hearing, while usually a fatal defect, may be cured by a subsequent hearing on a motion to reconsider. Following the ruling in *Borja v. Flores*,[2] the Court ruled that "although the Commission entered its order without notice or hearing, a requisite provided for by the Public Service Act before suspension, revocation, or cancellation of any certificate of public convenience, the defect, if any, was cured by the hearing held on said motion to reconsider the order."

Petitioner company here was granted a certificate of public convenience to operate 20 taxicabs. Pursuant to a writ of execution in a case between said company and the Philippine Bank of Commerce, the certificate was sold at public auction to the Bank, which sale was confirmed by the Court. Subsequently, the Bank sold the certificate to Cruz. Respondents Bank and Cruz jointly petitioned the Commission for approval of the sale. Acting on said petition and, without notice to the company, the Commission withdrew the authority of the company to operate the taxicabs and granted Cruz provisional authority to operate the service. Meanwhile, the company filed in the Court of First Instance a petition for the annulment of the order confirming the auction sale and, in the Commission, a motion for reconsideration of its order withdrawing the authority of the company to operate taxicabs. When the court therefore set aside the

* Recent Documents Editor, *Philippine Law Journal*, 1963-64.

[1] G.R. No. L-15464 and No. L-16255, March 30, 1963.

[2] 62 Phil. 106.

sale and revoked its order confirming it, the provisional authority granted to Cruz was also revoked. Cruz now moved for a reconsideration of this last order; the company meanwhile filed with the Commission a petition for reinstatement. The Commission denied the motion for reconsideration filed by Cruz and in another order allowed Cruz to continue operating the taxi service.

The issue now is: Who has the better right to operate the service? The company contended that it had been denied due process of law when the Commission withdrew its authority to operate without prior notice to it. In deciding that Cruz had the better right to operate the contested service, the Court said that the company was duly heard by the Commission on said motion. Thus, any defect had thereby been cured.

Failure to notify affected party is ground to reopen case.

In *Valero, v. The Public Service Commission,*[3] petitioners applied for a certificate of public convenience to install and operate an ice plant in Olongapo, Zambales. Accordingly, the order of hearing was published and notice was sent to the affected parties appearing in the list furnished the applicants by the Commission. Nobody appeared to oppose the application during the hearing and the Commission granted the certificate. Before thirty days lapsed, an ice plant operator in San Marcelino, Zambales, who sells his produce in Olongapo, petitioned the Commission to set aside the decision and reopen the case for the reason that as an affected party, he was not notified of the proceedings. Confronted by this commission and finding that Rodriguez should actually have been brought to the proceedings, the Commission directed the reopening of the case to enable him to oppose the application.

The issue is whether the Commission erred in ordering the reopening of the case. In upholding the Commission's decision, the Court ruled: 'The reopening of the case to allow an offended party who was not properly notified of the application to present his opposition thereto, is within the scope of the Commission's authority to pass upon and determine whether applications for operation of public service would be granted or not. As a matter of fact, it is empowered by law to amend, modify, or revoke even a certificate of public convenience already issued, at any time, should the facts and circumstances upon which it was issued be found to have been misrepresented or materially changed.[4] In this case, the motion to set aside was filed before the decision had become final. That applicant's

[3] G.R. No. L-19532, March 30, 1963.
[4] Javier v. De Leon, G.R. No. L-12483, Oct. 22, 1960.

failure to notify the oppositor was for cause not attributable to them does not alter the situation that an affected party was deprived of his day in court. The action taken by the Commission is not only not erroneous but is the proper step to take."

Factual findings of the Commission are 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.[5] The Court will not substitute its discretion for that of the Commission on questions of fact and will not interfere in the latter's decision unless it clearly appears that there is no evidence to support it.[6]

In the case of *Cababa v. Remigio*,[7] the issue was whether the decision of the Commission in granting a second certificate of public convenience was supported by evidence. Respondents applied for authority to operate ferry service by motorboats across the Cagayan River and petitioner, a holder of a certificate of public convenience on the same area, opposed the application on the ground that respondents are not financially capable of operating ferry services and that there is no need for additional service. The Court, in upholding the Commission's decision to grant the additional certificate said: "With respect to the financial capabilities of respondents, it is undisputed that both own riceland, residential houses, trucks and motor boats worth thousands of pesos. They are therefore of sound financial condition. As to the claim that there is no necessity for the additional services, the Commission found that the oppositor gives unnecessary preference or advantage to a particular person or group of persons in the matter of securing accommodation in his ferry boats, more especially on occasions when the government ferry is not in operation, so that it is for the best interests of the public that applicants be authorized to operate ferry service on the lines applied for. It appearing that the evidence supports and warrants the conclusion of the Commission, the decision appealed from is affirmed."

The same ruling was given in *Mindoro Transportation Co., Inc. v. Torcuator*.[8] In sustaining the Commission's decision to grant respondent authority to operate six auto-trucks for three routes in Oriental Mindoro, the Court decided that the Commission correctly appreciated the evidence presented before it.

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[5] Manila Yellow Taxicab Co. v. Castelo, G.R. No. L-13910, May 30, 1960.
[6] Santiago Ice Plant v. Lahoz, G.R. No. L-3661, August 29, 1950.
[7] G.R. No. L-17832-33, May 29, 1963.
[8] G.R. No. L-18479, February 28, 1963.

While it is true that the Court will not disturb the Commission's findings if supported by evidence, it will do so when it finds that the facts were not correctly appreciated by the Commission. In *A. L. Ammen Transportation Co., Inc., v. Del Rosario*,[9] the issue was whether the Commission was right in deciding that respondent had the required financial means to establish the passenger lines applied for. The Commission's decision was based on the respondent's evidence to the effect that he owned commercial and residential properties. Petitioners argued that even with the alleged landholdings of respondent, the latter would not have the means to undertake the proposed public service because motor trucks can be acquired only at very high prices and the fair market value of respondent's properties would not be sufficient to meet the expenses.

The Court here decided that the Commission's decision was not warranted by the evidence presented before it. It stated, "The Court can take judicial notice of the fact that trucks are very expensive and costly and their maintenance requires considerable capital. It is true that the law does not fix the amount necessary for the establishment of the business and that this matter is left to the discretion of the Public Service Commission; but the evidence submitted reasonably satisfies this Court that respondent's financial condition renders it impossible for him to run the public service he has been authorized to operate. The alleged subsequent registration of trucks in the name of respondent without the presentation of the corresponding certificates of registration, nor evidence of the condition of the registered trucks, or of the fact that said trucks do not belong to any other individual . . . cannot in any way change this Court's finding that respondent is not financially capable of maintaining the public service authorized."

Petition for reconsideration must be acted on immediately.

Section 34 of the Public Service Act, as amended, provides that it shall be the duty of the Commission to call a hearing on the petition for reconsideration immediately with notice to the parties and after hearing, to decide the same properly. In *Marinduque Transportation Co., Inc., v. Public Service Commission*,[10] the Court found that the petitioners were deprived of their day in court when the Commission failed to comply with Section 34. The Company opposed respondent private parties' application for the issuance of a certificate of public convenience. The Commission designated the Justice of the Peace of Buenavista, Marinduque to receive the depositions of the parties and

[9] G.R. No. L-17992, August 30, 1963.
[10] G.R. No. L-18528, July 31, 1963.

their witnesses. The Company filed a motion praying that they be permitted to present their witnesses in Manila and Sta. Cruz, Marinduque, wherein said witnesses reside. This motion remained unacted upon and in the meantime, the Company could not present its evidence in the case. It was only in the decision granting respondent the certificate of public convenience that the Commission denied petitioner company's plea. Petitioners moved for reconsideration and the Commission denied the motion without hearing. The issue now is whether the petitioners were denied the opportunity to present their evidence.

The Court said: "Petitioners were deprived of their day in court. It was not the fault of petitioners that they were unable to produce their witnesses, but rather it was due to the inaction on the part of the Commission to pass upon the timely and reasonable request of the petitioners. It is to be noted that the motion for reconsideration has never been set for hearing despite petitions to that effect, before the same was denied, contrary to the provision of Section 34 of the Public Service Act, as amended."

II. SALVAGE LAW (No. 2616)

Under the Salvage Law the term "salvage" has a technical meaning and only when certain requisites are present can compensation for such be allowed. Section 1 of said law provides: "When in case of a shipwreck, the vessel or its cargo shall be beyond the control of the crew, or shall have been abandoned by them, and picked up and conveyed to a safe place by other persons, the latter shall be entitled to a reward for the salvage.

"Those who, not being included in the above paragraph, assist in saving a vessel or its cargo from shipwreck, shall be entitled to a like reward."

Lack of marine peril, not proper case for salvage.

In the case of *Barrios v. Go Thong and Co.*,[11] the issue was whether the service rendered by plaintiff to defendant constituted "salvage" or "towage," and if so, whether plaintiff may recover compensation for such service. The facts show that plaintiff, in his capacity as captain of MV Henry I, owned by the William Lines Inc., intercepted an SOS distress signal by blinkers from the MV Alfredo, owned by defendant company. Answering the call, plaintiff altered the course of his vessel and headed towards the beckoning ship. With the consent of the captain of the latter ship, plaintiff caused the ves-

[11] G.R. No. L-17192, March 30, 1963.

sel to be conducted with tow lines to his ship. It was in this condition when a sister ship of the distressed ship arrived. Plaintiff then filed an action to recover remuneration for salvage fee.

In deciding against plaintiff's claim for salvage fee, the Court cited the leading case of *Erlanger and Galinger v. Swedish East Asiatic Co.*,[12] where it was held that three elements are necessary to a valid salvage claim, namely: (1) a marine peril, (2) service voluntarily rendered when not required as an existing duty or from a special contract, and (3) success, in whole or in part, or that the service rendered contributed to such success. The Court found that in the instant case there was no marine peril to justify the salvage claim. Although the vessel in question was in a helpless condition due to engine failure, it did not drift too far from the place where it was. And while it was drifting towards the open sea, there was no danger of its being stranded as it was far from any island or rocks. There was no danger that the vessel would sink in view of the smoothness of the sea and the fairness of the weather. That there was absence of danger was shown by the fact that the vessel did not even find it necessary to lower its launch and two motor boats in order to evacuate the passengers aboard. All the vessel's crew members could not do was to move the vessel on its own power. That did not make the vessel a quasi-derelict, considering that even before the appellant extended the help to the distressed ship, a sister vessel was known to be on its way to help it.

However, while plaintiff's service to defendant did not constitute "salvage" within the purview of the Salvage Law, it was considered a "quasi-contract of towage" for in consenting to plaintiff's offer to tow the vessel, defendant (through the captain of the ship in distress) thereby impliedly entered into a juridical relation of towage with the owner of the vessel captained by plaintiff. Since the contract thus created was one for towage, then only the owner of the towing vessel, to the exclusion of the crew of said vessel, would be entitled to remuneration (Article 2142, Civil Code).[13] And as the vessel owner had expressly waived its claim for compensation for the towage service, plaintiff, whose right if at all depends upon his employer, is not entitled to the payment of such towage service. The Court further held that there is no occasion to resort to equitable considerations since there is an express provision of law applicable to the relationship created in this case.

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[12] 34 Phil. 178.

[13] Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.

III. WORKMEN COMPENSATION ACT

Section 38 of the Workmen's Compensation Act, as amended by Act No. 3812, provides: "This Act shall cover the liability of its employer toward employees engaged in the coastwise and interisland trade, and also in foreign trade, when such is permissible under the law of the United States and the Philippine Islands." This was the basis of the claim in the case of *Madrigal Shipping Co v. Melad.*[14] The issue, however, was whether or not the requisite employer-employee relationship existed between the vessel and the pilots.

On November 25, 1955, the captain of S.S. "Cetus", owned by petitioner company, sent a telegram to the ship's agent in Aparri instructing him to advise pilot that it will re-enter Aparri port for repair. The agent accordingly informed the Aparri Pilot's Association of the telegram and Primitivo Siccuan and Francisco Ricerra, chief pilot and district pilot respectively, had Filoteo Siccuan and Domingo Batta, sounder and oarsman respectively, to take them by boat to the ship in distress. Primitivo and Filoteo and Ricerra boarded the ship while Batta remained on the boat. Because of heavy waves the ship sank and the boat was lost. The four persons perished in the tragedy and the four claims were subsequently filed in the Workmen's Compensation Commission against the Madrigal Shipping Co., owner of the vessel.

Petitioner contended that there was no employer-employee relationship between it and the deceased because its pilotage contract was with the Aparri Pilots' Association and not with its members. The Court said that this contention was without merit. Siccuan and Ricerra were members of the Aparri Pilots' Association not its employees. While it is true that their salaries were paid by the Association, the same were taken out of the pilotage fees paid by the vessels. The Association cannot be considered an independent contractor so as to free the petitioner from the liability of an employer because it has neither capital nor money to pay its employees nor did it file a bond.

As to the sounder and the oarsman, petitioner argued that they were employed not by petitioner but by the Association. The Court held that it is a fact that the services of the two were needed so that the pilots could be taken to the vessel. "It is well settled," it said, "that a person who is asked for help in an emergency which threatens the employer's interests becomes an employee under an implied contract of hire. (I Larson, W.C.L., Sec 47.42(c) 699; I Schneider,

[14] G.R. No. L-17362 and L-17367-69, February 28, 1963.

Workmen's Compensation Text, Sec. 234, 627.) And even granting that the Association was an independent contractor, the result would be the same for certainly, the pilotage of the ship so that it could enter port for repair was in the usual course of the business of the petitioner."

NEGOTIABLE INSTRUMENTS LAW

Expressed time for payment makes instrument not negotiable.

Section 7 of the Negotiable Instruments Law provides: "An instrument is payable on demand (a) Where it is expressed to be payable on demand, or at sight, or on presentation; or (b) in which no time for payment is expressed."

Whether or not land certificates were payable on demand was the issue in the case of *Buencamino, v. Hernandez.*[15] In 1957, the Land Tenure Administration purchased from the petitioners their hacienda in Nueva Ecija. It was agreed that 50% of the price was to be paid in cash and the balance in negotiable land certificates. The certificates issued to petitioners were payable to bearer on demand "if presented for payment after five years from the date of issue." The parties nevertheless agreed that the vendors could use the certificates for payment of land taxes or obligations in favor of the Government within the period of five years. Availing themselves of what they considered was their contractual rights under the certificate, petitioners presented he certificates to respondents in payment of realty tax obligations. Respondents refused to accept the certificates.

The Court found respondents' refusal justified. Under Republic Act 1400, Section 9, the land certificates should be payable to bearer on demand. The one issued, however, to petitioners were payable to bearer only after the lapse of five years from a given period. Obviously, the requirement that they should be payable on demand was not met since an instrument payable on demand should conform with Section 7 of the Negotiable Instrument Law. The five-year period within which the certificates could not be cashed was an expression of the time for payment contrary to the law.

Petitioners maintained, however, that although the questioned certificates may not really be payable on demand, they may nevertheless be used for the payment of realty obligations to the Government because as far as Government agencies are concerned, the certificate is payable to bearer on demand during the first five years. To this

[15] G.R. No. L-14883, July 31, 1963.

the Court said, "It is true that Section 10 of Republic Act 1400 expressly authorizes the use of the said certificates for the payment of all tax obligations of the holder thereof, but the said section can only have meant such certificates as were issued strictly in accordance with Section 9 of the Act—that the instrument is payable on demand."

CORPORATION LAW (Act No. 1459)

Certain "ultra vires" acts may be performed.

The rule is that the corporation has only such powers as are (1) expressly conferred upon it by its charter or the law of its creation or other statutes, and (2) such as are implied from the express powers or incidental to the existence of the corporation. Beyond these limitations the acts would be *ultra vires*.[16]

Ruling on the validity of an *ultra vires* act, the Court held in the case of *Republic of the Philippines v. Acoje Mining Co. Inc.*[17] that "While as a rule an *ultra vires* act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law (19 C.J.S. Sec. 965, p. 419), there are however certain corporate acts that may be performed outside of the scope of the powers expressly conferred if they are necessary to promote the interest or welfare of the corporation."

The defendant company in the instant case requested the Director of Posts that a post office branch be opened at its mining camp at Zambales. In reply, the Director informed said company that it is the policy of the Post Office to have the company assume direct responsibility for whatever pecuniary loss may be suffered by the Bureau of Posts by reason of any act of dishonesty or negligence on the part of the employee of the company who is assigned to take charge of the post office, and suggested that a resolution be adopted by the Board of Directors of the Company expressing conformity to the above condition. Subsequently, the Company informed the Director of Posts of the passage by the Company Board of Directors of a resolution in which the corporation assumed full responsibility for all the cash received by the postmaster. In October, 1949, the post office branch was opened at the camp with one Hilario Sanchez, company employee, as postmaster. In May, 1954 the postmaster went on leave but never returned. He was found short

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[16] Arturo M. Tolentino, *Commentaries and Jurisprudence on Commercial Laws of the Philippines*, Vol. 2, 7th ed., p. 658, and, citing Fletcher, Vol. 2, pp. 1756-57).

[17] G.R. No. L-18062, February 28, 1963.

in the amount of ₱13,867.24. The Government demanded from the Company payment of the shortage but the Company denied liability contending that the resolution of the Board of Directors is *ultra vires*, and in any event its liability is only that of a guarantor.

In finding for the Government, the Court held: "The opening of a post office branch at the mining camp was undertaken because of a request by the company to promote the convenience and benefit of its employees. The idea did not come from the government, and the Director of Posts was prevailed upon to agree to the request only after studying the necessity for its establishment and after imposing upon the company certain requirements intended to safeguard and protect the interest of the government. The company cannot now be heard to complain that it is not liable for the irregularity committed by its employee upon the technical plea that the resolution wherein it assumed full responsibility is *ultra vires*. There are certain corporate acts that may be performed outside of the scope of the powers expressly conferred if they are necessary to promote the interest or welfare of the corporation. Indeed, a post office is a vital improvement in the living condition of the company's employees living in its mining camp."

The Court went on further to say, "Even assuming arguendo that the resolution in question constitutes an *ultra vires* act, the same is not void for it was approved not in contravention of law, customs, public order or public policy. The term *ultra vires* should be distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated. It being merely voidable, an *ultra vires* act can be enforced or validated if there are equitable grounds for taking such action. Here it is fair that the resolution be upheld at least on the ground of estoppel."

On the claim of the Company that it was a mere guarantor, the Court held that the phraseology and the terms employed in the resolution were clear that the defendant assumed "full responsibility for all cash received by the Postmaster." The responsibility of the defendant is therefore that of a principal.

Corporation estopped to deny apparent authority of officer.

Section 28 of the Corporation Law provides: "Unless otherwise provided in this Act, the corporate powers of all corporations formed under this Act shall be exercised, all business conducted and all property of such corporations controlled and held by a board of . . . directors . . . ." This means that the managerial author-

ity vested by law in the board of directors is exclusive.[18] However, the power to bind the corporation by contract may be expressly or impliedly delegated by the Board of Directors to other officers or agents of the corporation.[19]

In dealing with corporations, the public is bound to rely to a large extent upon outward appearances. If a person is found acting for a corporation with apparent authority and one, not having notice of want of authority, may usually rely upon those appearances. And if the directors had permitted the agent to exercise that authority and thereby held him out as a person competent to bind that corporation, or had acquiesced in a contract and retained the benefit conferred by it, the corporation is bound, notwithstanding the actual authority may never have been granted.[20]

This familiar doctrine was reiterated in *Francisco v. Government Service Insurance System*.[21] Plaintiff obtained from the Government Service Insurance System a loan payable within 10 years. To guarantee payment she mortgaged the Vic-Mari Compound in Baesa, Quezon City, with 21 bungalows. As plaintiff was in arrears on her monthly installments in the amount of ₱52,000, the System extrajudicially foreclosed the mortgage. The System itself was the buyer of the property. On February 20, 1959, plaintiff's father sent a letter to the General Manager of the System, offering to pay ₱30,000.00 for which the System issued an official receipt. It did not, however, take over the administration of the property, so plaintiff received the monthly rent from the property and remitted the same to the System, all of which were receipted for.

Later, the System sent letters asking plaintiff to pay her indebtedness, since according to it, the one-year period for redemption had expired. Plaintiff's father protested against the request inviting attention to the concluded contract generated by his offer and the System's acceptance by telegram. The System countered that, by all means, plaintiff should pay attorney's fees and expenses; that the telegram should be disregarded in view of its failure to express the contents of the board resolution due to error of its minor employees in couching the correct wording of the telegram. Also, since the remittances made by plaintiff were not sufficient to pay off the arrears, including attorney's fees, and the one-year period for redemption had expired, the defendant consolidated the title to

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[18] Tolentino, p. 704.
[19] Yu Chuck v. "Kong Li Po", 46 Phil. 608.
[20] Ramirez v. Orientalist Co., 38 Phil. 634.
[21] G.R. Nos. L-18287 and L-18155, March 30, 1963.

the property in its name. Plaintiff now instituted the present suit for specific performance and damages.

The issue is whether or not the telegram generated a contract that is valid and binding upon the parties. The Court held that the offer of compromise made by plaintiff had been validly accepted and was binding on the defendant. There was nothing in the telegram that hinted at any anomaly, and the plaintiff therefore cannot be blamed for relying upon it. There is no denying that the telegram was within the general manager's apparent authority.

The Court said: "Corporate transactions would come to a standstill were every person dealing with a corporation held duty-bound to disbelieve every act of its responsible officers, no matter how regular they should appear on their face. It is a familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to do acts within the scope of an apparent authority, and thus holds him out to the public as possessing power to do those acts, the corporation will, as against any one who has in good faith dealt with the corporation through such agent, be estopped from denying his authority."

The Court further pointed out that the inequity of permitting the System to deny its acceptance becomes more patent when account is taken of the fact that in remitting the payment of ₱30,000.00, plaintiff's letter to the System quoted verbatim the telegram of acceptance. This was in itself notice to the corporation of the terms of the allegedly unauthorized telegram. It stated, "Knowledge of facts acquired or possessed by an officer or agent of a corporation in the course of his employment, and in relation to matters within the scope of his authority, is notice to the corporation, whether he communicated such knowledge or not. (Ballantine, Law on Corporations, Sec. 112). Notwithstanding such notice, the System pocketed the amount and kept silent about the telegram. This silence taken together with the unconditional acceptance of the remittances from plaintiff constitutes in itself a binding ratification of the original agreement (Civil Code, Article 1393)." [22]

Corporation secretary may be compelled to register transfer of shares.

Section 35 of the Corporation Law provides: ". . . shares of stock so issued are personal property and may be transferred by

[22] Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person, who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

delivery of the certificate indorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the name of the parties to the transaction, the date of transfer, the number of the certificate, and the number of shares transferred." Section 52, as amended by Act 3471, stresses the same point.

In *C.N. Hodges, v. Lezama* [23] plaintiff Hodges was the registered owner of shares of the capital stock of the La Paz Ice plant and Cold Storage Co. which he sold to his co-plaintiff Gurrea, who in turn sold a number of said shares to several individuals. Thereafter the corporation was placed under receivership. Despite surrender of Gurrea's certificate and efforts exerted by the purchasers to have the transfer registered in the stock and transfer books of the corporation, the secretary of the corporation refused the registration and transfer. Hence this action which the lower court decided in favor of the purchasers.

Does the lower court have authority to require appellant to register the transfer in the corporation books?

The court ruled that a trial court has jurisdiction to order a receiver of a corporation placed under receivership to do any act so as to protect and preserve its properties, and to that end it may order the secretary to do an act within the internal affairs of the corporation aimed at protecting the interests of the stockholders (Angles v. Santos, 64 Phil. 697). Sections 35 and 52 of the Corporation Law, as amend by Act 3471, which require that all transfers of shares to be valid as far as the corporation is concerned must be entered and noted upon the books of the corporation, contemplate no restriction as to whom the shares may be transferred or sold. The assets and business of the corporation having been placed under receivership, the court is in duty bound and has the authority to require the appellant as secretary of the corporation to perform her duties under the law.

Government-owned corporation, its causes of action are subject to the Statute of Limitations.

In the case of *National Development Company v. Tobias,*[24] plaintiff sought to recover from defendant a sum of money under a promissory note payable on demand. Defendant filed a motion to dis-

[23] G.R. No. L-17327, August 30, 1963.
[24] G.R. No. L-17467, April 23, 1963.

miss on the ground that the action had prescribed, more than 10 years having elapsed since the promissory note was issued. The lower court sustained the motion.

Plaintiff assailed the order of dismissal upon the theory that the Statute of Limitations does not run against the plaintiff because it is an instrumentality of the government citing the case of Government of the Philippines v. Monte de Piedad (35 Phil. 738). The Court held that the case cited was not in point, it having been instituted by the government. Plaintiff herein is neither the Government nor a branch or subdivision thereof. It is only an instrumentality of such government. It is, like all other corporations capitalized by the government, a business corporation, and, as such, its causes of action are subject to the statute of limitations (Asociacion de Creditor Agricola de Miagao v. Monteclaro, 74 Phil. 281). The plaintiff herein does not exercise sovereign powers—and hence, cannot invoke the exemptions thereof—but is an agency for the performance of purely corporate, proprietary or business functions. This is apparent from its Organic Act (C.A. 182, as amended by C.A. 311), Section 3 of which provides that it "shall be subject to the provisions of the Corporation Law insofar as they are not inconsistent" with the provisions of said Act "and shall have the general powers mentioned in said corporation law . . ."

Government-owned corporation; it comes under the Magna Carta of Labor.

In the case of *Social Security System Employees Association v. Hon. E. Soriano* [25] the Secretary of Finance required the Social Security System to pay customs duty and tax on its importation. The SSS requested for exemption on the plea that being a government entity it is exempt from the payment of such duty or tax. The exemption was denied on the ground that the System is not performing a strictly governmental function. The Court upheld this decision and ruled that the SSS is a government-owned or controlled corporation performing basically proprietary functions, and as such it comes under the operation of the Magna Carta of Labor. Disposing of the contention that the SSS is not operated for profit, the Court said that records and publications of the SSS itself showing how the funds of the System have been invested in real estate, banks, stocks and bonds of different companies, time deposits and savings deposits, as well as the consolidated balance sheets showing the tremendous increase in the assets and income of the System, belie this contention.

[25] G.R. No. L-18081, November 18, 1963.

INSURANCE ACT (No. 2427)

Insured has obligation to pay premiums.

Section 72 of the Insurance Act provides: "An insurer is entitled to payment of the premiums as soon as the thing insured is exposed to the peril insured against." On the basis of the provision the Court held in *The Capital Insurance and Surety Co., Inc., v. Degado,*[26] that the insured was bound to pay premiums on the fire insurance issued by the company. It stated: "As with the issuance of the policy to appellants the same became effective and binding upon the contracting parties the latter (insured) cannot avoid the obligation of paying the premium agreed upon. In fact appellants expressly admitted their unpaid account for premium and asked for an extension of time to pay the same."

Ambiguity of policy to be interpreted in favor of insured.

The general rule in the construction of insurance contracts is the same as that applicable to all contracts. In case of doubt, a written agreement should be interpreted against the party who has drawn it.[27]

This rule was applied by the Court in the case *Del Rosario v. The Equitable Insurance and Casualty Co.*[28] in deciding how much indemnity should be paid by the company. Defendant company issued personal accident policy on the life of Del Rosario, son of herein plaintiff, binding itself to pay the sum of ₱1,000 to ₱3,000 as indemnity for the death of the insured. While on a motor launch, the insured and the beneficiary were forced to jump off the vessel which caught fire. Both died. Defendant company paid plaintiff, as sole heir of the insured, the sum of ₱1,000 but plaintiff claimed that the amount payable under the policy should be ₱3,000. Defendant referred the matter to the Insurance Commissioner who rendered an opinion that the liability of the company was only ₱1,000. The plaintiff sued for the balance of ₱2,000.

In deciding for the plaintiff, the Court held: "Generally, the insured has little, if any, participation in the preparation of the policy, together with the drafting of the terms and conditions. The interpretation of obscure stipulations in a contract should not favor the party who caused the obscurity (Article 1377, Civil Code),[29]

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[26] G.R. No. L-18567, September 30, 1963.

[27] Gozo v. National Life Insurance Co., (C.A.), Official Gazette, Nov. 1947, p. 4711.

[28] G.R. No. L-16215, June 29, 1963.

[29] Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

which, in the case at bar, is the insurance company. And where two interpretations, equally fair, of language used in an insurance policy may be made, that which allows the greater indemnity will prevail."

Personal notice of cancellation to insure necessary.

In the case of *Saura Import and Export Co. Inc. v. Philippine International Co.*,[30] the Court found the insurance company liable for failure to notify the insured of the cancellation of the policy. In this case, the company mortgaged to the Philippine National Bank a parcel of land wherein a building of strong materials was built. The mortgage contract provided that the property shall be insured at all times against fire and earthquake. Accordingly, Saura insured the building and its contents with the defendant insurance company and the policy was endorsed to the mortgagee bank. Some 13 days after the issuance of the policy, the insurer cancelled the same. During the period covered by the policy, the building was burned. Upon presentation of the notice of loss with the mortgagee bank, Saura learned for the first time that the policy had previously been cancelled. Upon refusal of the insurer to pay the amount of the insurance, Saura filed the present action. At the trial, it was establishhed that neither the insurer nor the bank informed Saura of the cancellation of the policy.

The issue was whether the trial court erred in absolving the insurance company and the bank from liability.

The Court found for the plaintiff. It stated that the policy in question does not provide for the notice, its form or period of cancellation. The Insurance Law likewise does not provide for such notice. This being the case, it devolves upon the Court to apply the generally accepted principles regarding cancellation of the policy by the insurer. "Actual notice of cancellation," the Court ruled, "in a clear and unequivocal manner, preferably in writing, in view of the importance of an insurance contract, should be given by the insurer to the insured, so that the latter might be given an opportunity to obtain other insurance of his own protection. The notice should be personal to the insured and not to and/or through any unauthorized person."

It further said that the notice to the bank as mortgagee of the property was not substantial compliance with such duty. As far as appellant is concerned, it is not an effective notice. "If a mortgage or lien exists against the property insured, and the policy contains

[30] G.R. No. L-15184, May 31, 1963.

a clause stating that loss, if any, shall be payable to such mortgagee or the holder of such lien as his interest may appear, notice of cancellation to the mortgagee or lienholder alone is ineffective as a cancellation of the policy as to the owner of the property. (Connecticut Ins. Co. v. Caumissar, 218 Ky. 578, 281 SW 776, cited in 29 Am. Jur., p. 743).

Concealment is ground for recission of policy.

Section 27 of the Insurance Act provide: "Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty."

In Saturnino, v. The Philippine American Life Insurance Co.[31] the question was whether or not the insured made such false representation of material facts as to avoid the policy. The findings of fact show that Saturnino bought a non-medical insurance policy from defendant company. This kind of policy dispenses with the medical examination of the applicant usually required in ordinary life policies. However, detailed information is called for in the application concerning appellant's health and medical history. In the policy, Saturnino stated that she had never had cancer or tumors, or undergone any operation or suffered any injury within the preceding five years. However, the months prior to the issuance of the policy, she was operated on for cancer. In less than a year after the issuance of the policy, Saturnino died of pneumonia. Her surviving husband and minor child demanded payment of the face value of the policy but the claim was rejected.

Claimants contended that the facts subject of the representation were not material in view of the "non-medical" nature of the insurance applied for. The contention was without merit for if anything, the waiver of medical examination rendered even more material the information required of the applicant concerning previous condition of health and diseases suffered; such information necessarily constitutes an important factor which the insurer takes into consideration is deciding whether to issue the policy or not.

It was also contended that there was no fraudulent concealment of the truth in as much as the insured herself did not know the disease she was operated on (the doctor did not tell her). In dismissing this contention, the Court stated: "In the first place, the concealment of the fact of the operation was fraudulent, as there could not

[31] G.R. No. L-16163, February 28, 1963.

have been any mistake about it, no matter what the ailment. Secondly, in order to avoid a policy it is not necessary to show actual fraud on the part of the insured. In this jurisdiction, a concealment, being defined as negligence to communicate that which a party knows and ought to communicate (Sections 25, 26, Insurance Act).[32]

CENTRAL BANK ACT

Forcible sale of foreign exchange can fall under "implied powers" of CB; commandeering of exchange not included in the power.

The validity of Central Bank Circular No. 20, Sec. 4(a) was challenged in the case of *Bacolod Murcia Milling Co., Inc. v. Central Bank of the Philippines.*[33] In 1956, appellant sold and exported to Olavarria Co., Inc. of New York 3,000 tons of sugar, and as a consequence drew against said company two drafts to cover an initial payment of 95% of the purchase price. Under existing rules and regulations, all exchange proceeds of the drafts must be sold to the Central Bank creating a reserve supply of dollars which the Central Bank thereafter disposed to parties in need thereof, but at the rate also of 2 to 1 (Sec. 4(a). Doubting the validity of said Circular, appellant brought this action for prohibition in order to stop the Central Bank from taking further action to enforce Circular No. 20.

The first question was whether the exchange control provision contained in Section 4(a) of Central Bank Circular No. 20 may be considered as sufficiently authorized by the provisions of the Bank Charter. On this, the Court said that the fact that the Bank Charter does not expressly grant the Bank the power to require the forcible sale of foreign exchange is no reason, *per se,* for holding that the Bank may not do so. The test of whether a power has been granted to a body created by law is not necessarily whether the Charter expressly grants such power, but whether the law contains sufficient standards on which its exercise may be based.[34] The forcible sale of foreign exchange to the Central Bank, in relation to the powers and responsibilities given to it can be regarded as falling within the category of "implied powers," as those necessary for the effective discharge of its responsibilities.

However, said the Court, the grant of the power to adopt "exchange restrictions" should not be extended to include the most dras-

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[32] Section 25. A neglect to communicate that which a party knows and ought to communicate, is called a concealment.
Section 26. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

[33] G.R. No. L-12610, Oct. 25, 1963.

[34] People v. Joliffe, G.R. No. L-19553, May 13, 1959.

tic step of control, namely, the commandeering of the exchange earned by private individuals and the power to pay therefore at prices which the controller itself fixes. The commandeering of an exporter's dollars and the selling of the same to an importer to the exclusion of the exporter himself, cannot be said to be authorized even under the pretext of an exchange crisis, by the provisions of Section 74 of the Central Bank Act, because the Bank's acts taken to remedy an exchange crisis must be within the powers granted and the exchange control is not mere licensing of foreign exchange or the restriction thereof. If, as contented, there is need for the Government to adopt such a radical compulsory and confiscatory measure as the exchange control, such measure can be adopted by the Legislature alone under its police power. The Central Bank is not given the authority to pass the exchange control provision that it had established.

The Court however gave credit to two defenses of the Bank. First, the petitioner's suit is subject to the defense of estoppel. As petitioner obtained the license to export under the provision of Circular No. 20, it may not question the right or power of the Bank to enforce the provisions of said circular requiring surrender of the proceeds of the shipment obtained through the use of the license.

Second, the bank raised the defense that under present laws and because of international agreements which the country had entered into, the Bank may not unilaterally change the present rate of exchange of two pesos to the dollar. This defense is valid and bars the present suit. The Bank may not change the par value of the peso in relation to the dollar without the previous consultation or approval by the other signatories to the agreement. The Bank, therefore, may not be compelled to ignore Circular No. 20, which was adopted with the advice and acquiescence of the other members of the International Monetary Fund, and it may not be compelled by mandamus to prohibit its enforcement. This can be done only by the President upon proposal of the Monetary Board and with the approval of Congress. The petition was dismissed.

EXECUTIVE ORDER NO. 49, 1945 SERIES

Declaration of nullity of deposits made during enemy occupation is valid.

In the case of *Jabalde v. Philippine National Bank* [35] Jabalde sought to recover ₱10,000 allegedly deposited by him with appellee Bank, ₱5,000 on July 21, 1941 and another ₱5,000 on August 30, 1943.

[35] G.R. No. L-18401, April 27, 1963.

The complaint recites the printed wording of plaintiff's passbook indicating said deposit. Appellee's answer was not under oath, and admits the making of said deposits, but denies the dates of deposit, alleging as the true dates to be July 21, 1944 and August 30, 1944, and avers that the entries in the passbook as to the deposit dates were unlawfully altered by appellant, and that the deposits were all in Japanese military notes.

The issue was whether the bank's failure to deny under oath the entries in the passbook as copied in the complaint constitutes an admission of the genuineness and due execution of the document. The Court found the date entries in the passbook really tampered with, as such was clear even to the naked eye. It held that ordinarily, failure to deny under oath the entries in the passbook as copied in the complaint is an admission. However, this rule cannot apply in the instant case because the plaintiff introduced evidence purporting to support his allegations of deposit on the dates he wanted the Court to believe, and offered no objection during the trial to the testimonies of defendant's witnesses and documentary evidence showing different dates of deposit. By these acts, the plaintiff waived the defendant's technical admission through failure to deny under oath the genuineness and due execution of the document.[36]

Since the deposits were made during the Japanese occupation the Court held that Executive Order No. 49, series of 1945, was applicable. This provides that all deposits made with banking institutions during enemy occupation, and all deposit liabilities incurred by banking institutions during the same period are null and void except as provided therein. Appellant assailed the validity of this order as impairing the obligation of contracts and depriving him of property without due process of law. The Court ruled that this is no longer an open issue. The promulgation of said Executive Order was a valid exercise of the extraordinary powers invested by the legislature unto the President by Com. Act No. 671. This Act, enacted pursuant to Article VI, Sec. 16 of the Constitution, after declaring the necessity for granting extraordinary powers to the President in Section 1 thereof, granted him in Section 2 the power to promulgate such rules and regulations as he may deem necessary to carry out the national policy declared in Section 1.[37]

The alleged promise by the Bank to the depositor when it would be indemnified by either the United States or the Japanese governments, could not be considered a novation of the contract of deposit,

[36] Legarda Koh v. Ongsiako, 36 Phil. 185; Yu Chuck v. Kong Li Po, *supra*.
[37] Hilado v. De la Costa, 83 Phil. 471.

because there was no contract to novate for lack of one of the essential elements of a contract—object. The object of the supposed contract having been declared null and void, the same is non-existing.

TRADEMARKS

Factors to be considered in determining whether marks are confusingly similar.

In the case of *Mead Johnson & Co., v. NVJ Van Dorp, Ltd.*,[38] the respondent corporation filed an application for the registration of the trademark "ALASKA" used for milk products, dairy products and infant's foods. Petitioner, being the owner of the trademark "Alacta" used for powdered milk, which was registered with the Patent Office previously, filed an opposition on the ground that it will be damaged by the registration of the trademark "ALASKA" as the latter is confusingly similar to its trademark "Alacto." After hearing, the Director of Patents dismissed the opposition, holding that the trademark sought to be registered does not sufficiently resemble oppositor's mark.

The issue was whether the opposition to the registration is well-taken. The Court held that the two trademarks do have similarities in spelling, appearance and sound for both are composed of six letters of three syllables each and each syllable has the same vowel. But in determining if they are confusingly similar a comparison of said words is not the only determining factor. The two marks in their entirety as they appear in the respective labels must also be considered. While there are similarities in the two marks there are also differences which are glaring and striking to the eye. Thus, the sizes of the containers of the goods differ from each other, and so do the colors. Petitioner's mark has only the first letter capitalized and is written in black, while respondent's mark has all the letters capitalized in white. And coming to the goods covered by the trademarks, petitioner's certificate of registration covers "Pharmaceutical Preparations which Supply Nutritional Needs" and for the use of said preparations there is need for a medical prescription. On the other hand, respondent's goods cover "milk, milk products, dairy products and infant's foods" and there is no need of a medical prescription for their use.

[38] G.R. No. L-17501, April 27, 1963.