# COMMERCIAL LAW

MERCEDITA V. SANTIAGO *
MANUEL G. BUENSUCESO **

## PUBLIC SERVICE ACT

*Factual findings of the Commission are final.*

It is a well-settled rule that the Court will not substitute its discretion for that of the Commission on questions of fact and will not interfere with the latter's decision unless it clearly appears that there is no evidence to support it.[1] Where it clearly appears that the evidence supports and warrants the conclusion of the Commission, the decision appealed from will be affirmed.[2]

The above rulings were reiterated by the Court in the case of *Western Leyte Trans. v. Salazar*,[3] where it held that it has been the policy of the Court not to interfere with the findings of the Public Service Commission where some evidence reasonably supports its findings as to necessity and convenience of the authorized public utility.

In the case of *Manila Yellow Taxicab v. Viluan*,[4] the Court refrained from interfering with the findings of fact of the Commission since there was no showing of clear abuse of discretion. The Court, in affirming the decision of the Commission, held that the law [5] has invested the Commission, in the exercise of its power of supervision and control over public transportation, with broad discretion which the Court is not supposed to interfere with in the absence of a showing of clear abuse of discretion.[6] The Court found that while petitioner's application for increase of units was granted on October 28, 1958, respondent's application was granted on October 14, 1959. During the intervening period, it was entirely possible—as the Commission must have found—that the pertinent conditions and circumstances in the area had sufficiently changed to justify the granting of respondent's application.

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* Recent Documents Editor, PHILIPPINE LAW JOURNAL, 1964-65.
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[1] Manila Yellow Taxicab Co. v. Castelo, G.R. No. L-13910, May 30, 1960; Santiago Ice Plant v. Lahoz, G.R. No. L-3661, August 29, 1950.

[2] Cababa v. Remigio, G.R. No. L-17832-33, May 29, 1963; A. L. Ammen Trans. Co. v. Desuyo, G.R. No. L-10372, May 14, 1958.

[3] G.R. No. L-1541, September 30, 1964.

[4] G.R. No. L-16243, March 31, 1964.

[5] The law referred to is Com. Act No. 146 as amended, otherwise known as the Public Service Act.

[6] See also Estate of Buan v. Pampanga Bus Co., 53 O.G. 8553; Raymundo Trans. Co. v. Cerda, 52 O.G. 3580.

*The Commission can hear petitions for cancellation and appropriation of certificates of public convenience either singly or jointly.*

In the case of *Halili v. Heras*,[7] the issue before the Court was whether the Commission could consolidate petitions for cancellation and appropriation of certificates of public convenience into one single proceeding. It was contended by the petitioner that the charge of violation of the terms of a certificate of public convenience was a prejudicial question which had to be decided first by the Commission before it could consider a petition for appropriation of said certificate; that if a complaint for cancellation were to be tried separately, the issue would only narrow down to whether there was abandonment of the service, in which case, the most that could be imposed would be the payment of a penalty in the form of fine or suspension of the service; whereas, if the complaints were heard jointly with the petition for appropriation and the charge were proven, the result would be not only the imposition of that penalty but the cancellation of the corresponding certificate of convenience.

*Held:* "The Commission is given by law ample power and discretion to consider petitions of this nature, either singly or jointly, depending upon the convenience of the Commission or parties concerned, and if a joint trial is held, the Commission may not only impose the penalty that the evidence may justify, but may take whatever other appropriate action is warranted by the circumstances. The Commission, in conducting a joint hearing should even be commended because it avoided duplicity of action."

*The power of the Commission to fix rates of public utilities is subject to the requirement of previous notice and hearing.*

The power of the Commission to fix rates is expressly provided for in Section 16(c) of the Public Service Act which states that the Commission can "fix and determine individual or joint rates, tolls, charges, classifications, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service . . ." An important requisite, however, to the validity of the exercise of this power is notice and hearing.

In the case of *Vigan Electric Light Co. v. The Public Service Commission*,[8] the Court declared null and void an order of the Commission fixing the rates of petitioner without previous notice and hearing as required by Section 16 of the Public Service Act and

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[7] G.R. No. L-18889-90, April 30, 1964.
[8] G.R. No. L-19850, January 30, 1964.

the due process clause of the Constitution. As against respondent's contention that rate fixing is a legislative function and that legislative or rule-making powers may constitutionally be exercised without previous notice or hearing, the Court held that "although the rule-making power and even the power to fix rates—when such rules and/or rates are meant to apply to all enterprises of a given kind throughout the Philippines—may partake of a legislative character, such is not the nature of the order complained of. Indeed, the same applies exclusively to petitioner herein. What is more, it is predicated upon the findings of fact—based upon a report submitted by the General Auditing Office—that petitioner is making a profit of more than 12% of its invested capital,[9] which is denied by petitioner. Obviously, the latter is entitled to cross-examine the maker of said report, and to introduce evidence to disprove the contents thereof and/or explain or complement the same, as well as to refute the conclusion drawn therefrom by the respondent. In other words, in making said finding of fact, respondent performed a function partaking of a quasi-judicial character, the valid exercise of which demands previous notice and hearing."

*"Old Operator" doctrine*

It is a well-established doctrine observed in the granting of certificates of public convenience, that, so long as the first licensee keeps and performs the terms and conditions of his license and complies with reasonable rules and regulations of the Commission, and meets the reasonable demands of the public, he has more or less a vested and preferential right over another who seeks to acquire a later license to operate the same route.[10] Thus, before granting a certificate of public necessity and convenience to a transportation company or common carrier on land, there being another with a proper certificate, the latter should be given an opportunity to improve its service, if deficient or inadequate.[11] Old operators must be protected in their investment so long as they are willing and able to serve the public need in a proper and adequate manner.[12]

[9] Section 3 of Republic Act No. 3043 specifically provides that the National Power Corporation "shall in any contract for the supply of electric power to a franchise holder, require, as a condition that the franchise holder, if it receives at least 50% of its electric power and energy from the National Power Corporation, shall not realize a net profit of more than twelve percent annually of its investments plus two-months operating expenses . . ."

[10] Manila Electric Co. v. Mateo, 38 O.G. 1839.

[11] Bohol Land Trans. Co. v. Jureidini, 53 Phil 560; Raymundo Trans. Co. v. Laguna-Tayabas Bus Co., 55 Phil. 104.

[12] Yellow Taxicab v. Public Service Commission, G.R. No. L-2875, October 31, 1951.

However, the protection of the "prior operator" doctrine is not absolute in its application for upon failure of an operator to observe the terms of his certificate, other operators may be entitled to seek certificates of public convenience in the same territory. For while it is the duty of the Government to protect public utility operators against unfair and unjustified competition, it is nevertheless obvious that public convenience must have the first consideration.[13]

Accordingly, in *Halili v. Heras,*[14] the Court held that while, as a rule, a pioneer operator should be given the preference to cover the required units when expansion is needed, such cannot favor petitioner for he has completely failed to comply with the requirement for more than three years, thus giving the impression that he has completely abandoned the service insofar as the units in question are concerned.

In *Robles v. Blaylock,*[15] petitioner was not allowed to invoke the doctrine for he was not actually a prior operator. As explained by the Court, "the protection of or preference for a prior operator over a newcomer cannot be invoked by petitioner because before he was granted a certificate of public convenience to operate a taxicab service, the respondent had been operating a taxicab service under a grant of US naval authorities in the naval reservation before its turnover by the US Government to the Philippines."

*Public convenience as a condition precedent to issuance of certificate*

Section 16(a) of the Public Service Act provides, as one of the powers of the Commission, "to issue certificates, which shall be known as certificates of public convenience, authorizing the operation of public service within the Philippines whenever the Commission finds that the operation of the public service and the authorization to do business will promote the public interests in a proper and suitable manner. . ."

Again, Section 15 of the same Act provides: "With the exception of those enumerated in the preceding section, no public service shall operate in the Philippines without possessing a valid and subsisting certificate from the Public Service Commission, known as 'certificate of public convenience', or 'certificate of convenience and public necessity', as the case may be, to the effect that the operation of said service and the authorization to do business will promote the public interests in a proper and suitable manner."

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[13] Raymundo Trans. Co. v. Perez, 56 Phil. 274; Cebu Ice Cold Stores Corp. v. Velez, 31 O.G. 2818; De la Rosa v. Corpus, 38 O.G. 2069.

[14] G.R. No. L-18889-90, April 30, 1964.

[15] G.R. No. L-17629, March 31, 1964.

From the above-quoted provisions, it is apparent that the power of the Commission to issue a certificate of public convenience is founded on the condition precedent that after a full hearing and investigation, it shall find as a fact that the proposed operation is for the convenience of the public.[16]

This test of public convenience was reiterated by the Court in the case of *Robles v. Blaylock*[17] wherein it amplified the rule thus: "If public need and convenience demand or require the service; if the service to be rendered applied for would not result in or bring about ruinous competition; and if the ability of the applicant for service to satisfy public need and convenience is shown, a competition of two services, and not a monopoly would redound to the benefit of the community where the service is to be rendered."

In *Clemente v. Bonifacio*,[18] the Court affirmed the decision of the Commission granting respondent a certificate of public convenience where the evidence presented supported the finding of public necessity and convenience. However, the authority of the Commission to grant such certificates is limited to the territory applied for.[19]

*Alienation of franchise requires the prior approval of the Commission.*

Section 20(g) of the Public Service Act provides that it shall be unlawful for any public service to sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges or rights or any part thereof, without first securing the approval and authorization of the Commission.

It is a well-settled principle that the operator of record continues to be the operator of the vehicle in contemplation of law, as regards the public and third persons, and as such, is responsible for the consequences incident to its operation.[20] This rule is pursuant to a definite policy of the law to extend protection to the injured. If a registered owner were allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person or to one who possesses no property with which to respond financially for the damage or injury done.[21]

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[16] Batangas Trans. Co. v. Orlanes, 52 Phil. 455; Manila Electric Co. v. Parsons Hardware Co., 37 O.G. 1333; Carmelo v. Monserrat, 55 Phil. 644.

[17] *Supra.*

[18] G.R. No. L-14998, September 30, 1964.

[19] Robles v. Blaylock, *supra.*

[20] Vargas v. Langcay, G.R. No. L-17459, September 29, 1962.

[21] Erezo v. Jepte, G.R. No. L-9605, September 30, 1957; Tamayo v. Aquino, G.R. No. L-12634, May 29, 1959.

The foregoing principles were followed by the Court in the case of *De Peralta v. Mangusang*.[22] Defendant was the holder of a certificate of public convenience to operate a jeepney line in Baguio City. Without the approval of the Commission, he sold his jeepney to one Costales. Subsequently, the jeepney crashed against a post and as a result of which plaintiff suffered injuries. Plaintiff brought an action for damages for breach of contract of carriage against defendant and the driver of the jeepney and Costales. The Court held that Mangusang, being the registered owner of the vehicle, was directly responsible for the damages suffered by the plaintiff. Mangusang's franchise was personal in nature and any transfer or lease thereof should have been submitted for approval by the Commission. Any transfer without such requisite approval is not binding on the Commission and in contemplation of law, the grantee continues to be responsible under the franchise in relation to the Commission and to the public for the consequences incident to the operation of the vehicle.

## CORPORATION LAW

*Piercing the veil of corporate entity*

As a general rule, a corporation will be looked upon as a legal entity distinct and separate from its members. This rule has its limitations, however, for when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, then the legal fiction of separate corporate entity will be disregarded and the corporation looked upon as a mere association of persons.

In the case of *Commissioner of Internal Revenue v. Norton & Harrison Co.*,[23] the Court found sufficient grounds to support the theory that the separate identities of the two companies involved should be disregarded. It appears in this case that Norton & Harrison Co. was appointed sole distributor of concrete blocks manufactured by Jackbilt Corporation. During the existence of the distributing agreement, Norton & Harrison acquired by purchase all the outstanding shares of stock of Jackbilt. As a result of this transaction, the Commissioner of Internal Revenue assessed respondent for deficiency sales tax and surcharges based on its sales to the public. The Commissioner considered such sale to be the original sale and not the transaction with Jackbilt. Respondent contended

[22] G.R. No. L-18110, July 31, 1964. See also Montoya v. Ignacio, 50 O.G. 108; Vda. de Medina v. Cresencia, 52 O.G. 4606; Tamayo v. Aquino, *supra*.
[23] G.R. No. L-17618, August 31, 1964.

that the transaction subject to tax was the sale from Jackbilt to Norton.

*Held:* It is settled that the ownership of all stocks of a corporation by another corporation does not breed an identity of corporate interest between the two companies and be considered as sufficient ground for disregarding the distinct personalities. However, in the case at bar, there are sufficient grounds to support the theory that the separate identities of the two companies should be disregarded. Among these are:

1. Norton owns all the outstanding stocks of Jackbilt;
2. Norton constitutes Jackbilt's Board of Directors in a way as to actually direct and manage the other's affairs, the two companies having the same set of directors;
3. Norton finances the operations of Jackbilt;
4. Norton treats Jackbilt's employees as its own;
5. The compensation given to the directors of Jackbilt indicates that Jackbilt is merely a department of Norton; and
6. The offices of Norton and Jackbilt are located in the same compound.

An appraisal of the foregoing circumstances yields to the conclusion that Jackbilt is merely an adjunct, business conduct or *alter ego* of Norton & Harrison Co.[24]

*Forced sale of franchises*

There are two kinds of franchises relating to corporations, the first being the corporate or general franchise and the second, the special or secondary franchise. The former refers to the right or privilege to be or to exist as a corporation. It belongs to the corporators and is an essential part of corporate existence. The latter refers to those rights and privileges granted to corporations by the State.

With respect to the primary franchise, it is well-settled that in the absence of statutory authority, a corporation cannot transfer its corporate franchise. The reason is that such transfer would result in the creation of a corporation without the consent of the Legislature.[25] With respect to the secondary franchise, the courts are not in accord as to the corporate authority to transfer such franchise. The weight of authority in the United States and in England supports the rule that a corporation cannot transfer the special fran-

[24] In Liddel v. Collector, G.R. No. L-9687, June 30, 1961 and Koppel v. Yatco, 43 O.G. 4604, the Court disregarded the fiction of separate corporate entity where it was used as a shield for tax evasion.

[25] Memphis v. Railroad Commissioner, 112 U.S. 609, 28 L. ed. 837.

chises conferred upon it by its charter or other statutes or ordinances unless such a transfer is expressly authorized by the Legislature or ratified by it.[26]

In the Philippines, our Corporation Law[27] expressly allows forced sale of secondary franchises under Sections 56 to 61 thereof. Before these franchises can be sold, however, two requisites must be complied with: (1) that such sale is "specially decreed and ordered in the judgment" and (2) that "the sale shall not become effective until confirmed by the court after due notice."[28] Compliance with this procedure is necessary for a valid sale of secondary franchises. In the case of *J. R. S. Business Corp. v. Imperial Insurance Co.*,[29] the procedural requirements for a valid sale of petitioner's franchise to operate a messenger and express delivery service were not met for the compromise agreement and the judgment based thereon did not contain any special decree or order making the franchise answerable for the judgment debt. The sale was accordingly declared invalid. The Court applied the same ruling to petitioner's trade name and capital stock which, being necessarily included in the enjoyment of the franchise, could not be sold separately from the franchise.

## TRADEMARKS, TRADENAMES, UNFAIR COMPETITION

*A fanciful and arbitrary use of a foreign word which does not come within the purview of Section 4 of R.A. No. 166 and which identifies the products of a company can be registered as a trademark for such products.*

The above ruling was laid down by the Court in the case of *Romero v. Maidenform Brassiere Co.*[30] This involved a petition for cancellation of the registration of the trademark "Adagio" for brassieres manufactured by respondent on the following grounds: (1) it is a common descriptive name of an article or substance on which the patent has expired; (2) its registration has been obtained fraudulently or contrary to the provisions of Section 4, Chapter II of R.A. No. 166; and (3) the application for registration was not filed in accordance with the provisions of Section 37, Chapter XI of R.A. No. 166. Petitioner also alleged that said trademark has been used by him for almost six years and by other local brassiere manufacturers since 1948 without objection on the part of respondent.

[26] Oregon Ry. v. Oregonian Ry. Co., 130 U.S. 1
[27] Act No. 496, as amended.
[28] Section 56, Act No. 496, as amended.
[29] G.R. No. L-19891, July 31, 1964.
[30] G.R. No. L-18289, March 31, 1964.

The Court, in striking down petitioner's contentions held that the trademark "Adagio" being a musical term, was used in an arbitrary sense and hence, it could qualify as a trademark. The Court found that respondent company objected to the use of the trademark by petitioner. With respect to plaintiff's third allegation, the Court held that Section 37 of R.A. No. 166 was not applicable to the case at bar, for said section can be availed of only where the Philippines is a party to an international convention or treaty relating to trademarks. However, the Philippines has not yet entered into any such treaty or convention.

The following rulings were also laid down by the Court:

1. The long and continuous use of a trademark does not render it merely descriptive of the product. In the case of Winthrop Chemical v. Blackman [31] it was held that "the widespread dissemination does not justify the defendants in the use of this trademark. If this argument were sound, then every time a plaintiff obtained the result of having the public purchase its article, that fact of itself would destroy a trademark. Arbitrary trademarks cannot be generic in this way."

2. The use of a word to designate a particular style or quality of a product does not affect the validity of such word as a trademark.

3. Temporary non-use of a trademark because it was occasioned by government restrictions and was not permanent, intentional and voluntary does not constitute an abandonment of such trademark. "To work an abandonment, the disuse must be permanent and not ephemeral; it must be intentional and voluntary, and not involuntary or even compulsory. There must be a thoroughgoing discontinuance of any trademark use of the mark in question." [32]

*The inherent element of unfair competition is fraud or deceit.*

Section 29 of R.A. No. 166 provides that "any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefore . . ." The true test of unfair competition is whether the acts of defendant are calculated to deceive the ordinary buyer making his purchase under the ordinary conditions which prevail in the particular trade to which the controversy relates.[33]

[31] 268 N.Y.S. 653.
[32] COLLMAN, UNFAIR COMPETITION & TRADEMARK, 1341 (2nd ed.).
[33] Alhambra v. Mojica, 27 Phil. 266.

In the case of *Shell v. Insular Petroleum Refining*,[34] defendant was charged with unfair competition on the ground that it sold its own low-grade oil in Shell containers without erasing the marks or brands labelled or stencilled thereon and thus intended to mislead the buying public to the prejudice of petitioner. The Court of Appeals found that in selling its low-grade oil, respondent used miscellaneous containers but before filling such, the markings were obliterated. In one transaction, however, which was consummated with a dealer of petitioner, the low grade oil that was sold was contained in a drum with the petitioner's mark or brand "Shell" still stenciled without having been erased. Would this single transaction be sufficient to sustain petitioner's charge of unfair competition? The Court answered this question in the negative. It stated that the drum in question did not even reach the buying public. It was merely a dealer of petitioner who purchased the drum not to be resold to the buying public but to be sold to the petitioner with a view of obtaining evidence against someone who might have been committing unfair business practices. The Court went on further to say that to hold a defendant guilty of unfair competition, no less than satisfactory and convincing evidence is essential, showing that the defendant has passed off or attempted to pass off his own goods as those of another and that the customer was deceived with respect to the origin of the goods. Not just because a manufacturer used a container still bearing a competitor's markings in the sale of one's products, irrespective of to whom and how the sale is made, can there be a conclusion that the buying public has been misled and therefore unfair competition is born.

## COMMON CARRIERS

### *When contract of carriage is created*

One of the questions raised in the case of *Cia. Maritima v. Insurance Co. of North America*[35] was whether there was a contract of carriage perfected between the carrier and the shipper where the loss occurred when the goods were loaded on a barge owned by the carrier but which was loaned to the shipper free of charge and before such goods could actually be loaded aboard the vessel and a bill of lading issued. In holding that a valid contract of carriage existed, the Court explained that the liability and responsibility of a carrier under a contract of carriage commences upon the actual delivery to, or receipt by, the carrier or an authorized agent. The test as to whether the relation of shipper and carrier had been established is

[34] G.R. No. L-19441, June 30, 1964.
[35] G.R. No. L-18965, October 30, 1964.

whenever the control and possession of goods passed to the carrier and nothing remains to be done by the shipper. The Court held that the sending of the barge did not impair the contract entered into between the carrier and the shipper for the preparatory step is but part and parcel of said contract. The barge was merely employed as the first step of the voyage but once the step was taken and the goods delivered to the carrier's employees, the rights and obligations of the parties attached thereby, subjecting them to the principles and usages of the maritime law. The fact that no bill of lading was yet issued was brushed aside by the Court with the statement that the great weight of authority is to the effect that a bill of lading is not indispensable for the creation of a contract of carriage for said bill of lading is but a documentary proof of the stipulations and conditions agreed upon by the parties.

*Notice of appeal from the decision of the Board of Marine Inquiry should be filed in the Office of the Secretary of Finance.*

In the case of *Verdera v. Hernandez,*[36] the issue involved was whether or not the filing of a notice of appeal from a decision of the Board of Marine Inquiry with said Board would perfect the appeal in the light of the provisions of Section 1198 of the Revised Administrative Code which states that the decision of the Commissioner of Customs—which the parties take to be that of the Board of Marine Inquiry—shall be final "unless within thirty days after its promulgation, an appeal is perfected and filed in the Office of the Secretary of Finance . . ." Petitioners contended that the filing of the notice of appeal with the Board of Marine Inquiry should be considered as a filing with the Office of the Secretary of Finance inasmuch as the Bureau of Customs is under the supervision of the Department of Finance. Petitioners' contention was declared devoid of merit for although subject to the executive supervision of the Department of Finance, "the Bureau of Customs, of which the Board of Marine Inquiry forms part, is obviously distinct and separate from the Office of the Secretary of Finance. The provisions of the Revised Administrative Code governing the two offices deal with the same as two different offices. The very power of executive supervision of the Secretary of Finance over, *inter alia,* the Bureau of Customs, upon which petitioners rely, proves precisely that the two offices are distinct from each other. Otherwise, it would have been unnecessary to provide for an appeal from the decisions of the Commissioner of Customs to the Secretary of Finance.

[36] G.R. No. L-18511, January 22, 1964.

*Consignee bound by stipulation in contractor's management contract*

The arrastre operator, in the absence of an agreement to the contrary, would ordinarily be liable to the full extent of the value of the goods declared by the shipper and for which the corresponding charges have been paid. An exception to this rule is when an agreement is entered into between the arrastre and the consignee limiting the liability of the former to a specified amount unless the value of the goods is otherwise specified or manifested. In the case of *Insurance Co. of North America v. U.S. Lines Co.*,[37] the question presented was whether a management contract entered into between the arrastre operator and the Bureau of Customs which limits the liability of the arrastre to an amount not exceeding ₱500.00 per missing bale or package unless the value thereof is specified, would be binding on a consignee who was not a party to the contract. The question, actually, is not one of first impression for in a long line of cases [38] it has been settled by the Court that the management contract above referred to was binding on a consignee who, though not a party thereto, has taken delivery of the goods upon presentation of a pass and a delivery permit making reference to said management contract and reproducing substantially the provisions thereof as one of the conditions of said pass and delivery permit. The Court applied the above ruling to the case at bar.

*Exceptions*

In *Reliance Surety & Ins. Co. v. M.R.R.*,[39] the management contract was held not binding on the consignee, for the Court found that the consignee did not, either personally or through its broker, sign the annotation and did not make use of any delivery permit as the goods were never withdrawn from the piers. There was no positive findings of the lower court that the consignee had been aware of the conditions of the management contract.

Again, the 15-day limitation period for filing claims pursuant to the provisions of the management contract was not held binding on the consignee in the case of *Republic v. Manila Port Service*.[40] The Court stated that the Management Contract provides that the 15-day period be counted from the date of the discharge of the last package from the carrying vessel. It was found by the Court that the "Per-

[37] G.R. No. L-17032, March 31, 1964.
[38] Insurance Co. of North America v. Manila Port Service, G.R. No. L-17331, November 29, 1961; Commercial Union Insurance Co. v. Manila Port Service, G.R. No. L-14972, October 31, 1961; Atlantic Mutual Ins. Co. v. Delgado Bros., G.R. No. L-12058, April 27, 1960 and Northern Motors v. Prince Line, G.R. No. L-13884, February 29, 1960.
[39] G.R. No. L-19589, April 30, 1964.
[40] G.R. No. L-19115, March 31, 1964.

mit to Deliver Imported Goods" was issued by the Bureau of Customs to the broker only fifty days after arrival of the vessel and the goods were actually delivered to the consignee only twenty-four days after. It was therefore impossible for the consignee to have filed its claim within fifteen days after the discharge of the cargo from the vessel when it was able to take hold of the shipment only about 2½ months after the arrival of the vessel and its subsequent discharge therefrom. The Court held further that the fifteen-day period was not applicable inasmuch as the defendant had previously issued a shortlanded certificate which was an admission of the missing cargo. This admission would preclude the defendant from invoking the 15-day limitation since the purpose for which it was provided had already been served.

## COPYRIGHTS

*Failure of an author to have his work copyrighted, where such work is generally circulated, vests in the public irrevocable rights.*

In *Santos v. McCullough Printing Co.*,[41] plaintiff was asked to design for former Ambassador Neri an artistic Christmas card greeting for the year 1959. The following year, defendant displayed the very design created by plaintiff in its album and offered it for sale. An action was instituted by plaintiff to recover damages allegedly on the unauthorized use, adoption and appropriation by the defendant of plaintiff's intellectual creation and artistic design. Defendant moved to dismiss on the following grounds: (1) the design claimed did not contain a clear notice that it belonged to plaintiff and that he prohibited its use by others; and (2) the design had been published but did not contain a notice of copyright as in fact it had never been copyrighted by plaintiff, for which reason, his action was barred by the Copyright Law.

The Court found plaintiff not entitled to protection of the Copyright Law for pursuant to Paragraph 33 of Patent Office Administrative Order No. 3, "an intellectual creation should be copyrighted thirty days after its publication, if made in Manila or within 60 days if made elsewhere, failure of which renders such creation public property." Furthermore, the publication of said design was not limited nor was there an understanding that only Ambassador Neri should have absolute rights to use the same. When the purpose is limited publication, but the effect is general publication, irrevocable rights thereon become vested in the public, as a consequence of which, enforcement of the restriction becomes impossible.

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[41] G.R. No. L-19439, October 31, 1964.

## BANKING LAWS

*The "24-hour clearing house rule" applies to the Government Treasury.*

The applicability of the "24-hour clearing house rule" of the Central Bank to the Government Treasury was upheld in the cases of *Republic v. Equitable Banking Corp.*[42] and *Republic v. Bank of P.I.*[43] From the facts of the case, it appears that some 28 warrants were deposited with appellee banks which accepted them "subject to collection only." Subsequently, these warrants were paid to said banks by the Treasurer of the Philippines through the Clearing Office of the Central Bank. The banks thereafter credited the proceeds of said warrants to the accounts of its depositors. Subsequently the warrants were returned by the Treasury to the Central Bank on the ground that they had been forged and that the value thereof be credited back to the demand deposit of the Bureau of the Treasury. The clearing of the aforementioned warrants thru the Clearing Office was made pursuant to the "24-hour clearing house rule" which had been adopted by the Central Bank in a conference with representatives of the different banking institutions in the Philippines. The rule is embodied in Section 4(c) of Circular No. 9 of the Central Bank, which provides in part that "all items cleared at 11:00 o'clock a.m. shall be returned not later than 2:00 o'clock p.m. on the same day and all items cleared at 3:00 o'clock p.m. shall be returned not later than 8:30 o'clock a.m. of the following business day . . ." The Government maintained that it was not bound by this rule because the Treasury is not a bank and the Treasurer has objected to the application of said rule to his Office. On appeal, the Court held the contention of the Government untenable for "admittedly the Treasury is a member of the Clearing Office and the former has agreed to clear its clearable items through the latter, subject to the rules and regulations of the Central Bank. Besides, the rule applies not only to banks, but also to the institutions and entities therein alluded to. Then, too, the opposition of the Treasurer to the '24-hour clearing house rule' is not sufficient to exempt the Treasury from the operation thereof."

*The question of constitutionality of Central Bank Circular No. 20 has become moot with the passage of R.A. No. 2609.*

In Bacolod Murcia v. Central Bank,[44] the validity of Circular No. 20 of the Central Bank was challenged on the ground that the Central Bank had no power to impose exchange restrictions, such

[42] G.R. No. L-15894, January 30, 1964.
[43] G.R. No. L-15895, January 30, 1964.
[44] G.R. No. L-12610, October 25, 1963.

power not being expressly granted by the Central Bank Charter. On this, the Court said that the fact that the Charter does not expressly grant the Bank the power to require the forcible sale of foreign exchange is no reason to hold that the Bank may not do so. The forcible sale of foreign exchange to the Central Bank in relation to the powers and responsibilities granted to it can be regarded as falling within the category of "implied powers," as those necessary for the effective discharge of its responsibilities.

The uncertainties created by the provisions of Circular No. 20 have been cleared with the passage of R.A. No. 2609. Accordingly, in the case of Bacolod Murcia v. Central Bank,[45] the Court said that the question of constitutionality of Circular No. 20 has become moot since, under said Act, the power of the Central Bank to commandeer the dollars earned by exporters was superseded by its provisions. Section 1 of said Act reads: "The provisions of any law to the contrary notwithstanding, when and as long as the Central Bank of the Philippines subjects all transactions in gold and foreign currency to licensing in accordance with the provisions of Section 24 of Republic Act No. 265, the Central Bank, in respect of all sales of foreign exchange by the Central Bank, shall have authority to establish a uniform margin of not more than 40% over the bank's selling rates stipulated by the Monetary Board under Section 79 of Rep. Act No. 265, which margin fee shall not be changed oftener than once a year except upon the recommendation of the National Economic Council and the approval of the President. The Monetary Board shall fix the margin at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve."

*The margin fee is not an imposition on the proceeds itself of amounts invested in the Philippines by non-residents; rather, it is being collected on the remittance of said proceeds.*

In the case of *U.S. Life Ins. v. Central Bank*,[46] one of the defenses raised by plaintiff against the Central Bank, which sought to enforce the margin fee on the dollar value of the redemption proceeds and interests of the RFC bonds which were purchased by plaintiff, was that the imposition of the fee would result in a breach of the guarantee committed by the law in Section 2(g) of R.A. No. 85. Said Section provides that "the said obligations (referring to the RFC bonds) shall be and are hereby unconditionally guaranteed both as to principal and interest by the Government of the Republic of the Philippines and such guarantee shall be expressed on the face thereof." Plaintiffs contended that if the margin fee in question were

[45] G.R. No. L-12610, July 16, 1964.
[46] G.R. No. L-20674, December 29, 1964.

to be imposed on the proceeds of the bonds, there would not anymore be a full return of what it originally invested. In striking out this contention as "scantly meritorious," the Court held that the margin fee was not being imposed upon the proceeds itself of the matured bonds but was being collected on the remittance of the said proceeds to the United States. The Government had not gone back on its word that on the maturity of the bonds, it would return to the plaintiff the entire amount of its investment therein plus the corresponding interest for the fact was that plaintiff did receive back the entire investment it made on the said bonds. The payment of the fee in order to enable it to remit the said return to its Home Office abroad was a transaction completely different from and totally independent of the terms governing acquisition of the bonds.

## SUGAR LIMITATION LAW

*The reallocation of sugar quotas provided for in Section 8-A of the Sugar Limitation Law is mandatory on the Sugar Quota Administration.*

Can the Sugar Quota Administrator and the Secretary of Commerce and Industry refuse to reallocate sugar quotas in the light of the provisions of Sections 8- and 8-A of the Sugar Limitation Law?[47] The Court answered the foregoing question in the negative in the case of *Talisay-Silay Milling Co. v. Bunuan*[48] holding that it is beyond dispute that under Section 8, it is the duty of the Sugar Quota Administrator to allocate among sugar cane planters the total amount of B and C sugar authorized to be manufactured in any given year, and under Section 8-A, in the event that the holder of any allotment for any given year is unable to fill the same, to reallocate the unfilled amounts to other allotment holders. The system of reallocation is only a means by which the quota fixed for any given year may be filled. This objective is laid down by law and necessarily negates any authority on the part of respondent officials to defeat it by refusing to make the reallocation required.

[47] Section 8. "The Sugar Quota Administrator shall allocate among all planters engaged in the growing of sugarcane, the total amount of 'B' and 'C' sugar, the manufacture whereof may be permitted in any given year, as provided in section five of this Act."

Section 8-A. "If after the termination of milling in each sugar central in any milling season, the holder of any allotment is not able to mill enough sugar to fill his allotment for that year, that amount of such allotment which he canot fill during such milling season shall be reallocated by the Sugar Quota Administration to other holders of allotments first within the same district, and then to other districts or in such manner as may insure the filling of the quota for that year; Provided, That no reallocation under the provision of this section shall diminish the allotment to which the holder may be entitled in any subsequent crop-year."

[48] G.R. No. L-16933, December 29, 1964.