COMMERCIAL LAW

CECILIO S. JAVIER, JR.*
VIOLETA M. CALVO**

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

While as a general rule, according to the Court, a person who has contracted or dealt with an association in such a way as to recognize its existence as a corporate body is precluded from denying the same in an action arising out of such transaction or dealing,[1] yet this doctrine may not be held applicable where fraud plays a part in the said transaction.

The above ruling is reiterated in the case of *Albert v. University Publishing Co., Inc.*[2] It appears that Albert entered into a contract for the printing and publication of his "Commentaries on the Revised Penal Code" with the University Publishing Co., Inc., allegedly a corporation "duly organized and existing under the laws of the Philippines," as then represented by Jose Aruego, the supposed President of the said corporation. For the non-compliance of the University Publishing Co., Inc. with the terms of the contract, the plaintiff, Albert, sued said entity. Having discovered, however, that there is no such entity as University Publishing Co., Inc. registered in the Securities and Exchange Commission, the plaintiff sought the execution of the judgment on Aruego's property. The defendant entity filed through counsel (Jose M. Aruego's own law firm), a manifestation stating that Aruego is not a party to the case.

The fact of non-registration of University Publishing Co., Inc. has not been disputed. Aruego represented a non-existent corporation and induced not only the plaintiff but even the Court to believe in such representation. He signed the contract as "President" of "University Publishing Co., Inc.," stating that this was a corporation duly organized and existing under the laws of the Philippines, and obviously misled plaintiff into believing the same. It was likewise undisputed that Jose M. Aruego was the one who reaped the benefits resulting from the contract, so much so that partial payments of the consideration were made by him. Under such circumstances surrounding the execution of the contract, the Court said that there is no room for the application of the doctrine of estoppel.

---

* Member, Student Editorial Board (Recent Legislations).
** Member, Student Editorial Board (Notes and Comments).

[1] Asia Banking Corporation v. Standard Products Co., 46 Phil. 144 (1924); Chinese Chamber of Commerce v. Pua Te Ching, 14 Phil. 222 (1909).

[2] G.R. No. L-19043, January 30, 1965.

As to Aruego's liability, the Court, taking into account his having acted in behalf of a non-existent organization which before the law had no personality, applied the principle in the law of agency that a person who acts as an agent without authority or without a principal is himself regarded as the principal, possessed of all the rights and subject to all the liabilities of a principal. *Translated into a Corporation Law principle: a person who acts or purporting to act on behalf of a corporation which has no valid existence assumes the privileges and obligations and becomes personally liable for contracts entered into or for other acts performed as such agent.*[3] (Italics supplied)

B. *Piercing the veil of corporate entity*

A corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons.[4] Accordingly, in *Emilio Cano Enterprises v. CIR, et al.*,[5] an order having been directed against the properties of Cano Enterprises, said corporation filed an *ex parte* motion to quash said writ on the ground that the judgment was not rendered against it which is a juridical entity separate and distinct from its officials. The Court brushed aside the theory of separate corporate personality on the ground that the said corporation is a family corporation where the incorporators and directors belong to one single family, stating: *"To hold such entity liable for the acts of its members is not to ignore the legal fiction but merely to give meaning to the principle that such fiction can not be invoked if its purpose is to use it as a shield to further an end subversive of justice."* (Italics supplied) The corporation, cannot now, therefor, invoke the fiction of corporate personality to avoid liability for its unfair labor practice.

Besides, the Court continued, Emilio and Rodolfo, president and manager of the corporation, respectively, have been sued officially. Having been sued officially, their connection with the case must be deemed to be impressed with the representation of the corporation.[6] In fact, the Court's order is for them to reinstate Honorata Cruz to her former position in the corporation and to pay her back wages. Verily, the order against them is in effect against the corporation.

---

[3] See Vda. de Salvatierra v. Garlitos, G.R. No. L-11442, May 23, 1958.

[4] 192 Fed. 247, 555, quoted in Koppel (Phil.) Inc. v. Yatco, 43 O.G. 4604, 411 (1946).

[5] G.R. No. L-20502, February 26, 1965.

[6] *See also* Mindanao Academy v. Yap, G.R. Nos. L-17681-2, February 26, 1965; Alfonso Hilado v. Victorias Milling Co., Inc., G.R. No.L-17126, February 27, 1965.

C. *Nature of rights of subscribers under Section 37 of Act No. 1459 (Corporation Law) as amended*

Previous to the amendment of section 37 of the Corporation Law, the Court ruled in the case of *Fua Cun v. Summers,*[7] that "in the absence of special agreement to the contrary, a subscriber for a certain number of shares of stock does not, upon payment of one-half of the subscription price, become entitled to the issuance of certificates for one-half the number of shares subscribed for; the subscriber's right consists only in an equity entitling him to a certificate for the total number of shares subscribed for by him upon payment of the remaining portion of the subscription."

In *Baltazar, et al. v. Lingayen Gulf Electric Power Co., Inc.,*[8] approximately 42 years after the promulgation of the *Fua-Summers* case, the Court had occasion to explain the import of section 37 of the Corporation Law, as amended, stating that the *Fua-Summers* case does not reflect the correct view on the matter. It appears in the case at bar that the defendants had been in complete control of the management and property of the corporation, and in order to continue retaining such control, passed resolutions, *inter alia,* disqualifying the delinquent subscribers, among whom were plaintiffs and companion stockholders, from voting on their subscriptions. On authority of these resolutions, defendants threatened to oust plaintiff for the ultimate purpose of depriving them of their right to vote. The issue presented is: *Whether a stockholder who has subscribed to a certain number of shares, has made partial payments only, but is issued a certificate for the paid up shares of stock, is entitled to vote the whole number of shares subscribed by him, paid or not, until the unpaid shares shall have been called for payment or declared delinquent.* (Italics supplied)

In resolving the issue, the Court held: "... The cases at bar do not come under the aegis of the principle enunciated in the Fua-Summers case because it was the practice and procedure, since the inception of the corporation, to issue certificates of stock to its individual subscribers for unpaid shares of stock and gave voting power to shares of stock fully paid. And even though no agreement existed, the ruling in said case does not now reflect the correct view on the matter, for better than agreement or practice, there is the law which renders the said case of *Fua-Cun-Summers,* obsolescent. Section 37 of the Corporation Law, as amended by Act No. 3518 approved on March 1, 1929, six (6) years *after* the promulgation of the *Fua-Summers* case (decided in 1953) provides: '... no certificate of stock shall be issued to a subscriber as fully

[7] 14 Phil. 705 (1923).
[8] G.R. Nos. L-16236-38, June 30, 1965.

paid up until the *full par value thereof, or the full subscription in the case of no par stock, has been paid by him to the corporation.* Subscribed shares not fully paid up may be voted provided no subscription call or interest due on subscription is unpaid and delinquent...' The present law requires as a condition before a shareholder can vote his shares that his *full subscription be paid in the case of no par value stock;* and in the case of stock corporation *with par value,* the stockholder can vote the shares fully paid by him only, irrespective of the unpaid delinquent shares..."

The above ruling of the Court must be read together with its qualification that "a corporation may, in the absence of provisions in their by-laws to the contrary, apply payments made by subscribers-stockholders, either (a) full payment for the corresponding number of shares of stock, the par value of each of which is covered by such payment; or (b) as payment *pro-rata* to each and all the entire number of shares subscribed for."

In the case at bar, the defendant corporation had chosen to apply payments by its stockholders to definite shares of the capital stock of the corporation and fully paid capital stock shares certificates for said payments; its call for payment of unpaid subscription and its declaration of delinquency for non-payment of said call affecting only the remaining number of shares of its capital stock for which no fully paid capital shares certificates have been issued, and only these have been legally shorn of their voting rights by said declaration of delinquency.

With respect to the issuance of shares certificates, a reading of the ruling in the case at bar together with its qualification may show that the *Fua-Summers* case had not really been rendered obsolescent, although strictly speaking, the case at bar may not really fall within the aegies of the ruling in the said *Fua-Summers* case. The provisions of section 36 of the Corporation Law of 1906 under which the Fua-Summers case was decided, were reproduced in exact terms under section 37 of the new law, insofar as it makes the payment of the par value as prerequisite for the issuance of certificates of par value stocks. The only difference between the old (Sec. 36) and the new (Sec. 37) is that the old provision makes no mention of the prerequisite for the issuance of certificate of no par value stock, which is not the issue in this case; rather the issue concerns the issuance of certificates of par value stocks in which the terms of the old (Sec. 36) and the new (Sec. 37) are identical.

Construing the present provision of the law (Sec. 37) the Court said that "full payment of the subscription" is not the criterion in the issuance of certificates, for both the par value and no par value stocks; otherwise the present law could have simply so provided.

The import of the above statement of the Court gives rise to a legal inference that the issuance of a certificate of stock may be subject to an agreement between the corporation and the stockholders, as done in the case at bar. The presence of an agreement, as properly observed by the Court in the case at bar, should be taken as a cautionary qualification to the rather sweeping statement of the Court that "full payment of the subscription" is not the criterion for the issuance of certificates for par value stocks. Therefore, in the absence of such agreement to the contrary, it is still believed that the *Fua-Summers* case is applicable to the effect that payment of only a portion of the subscription price does not entitle the subscriber as a matter of right to the issuance of a certificate of stock, unless and until the full par value of the subscribed shares has been fully paid-up. So that payments made partially under a subscription contract should be treated as payments *pro-rata* to each and all the entire number of shares subscribed for, and until the full subscription price has been paid, one cannot be considered to have fully paid up the full par value of the subscribed shares under one subscription contract. Even this has been properly observed by the lower court and properly accorded to by the Supreme Court.

In the light of the two cases discussed, one may properly conclude that the case at bar falls properly within the exception enunciated in the ruling of the *Fua-Summers* case, to wit: *"In the absence of special agreement to the contrary, a subscriber for a certain number of shares of stock does not, upon payment of one-half of the subscription price, become entitled to the issuance of certificates for one-half the number of shares subscribed for; the subscriber's right consists only in an equity entitling him to a certificate for the total number of shares subscribed for by him upon payment of the remaining portion of the subscription."* (Italics supplied)

D. *Application of payment to the full par value of shares ahead of accrued interest*

The Corporation Law and the by-laws of the defendant corporation (Lingayen Gulf Electric Power Co.) do not contain any provision prohibiting the application of stockholders' payment to the full par value of a corporation's capital stock, ahead of payment of accrued interest for unpaid subscriptions. It would, therefore, result that a corporation may, upon request of an interested stockholder, at his option apply payments by them to the full par value of shares of capital stocks subscribed, leaving its collection later of the accrued interest for unpaid subscriptions, and that once said option has been exercised and the corresponding stock certificates

have been issued, the corporation cannot by a unilateral act, legally nullify and cancel the capital stock certificates so issued.[9]

E. *Sale of Shares without cancelling the certificate of stock*

Shares of stock in a corporation are personal property, and it is well-settled that the owner, as in the case of other personal property, has an absolute and inherent right, as an incident of ownership, to sell and transfer the same subject only to reasonable regulations.[10]

This right is expressly recognized by the Corporation Law, which provides that "shares of stock are personal property and may be transferred by delivery of the certificate endorsed by the owner or his attorney in fact or other person legally authorized to make the transfer."[11]

The corporation, therefore, has no duty to register a transfer of shares unless the outstanding certificate is produced with a valid endorsement or assigned and surrendered to the corporation.[12] If a corporation registers a transfer and issues a new certificate, it becomes liable to a holder in good faith of the outstanding certificate.[13] It is under these principles that the Supreme Court resolved the issue in the case of *Hodges v. Lezama,*[14] by affirming the decision of the lower court to the effect that the issuance of a certificate by the corporation without the endorsement of the holder thereof, the surrender and cancellation of the previous outstanding certificate is unlawful. Insofar as the corporation is concerned, the ownership of the shares belongs to Hodges; the issuance of said corporation of a new certificate of stock to respondent Borja being irregular, done without the required endorsement, surrender and cancellation of the previous outstanding certificate. Therefore, the surrender and cancellation of the subsequent certificate of stock issued to respondent, and the subsequent issuance of another stock certificate to Hodges are in order.

F. *Sale of assets to another corporation*

Generally where one corporation sells or otherwise transfers all of its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor, except: (1) where the purchaser expressly or impliedly agrees to assume such debts; (2) where the transaction amounts to a consolidation or merger of the corporations; (3) where the purchasing corporation is merely a

---

[9] *Ibid.*

[10] Lambert v. Fox, 26 Phil. 588 (1914); Fleischer v. Botica Nolasco, 47 Phil. 584 (1925); Madrigal v. Rodas, 45 O.G. 3814 (1948).

[11] Sec. 35, Corporation Law.

[12] 3 Agbayani, Commercial Laws of the Philippines, 1602, citing Ballantine, 741.

[13] *Ibid,* citing Fletcher.

[14] G.R. No. L-20630, August 31, 1965.

continuation of the selling corporation; and (4) where the transaction is entered into fraudulently in order to escape liability for such debts.[15]

In the case of *Edward J. Nell Co. v. Pacific Farms*,[16] respondent purchased the shares of stock of Insular Farms as the highest bidder at an auction sale held at the instance of a bank to which said shares had been pledged as security for the obligation of Insular Farms in favor of said bank. The claim that this transaction has resulted in the consolidation or merger of the corporations is without basis. On the contrary, petitioner's theory that respondent is an alter ego of Insular Farms, negates such consolidation or merger, for a corporation cannot be its own alter ego. There is neither proof nor allegation that Pacific Farms had expressly or impliedly agreed to assume the debt of Insular Farms, or that the sale of either the shares of stock or the assets of the Insular Farms to the appellee has been entered into fraudulently, in order to escape liability for the debts of Insular Farms in favor of appellant herein. Thus, the Pacific Farms is not liable for the debts and liabilities of the transferor.

G. *Foreign sociedad anonima not falling within the prescription of Section 68 of the Corporation Law*

In *Philippine Products Co. v. Primateria Societe Anonyma (Zurich) et al.*,[17] the defendant, a foreign juridical entity engaged in international trade entered into an agreement with plaintiff through defendant, Baylin, whereby plaintiff undertook to buy copra in the Philippines for its account. It is undisputed that defendant corporation had no license to transact business in the Philippines. Neither is it disputed that Baylin and Primateria (Phil.), acted as duly authorized agents of Primateria (Zurich). Baylin acted indiscriminately in the transaction involved in the dual capacities of agent of such firm and executive vice-president of Primateria (Phil.) which also acted as agent of Primateria (Zurich). On account of the transactions, Primateria (Zurich) was held liable by the lower court for the unpaid balance of the price of copra shipment; the defendant Primateria (Phil.) and Baylin were absolved from all liabilities.

It is plaintiff's theory that Primateria Zurich is a foreign corporation within the meaning of sections 68 and 69 of the Corporation Law; and since it has transacted without the necessary license, as required by said provisions, its agents here are personally liable for contracts made in its behalf. Section 68 of the Corpora-

[15] Edward J. Nell Co. v. Pacific Farms, G.R. No. L-20850, Nov. 29, 1965; quoting 15 Fletcher's Encyclopedia Corporations, Sec. 7122, pp. 160-61.

[16] *Ibid.*

[17] G.R. No. L-17160, November 29, 1965.

tion Law states: "No foreign corporation shall be permitted to transact business in the Philippines until it shall have obtained a license for the purpose from the Securities and Exchange Commission..." Under section 69, "any officer or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment or etc...."

The issues which have to be determined, therefore, are the following:

1. Whether defendant Primateria (Zurich) may be considered a foreign corporation within the meaning of sections 68 and 69 of the Corporation Law;

2. Whether, assuming said entity to be a foreign corporation, it may be considered as having transacted business in the Philippines within the meaning of said sections; and

3. If so, whether its agents may be held personally liable on contracts made in the name of the entity with third persons in the Philippines.

In disposing of the case, the Court stated that Primateria Zurich does not come within the purview of sections 68 and 69 as a foreign corporation within the meaning of said sections; it being considered as a sociedad anonima and not a corporation. In fact, the Court said: "Our corporation law recognized the difference between sociedades anonimas and corporations."

This view of the cause dispenses with the necessity of deciding the other two issues, namely; whether the corporation is doing business; and whether the agent of a foreign corporation if doing business, but not licensed here is personally liable for contracts made by him in the name of such corporation. Although the solution should not be difficult, since it was decided by the Supreme Court that such foreign corporation may be sued here.[18]

At any rate, the Court continued, "We do not see how the plaintiff could recover from both the principal Primateria (Zurich) and its agents. It has been given judgment against the principal for the whole amount. It asked for such judgment and did not appeal from it. It clearly stated that its appeal concerned the other three defendants, finally anchoring its claim under Article 1897 of the Civil Code which holds liable the agent personally in case he exceeds his authority or binds himself expressly without giving such party sufficient notice of his powers. There is no proof, however, that there has been an excess of authority. At any rate, Article

[18] General Corp. v. Union Insurance, 87 Phil. 313 (1950).

1897 does not hold that in cases of excess of authority, both the agent and the principal are liable to the other contracting party."

A SECOND LOOK AT THE PRIMATERIA CASE

The pronouncement of the Court that a sociedad anonima can not be deemed to fall within the prescription of section 68, in the absence of proof that such sociedad anonima is considered a corporation, invites this observation.

There appears to be no justification for applying the incorporation test in order to determine the legal status of the Primateria (Zurich). The issue is not the legal status of the Zurich firm as determined by Swiss law; rather, it is the legal status of the Zurich firm as determined by section 68 of the Philippine Corporation Law. Admittedly, the Zurich firm is a "sociedad anonima" as this term is understood under our Code of Commerce. But, by whatever name a foreign business entity is designated, the fact remains that the question in the instant case is referred to the provisions of section 68 of the Corporation Law. Therefore, it is only relevant to inquire into the public policy enunciated in the law in order to determine whether its terms should be made to extend to those business organizations not strictly categorized as corporations as the term is understood in our jurisdiction. There is authority to support the view that an association which is not regarded as a corporation under the law of the place where it is organized may nevertheless be a foreign corporation as to another state or country, thus:

> "Whether the body is called a corporation, partnership or trust is not the essential factor in determining the powers of a state concerning it. The real nature of the organization must be considered. If invested by the laws under which it comes into being with the ordinary functions and attributes of a corporation, as known to the law of another state or country in which it assumes to exercise corporate power as there understood, it is subject thereto the treatment accorded foreign corporations generally."[19]

There is no question that a sociedad anonima exhibits the salient features and attributes of a corporation, among which are a common name, capacity of succession, limited liability of members, capacity of succession, and capacity to act as an artificial person.

Indeed, American courts, construing a similar provision as section 68 of the Corporation Law, have regarded as foreign corporations such organizations of other states as joint stock companies,[20] partnerships,[21] business or other Massachusetts trust, and other as-

[19] See 23 Am. Jur., Foreign Corporations, Sec. 14.
[20] American Exp. Co. v. Comm., 30 ALR 543 (1920).
[21] Tidewater Pipe Co. v. State Assessors, 27 LRA 684 (1895); State ex rel Richards v. Ackerman, 51 Ohio St. 136, 37 N.E. 828 (1894).

sociations, companies or societies considered to possess corporate attributes.[22]

It must be borne in mind that the purpose of the law in requiring foreign corporations doing business in the Philippines to secure license is "to subject the foreign corporation doing business in the Philippines to the jurisdiction of the courts, to prevent it from acquiring a domicile for the purpose of business without taking steps necessary to render it amenable to suit in the local courts."[23] Considering the object of the statute, it becomes apparent that the prohibition is intended to cover foreign business entities, whether incorporated or not; a contrary construction that would apply the prohibition of the law only to entities duly incorporated under the laws of the place where they organized would allow unincorporated foreign business organizations to transact business in this country, to make contracts and assume obligations without being held amenable to suits in the local courts. It would practically allow such business associations to evade their liabilities with impunity by putting up the defense of not being incorporated as a corporation.

Premises considered, it becomes immaterial whether the law of Switzerland considers defendant Primateria (Zurich) as a corporation or not.

Pursuing the case to its legal termination (the determination of the liability of defendants) it would then be necessary to inquire whether the transaction involved amounts to "doing business" in the Philippines. The lower court ruled that the defendant Primateria (Zurich) did not transact business in the Philippines, on the strength of the contract between plaintiff and said firm, which covers merely a "tentative" or "experimental" period of one month; the fact that there was subsequent extensions of the period of time made by the parties relative to the buying of copra from the plaintiff was said not to have altered the fact that the transaction was "tentative" or "experimental."

While the intention of the parties that their contract covers merely a "tentative" or "experimental" period may suggest that the Zurich firm had no purpose to engage in business within the Philippines, that by no means is the essential criterion. As stated by the Court, in the case of *Pacific Micronesian Lines, Inc.*,[24] the nature of the particular transaction as well as the contemporaneous circumstances surrounding said transaction should be looked into. Indeed, it may be stated as a general proposition that a single or isolated act, and occasional, incidental or casual business transactions do not constitute doing or engaging in business contemplated

[22] Clark v. Grand Lodge, BRT, 88 ALR 150 (1931).
[23] Marshall Wells Co. v. Elser & Co., 46 Phil. 70 (1924).
[24] 50 O.G. 5271 (1954).

by law.[25] This rule must be qualified in the sense that even a single business act may bring the corporation within the purview of the statute where it is an act of the ordinary business of the corporation.[26]

Accordingly, even on the supposition that Primateria Zurich's only business transaction in the Philippines was its contract with plaintiff company, still such dealing constituted a transaction of business in the contemplation of law, it appearing that part of the ordinary business of Primateria (Zurich) was engaged in "transactions in international trade with agricultural products, particularly on oils, fats and oil seeds, and related products." It was not, therefore, merely incidental to the ordinary business of the firm. The fact that a foreign company maintains an agency in the Philippines for its business transactions here, buttressed the conclusion that the Zurich firm intends to engage in business in the Philippines.

Having arrived at the conclusion that Primateria (Zurich) is a foreign corporation transacting business in the Philippines without the license required by the corporation law, the only question that remains to be determined is whether by reason of such fact, Primateria's agents may be held personally liable for its contract with the plaintiff.

The defendants Primateria Philippines and Alex Baylin were found to have acted as agents of the Zurich firm, and since the latter transacted business in this country without the requisite license, its agents should be held personally liable following the doctrine that an agent contracting in the name of a non-existent corporation or principal, or a principal without legal status or existence renders himself personally liable on the contract so made.[27] As such agent, he must be deemed to have represented compliance with the laws of the state, and should not be allowed afterwards to hide behind his own misrepresentation. Besides, equity provides that where there is a wrong, there is a remedy (ubi injuria, ubi remedium). To hold the defendants-agents not liable for their own fault would render the plaintiff utterly helpless.

INSURANCE LAW

A. *Violations of specified provisions of an insurance policy avoid insurer's liability*

The failure of the insured to comply with a provision speci-

[25] *Ibid.*

[26] Far East International Import & Export Corp. v. Nankai Kogyo, G.R. No. L-13325, Nov. 30, 1962.

[27] Albert v. Univ. Pub. Co., Inc. and Vda. de Salvatierra v. Garlitos, *supra*, notes 2 and 3.

fied in the policy bars recovery of the proceeds thereof under the statutory provision (Sec. 70, Insurance Law). Accordingly, in the case of *Tanco v. Phil. Guaranty*,[28] the policy sued upon expressly provides that the "company shall not be liable if the accident occurs while the vehicle is being driven by any person other than an authorized driver." That an authorized driver has been defined by the policy to be insured himself or one who is acting on his order or with his permission, provided he is permitted to drive under the licensing statutes. At the time of the collision, plaintiff's brother, who was at the wheel, did not have the valid license; the one he obtained for the year not having been renewed. Such a violation rendered the policy void, consequently barring recovery thereunder, there being no principle of law or public policy which would militate against the validity of such provision.

Likewise, where the policy provides that benefits under the policy shall be forfeited if the claim be in any respect fraudulent, or any false declaration be made or used by the insured or any one acting in his behalf to obtain any benefit under the policy; any such proof of claim will avoid the policy. Under such policy, in the case of *Yu Ban Chuan v. Fieldmen's Insurance Co.*,[29] the proof of claim submitted by the insured was false (inflating the stock by fictitious invoices) and fraudulent both as to quality and amount of the goods and the value destroyed by fire, consequently barring his recovery on the policy and even for the amount of his actual loss.[30]

B. *Marine Insurance: Reserve acquired under Section 186 of the Insurance Act and under the Tax Code*

Under section 186 of the Insurance Law, the reserve required for marine insurance premiums is determined on two bases: 50% of premiums under policies on yearly risks and 100% of premiums under policies of marine risks not terminated during the year. Section 32(a) of the Tax Code allows the full amount of such reserve to be deducted from gross income. In the case of *Commissioner of Internal Revenue v. Phoenix Assurance Co., Ltd.*,[31] the court said: "It may be observed that the formulas for determining the marine reserve employed by Phoenix Assurance Co. and the Commissioner — 40% of premiums received during the year and 100% of premiums received during the last three months of the year, respectively, do not comply with section 186. For purposes of Insurance Law, this court, therefore, can not countenance the same.

[28] G.R. No. L-17312, November 29, 1965.
[29] G.R. No. L-19851, June 29, 1965.
[30] See also Yu Sun & Co. v. Presidential Assurance Co., Ltd., 51 Phil. 231 (1927).
[31] G.R. Nos. L-19727 and L-19903, May 20, 1965.

However, for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the Income Tax Law is to claim a deduction beyond the amount authorized therein. Phoenix's claim for deduction being less than the amount required in section 186 of the Insurance Law, the same is not excessive and should therefore be fully allowed."

C. *GSIS: Effectivity of Insurance Coverage under the GSIS*

Section 8 of Rep. Act No. 660 (GSIS charter) provides that an employee whose membership in the system is compulsory shall be automatically insured on the first day of the 7th calendar month following the month he was appointed or on the first day of the 6th month if the date of his appointment is the first day of the month. As thus worded, the provision makes a distinction in the matter of effectivity of insurance coverage. The court observed that assuming this to be a class legislation, it does not *ipso facto* make a statutory provision invalid. Taking into account the volume of business that the GSIS handles, the inclusion of this measure can not be considered arbitrary. Thus, in the case of *Aleja, et al. v. GSIS*,[32] the court denied the claim to collect proceeds on the policy which was issued July 8, 1958 to take effect February 26, 1959. The insured died two days before the effective date. Clearly at the time of Aleja's death, there was no existing contract between him and the GSIS, there being no consideration for the risk sought to be enforced against the insurance system.

BANKING LAWS

A. *Central Bank: Goods imported in violation of Central Bank Circulars Nos. 44 & 45, subject to forfeiture*

The term "merchandise of prohibited importation" used in the Revised Administrative Code is broad enough to include not only those already declared prohibited at the time of its adoption but also goods, commodities or articles that may be the subject of activities undertaken in violation of subsequent laws, considering that Bank Circulars, issued for the implementation of the law authorizing their issuance although by themselves are not statutes, have the force and effect of law.[33] Under said ruling the Court in the case of *Bombay Dept. Store v. Commissioner of Customs*[34] stated that the misdeclaration of goods described under release certificate issued rendered such importation contrary to Central Bank Circu-

[32] G.R. No. L-18529, February 26, 1965.
[33] Carreon Tong Tek v. Commissioner of Customs, G.R. No. L-11949, June 30, 1959, citing People v. Que Po Lay, 50 O.G. 4850 (1954).
[34] G.R. No. L-20379, June 22, 1965.

lars Nos. 44 & 45. Forfeiture of said goods is, therefore, in order, pursuant to section 1363(f) of the Revised Administrative Code, since violation of Circulars Nos. 44 & 45 made them fall under the same as "merchandise of prohibited importation" or "merchandise, the importation of which is effected contrary to law."[35]

The argument that Circulars Nos. 44 & 45 have been impliedly repealed by Circular No. 133, effective January 21, 1962, is without basis. The requirement of the release certificate, on the contrary, is reiterated in Circular No. 133, Section 6, which provides that "imports shall be released from the port of entry only upon presentation of a release certificate issued by the Central Bank based on the letters of credit opened."[36]

There is neither any basis on the argument that the Central Bank has no power to issue such circulars. Said authority and the legality of the questioned circulars having been repeatedly upheld by the court.[37]

B. *Importation which does not involve sale of foreign exchange*

In *Commissioner of Customs v. Icamen*,[38] the court again remarked that goods purchased by respondent with dollars received by him as salary and allowances in Tokyo, Japan, do not involve "imported goods" in the sense of goods purchased abroad and paid with money (in U.S. dollars or in Philippine currency) coming from the Philippines. In other words, the importation having been taken place before the enactment of Republic Act No. 1410 prohibiting the so-called no dollar importation except under certain conditions, said importation does not come within the purview of Central Bank Circular No. 45.

C. *Power of the Central Bank to compel exporters to surrender to it 20% of foreign exchange receipts after the expiration of Rep. Act No. 2609*

In *Chamber of Agriculture and Natural Resources of the Philippines v. Central Bank of the Philippines*,[39] the validity of Circular No. 171 extending the force and effect of Circular No. 133 which was issued in line with Rep. Act No. 2609 authorizing the Central Bank to establish a margin of not more than 40% over banks' selling rates of foreign exchange up to December 31, 1964 was assailed on the ground that the Central Bank had no power

---

[35] See also Serree Investment Co. v. Commissioner of Customs, G.R. No. L-20847, June 22, 1965.

[36] Bombay Dept. Store v. Commissioner of Customs, *supra*, note 34.

[37] Bombay Dept. Store v. Commissioner of Customs, G.R. No. L-20460, Sept. 30, 1965; Serree Investment Co. v. Commissioner of Customs, G.R. No. L-21217, Nov. 29, 1965; Commissioner of Customs v. Santos, G.R. No. L-11911, March 30, 1962.

[38] G.R. No. L-12351, June 29, 1965.

[39] G.R. No. L-23244, June 30, 1965.

to impose exchange restrictions after the expiration of Rep. Act No. 2609.

Petitioners argue that it was obligatory for the Central Bank to decontrol all foreign exchange in four years. The court dismissed the argument, saying: "There is nothing in Rep. Act No. 2609 that imperatively decrees total decontrol after four years from the time of its passage. The express terms are that the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol, without specifying from what date the period shall be counted. Clearly, the phrase in the law regarding a four-year program of gradual decontrol does not necessarily mean total decontrol at the end of the four-year period." As observed by Justice Bengzon in his concurring opinion: "Considering the prevailing disequilibrium in the economy, and the tenor as well as the objectives of Rep. Act No. 2609, respondent was not called upon to swing the country into total decontrol on April 25, 1964 as petitioners would have wanted. Such an action, the outright lifting of the 20% retention under Central Bank Circular No. 133 would most likely have generated further inflationary measures on the economy."

The pronouncement of Justice Labrador in the case of *Bacolod Murcia Co. v. Central Bank*,[40] to the effect that the Central Bank lacks power to commandeer the exporters' dollars, was the personal view of the said Justice. It did not represent the view of the majority of the Court, and is not binding as a legal doctrine. The fact is that the validity of Circular No. 20 requiring the exporters to surrender 100% of their foreign exchange receipts to the Central Bank ($1 to ₱2) had been previously sustained by the court.[41]

The power to license and restrict foreign exchange necessarily implies the authority to impose upon such licensees conditions including that of surrendering the receipts to the Bank, as the latter may deem necessary to protect its international reserve.

The other objections to the maintenance of the 20% retention that it amounts to confiscation of foreign exchange, that it constitutes an undue delegation of legislative power or an invalid exercise of police power, have already been adversely resolved by this Court in connection with other Central Bank Circulars Nos. 21 and 37 of the same character as those assailed now.[42] In conclusion, the continuation of the 20% retention of foreign exchange receipts is a valid exercise of the emergency powers granted under section 74

[40] G.R. No. L-12610, October 25, 1963.

[41] People v. Tan, G.R. No. L-9275, June 30, 1960; Earnshaw Docks v. Jimenez, G.R. No. L-14814, Dec. 30, 1961.

[42] People v. Joliffe, G.R. No. L-9553, May 31, 1959; People v. Exconde, G.R. No. L-9820, Aug. 30, 1957.

of Rep. Act No. 265 (Central Bank Act) and that said powers continue in existence at the expiration of Rep. Act No. 2609.

D. *Rural Banks: Liquidation of assets in contemplation of Rep. Act No. 720 (Rural Banks' Act) and Rep. Act No. 265 (Central Bank Act)*

The question as to whether there is irreconcilable conflict between Rep. Act No. 720 and Rep. Act No. 265 has been resolved in the case of *Rural Bank of Lucena v. Arca, et al.*[43] The court said that there is no such irreconcilable conflict between section 10 of Rep. Act No. 720 (Rural Banks' Act) and section 29 of Rep. Act No. 265 (Central Bank Act). What the former section authorizes is the taking over of the management by the Central Bank, until the governing body of the offending bank is recognized with a view to assuring compliance by it with the laws and regulations. On the other hand, section 29 of the Central Bank Act has in view a more drastic step, the liquidation of a rural bank by taking over its assets and converting them into money to pay its creditors. Under section 10, the Monetary Board may take over the management of a rural bank without hearing. Such previous hearing is not required by section 29. Whether a rural bank's continuance in business would involve probable loss to its clients or creditors, and that it cannot resume business with safety, is a matter of appreciation and judgment that the law entrusts primarily to the Monetary Board. For this reason, the statute has provided for a subsequent judicial review of the Monetary Board, in lieu of a previous hearing. Such review must be asked within 10 days from notice of the resolution of the Board.

E. *Philippine National Bank is distinct and separate from the Government*

The Philippine National Bank is one of those corporations owned or controlled by the Government and endowed with proprietary functions which have nothing to do with the exercise of political authority. They are governed by the Corporation Law and/or by their individual charters; the Philippine National Bank in this case is covered by Rep. Act No. 1300, which took effect June 16, 1955, authorizing it among other purposes to engage in the business of general banking. Thus, it has a personality of its own and may sue and be sued as an entity entirely distinct from the Republic.[44]

---

[43] G.R. No. L-21146, Sept. 20, 1965.

[44] Republic of the Phil. v. Phil. Nat'l. Bank, G.R. No. L-19118, January 30, 1965.

SECURITIES ACT

A. *Conditions under which a stock exchange may obtain permit*

In the case of *Makati Stock Exchange v. Securities and Exchange Commission,*[45] the court had the occasion to state that the conditions under which a stock exchange may legally obtain a permit under section 17 of the Securities Act are exclusive. Said the court: "The legislature has specified the conditions under which a stock exchange may legally obtain a permit (Sec. 17, Securities Act); it is not for the Securities and Exchange Commission to impose others. If the existence of two competing exchanges jeopardizes public interest, which is doubtful, let Congress speak. But, until otherwise directed by law, the operation of exchange should not be so regulated as to practically create a monopoly by preventing the establishment of other stock exchanges.

For a licensing officer to deny license solely on the basis of what he believes is best for the economy of the country, would amount to regimentation, or in this instance, the exercise of undelegated legislative powers and discretion. Thus, it has been held that where the licensing statute does not expressly or impliedly authorize it the officer in charge may not refuse to grant a license simply on the ground that a sufficient number of licenses to serve the needs of the public have already been issued.[46]

The resolution of the Commission denying the Makati Stock Exchange on its board, securities already listed in the Manila Stock Exchange has no basis in law. According to many court precedents, the general power to regulate which the Commission has (Sec. 33) does not imply the authority to prohibit.[47]

B. *Review of decisions of Securities and Exchange Commission*

The power to review decisions of the Securities and Exchange Commission pertains not to the Court of First Instance but to the Supreme Court exclusively.[48] In *A.F.A.G. v. Mariano Pineda, et al.,*[49] the court said: "True, a petition for prohibition may be filed in the Court of First Instance, but only if it relates to acts or omissions of an inferior court (Sec. 4, Rule 65), which is not the case with the Securities and Exchange Commission. Indeed, the same rule says that a petition for a certiorari under Rule 43 against *inter alia,* Securities and Exchange Commission, shall be filed with

[45] G.R. No. L-23004, June 30, 1965.
[46] *Ibid,* citing 53 C.J.S., p. 636.
[47] Republic v. Esguerra, 81 Phil. 33 (1948); Primicias v. Fugoso, 80 Phil. 71 (1948).
[48] Pursuant to Sec. 1, Rules 43, and Sec. 35, C.A. No. 83, as amended by R.A. No. 635.
[49] G.R. No. L-17159, November 23, 1965.

the Supreme Court; and there is no reason why a different procedure should be observed in respect of a petition for prohibition."

TRADEMARKS, TRADENAMES, UNFAIR COMPETITION

A. *If the competing label contains the trademark of another, and confusion or deception is likely to result, infringement takes place regardless of the fact that the accessories are dissimilar.*[50]

The above ruling was applied by the court in the case of *Chua Che v. Phil. Patent Office.*[51] This involved a petition praying for the registration in favor of the petitioner the tradename "X-7", on the ground that he has been using within the Philippines said trademark for not less than two years before his application. Respondent Su Tuo opposed the application claiming that he has prior use of the trademark "X-7" since 1953. Petitioner countered that although "X-7" is registered in the name of the oppositor, said trademark is not being used in soap, but purely on toilet articles.

The court in striking down petitioner's contention said: "There is no merit in this contention for it has been held that while it is no longer necessary to establish that the goods of the parties possess the same descriptive properties as previously required under Trade Act of 1905, registration of a trademark should be refused in cases where there is a likelihood of confusion, mistake or deception, even though goods fall into different categories."[52]

B. *Compulsory licensing under patented invention relating to medicine under Section 34(d) of Rep. Act No. 165 (Patent Law)*

Under section 34 of Rep. Act No. 165, any person may apply for the grant of a license under any of the circumstances in section 34(a), (b), (c), and (d), which are in the disjunctive, showing that any of the circumstances thus enumerated would be sufficient to support the grant. Each of these circumstances stands alone and is independent of the others. It can be seen, therefore, that in order that a person may be granted a license under a particular patented invention relating to medicine under section 34(d) it is sufficient that the application be made after the expiration of three years from the date of the grant of the patent and that the Director should find that a case for granting such license has been made out. It is not even required for a grant of license under section 34(d) that the medicine is necessary for public health or safety. It is sufficient if the invention relates to medicine.

---

[50] Director of Patents v. Co Tiong Sa, 95 Phil. 1 (1954).
[51] G.R. No. L-18337, January 3, 1965.
[52] See also Operators, Inc. v. Director of Patents, G.R. No. L-17901, October 10, 1965.

Section 34 does not require the petitioner of a license to work the patented invention itself if the invention refers to medicine for the term "worked" or "working" used in said section does not apply to circumstances mentioned in sub-section (d), which relates to medicine or to one necessary for public health and safety.

Compulsory licensing of a patent without regard to the other condition imposed in section 34 is not an undue deprivation of proprietary interests over a patent right because the law sees to it that even after three years of complete monopoly something is awarded to the inventor in the form bilateral and workable licensing agreement and a reasonable royalty to be agreed upon by the parties, and in the default of such agreement the Director of Patent may fix the terms and conditions of the license under section 36 (Rep. Act No. 165).[53]

CODE OF COMMERCE

A. *Letters of Credit; Consummation*

To resolve the issue as to when the right to ask refund under Rep. Act No. 601 required 17% specific tax on remittances in foreign exchange for the importation of goods accrues, the Court has first to determine when an irrevocable letter of credit becomes a consummated contract. As to when the sale of foreign exchange is deemed consummated under an irrevocable letter of credit is not a novel question. In the case of *Indian Commercial v. Central Bank,*[54] the court citing the case of *Belman Cia, Inc. v. Central Bank,*[55] said:

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

---

[53] Parke, Davis & Co. v. Director of Patents, G.R. No. L-20170, August 10, 1965.

[54] G.R. No. L-19157, June 30, 1965.

[55] G.R. No. L-10195, November 29, 1958.

COMMON CARRIERS

A. *When consignee is bound by management contract*

The court has consistently ruled that a consignee, who personally or through a broker, secures from the Bureau of Customs a delivery permit wherein is reproduced the limitations contained in the management contract, signs and presents it to the arrastre contractor and obtains thereunder partial delivery of the goods, is bound by the provisions of the contract as if he were a party thereto.[56] In such case, the consignee was not only aware of the limitations contained in paragraph 15 of the Management Contract but it also took advantage of and received benefits under said contract.[57]

B. *Exceptions*:

In those cases, however, where the consignee did not sign the delivery permit and completely failed to obtain delivery thereunder because all the goods were missing or could not be located, the court denied enforceability of the provisions of management contract upon the consignee.[58]

In *Shell Co. v. Manila Port Service,*[59] the consignee did not make use of the delivery permit and derived no benefit from the management contract, for no delivery, partial or total, was ever made because all the goods could not be located or found. Mere notice of the provisions of the management contract on the part of the Shell Company does not suffice to bind it as a party thereto. Where the consignee does not personally or through its broker, make use of any delivery permit as the goods were never withdrawn from the piers, it is not bound by the notice appearing on the back of the permit that claims for losses must be filed within fifteen (15) days from the discharge of the goods.

C. *Warsaw Convention of October 12, 1929—Liability of air carriers*:

In the *Northwest Airlines, Inc. v. Cuenca,*[60] the petitioner claimed exemption from the provisions of the Warsaw convention:

> "Article 17. The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident

---

[56] Insurance Co. of North America v. Manila Port Service, G.R. No. L-17331, November 29, 1961; Atlantic Mutual Insurance Co. v. Delgado Bros., G.R. No. L-13884, April 21, 1960.

[57] See also *Alex Lo Kiong v. U.S. Lines and Manila Port Service,* G.R. No. L-18673, November 28, 1965.

[58] Reliance Surety Ins. Co. v. MRR, G.R. No. L-19589, April 30, 1964; *Republic v. Manila Port Service,* G.R. No. L-19115, March 31, 1965.

[59] G.R. No. L-20223, July 30, 1965.

[60] G.R. No. L-22425, August 31, 1965.

which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

"Article 18. (1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage, or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.

(2) The transportation by air within the meaning of the preceding paragraph shall comprise the period during which the baggage or goods are in charge of the carrier, whether in an airport or on board an aircraft or, in the case of landing outside the airport, in any place whatsoever.

(3) The period of the transportation by air shall not extend to any transportation by land, by sea or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation, by air, for the purpose of loading, delivery, or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the transportation by air."

The airline company argued that an air carrier is liable only in the event of death of a passenger or injury suffered by him or of destruction or loss of, or damage to any checked baggage of any goods or of delay in the transportation by air of passengers, baggage or goods. The court ruled that the allegation is not borne out by the language of the articles. The same merely declare the carrier liable for damages in the enumerated cases, if the conditions therein specified are present. Neither said provisions nor others in the convention regulate or exclude liability for other breaches of contract by carrier. Under petitioner's theory, an air carrier would be exempt from any liability for damages in the event of its absolute refusal in bad faith to comply with a contract of carriage which is absurd. Therefore, the damages awarded to respondent Cuenca for the violation of the contract committed by the petitioner is in order.

PUBLIC SERVICE ACT

A. *Old operator rule*

The primary purpose of the Public Service Law is to secure adequate and sustained service for the public at the least possible cost, and to protect and conserve investments which have already been made for that purpose. To carry out the purpose and intent for which the Public Service Commission was created, the law contemplates that the first licensee will be protected in his investment and will not be subjected to ruinous competition. Thus, so long as the first licensee keeps and performs the terms and condi-

tions of its license and complies with the reasonable rules and regulations of the Commission and meets the reasonable demands of the public, it has more or less of a vested and preferential right over the same route.[61] This is referred to as the old operator rule.

Before permitting a new operator to invade the territory of another already established with a certificate of public convenience, thereby entering into competition with it, if this be for the benefit of the public, the operator must be given an opportunity to extend its service in order to meet the public needs provided that all conditions are equal.

This rule, however, can not apply where the old operator has been disregarding the public need for extension of its services and offers to increase such services only after a new applicant offers to serve on the same line.[62] The reason for this rule is for the protection of those who are vigilant in meeting the needs of the travelling public. This qualification to the prior operator rule was reiterated in *Phil. Long Distance Co. v. Davao*,[63] where it held that the said rule requires for its application that the old operator offers to meet the increase in the demand, the moment it arises and not when another operator, even a new one, had made the offer to serve the public needs.

In the case of *Dangwa Transportation Co. v. Public Service Commission, et al.*,[64] respondent Pangasinan Transportation Co. invoked the old operator rule for the extension of its line to Manila without any change in the number of trips and on condition that no passengers would be accepted between Manila and Tarlac. Petitioner Dangwa opposed the application claiming that it was already rendering adequate service on the line applied for. At the same time, filing its own application for additional units on its Baguio-Manila line. In granting the extension, the court distinguished the case from *Batangas Transportation Co. v. Orlanes*.[64a]

The court in reversing the ruling of the Public Service Commission in the latter case said that the decision of the Commission improperly gave an irregular operator, who was last in the field, a preferential right over a regular operator, who was first in the field. The court thus took into account the fact that the regular operator, on its own volition and to meet the increase of its business, had applied for authority to increase the number of daily trips, and that it was only thereafter that Orlanes filed its own application. Unlike the Orlanes case, the respondent in the Dangwa case was not

---

[61] Batangas Trans. Co. v. Orlanes, 52 Phil. 455 (1928).
[62] Isidro v. Ocampo, G.R. No. L-12331, May 29, 1959.
[63] G.R. No. L-23080, September 20, 1965.
[64] G.R. No. L-16899, October 29, 1965.
[64a] *Supra*, note 61.

an irregular operator. It already had its own line with scheduled trips between Baguio and Tarlac. And its application was not primarily intended to meet the demand of the general public but rather of the passengers who had given respondent their patronage and who are to be benefited by the extension.

In granting the application, the Commission did not disregard the doctrine that old and established operators should be given preference over new ones.

B. *Inadequate notification to interested parties renders the decision void*

Paragraph 16 of the Public Service Act (Act 146) expressly defines the powers of the Public Service Commission which it may exercise only upon notice and hearing.

In *Olongapo Jeepney Operators Association v. Public Service Commission*,[65] the court held that the inadequate notification to interested parties which resulted in the oppositors' failure to be present during the hearing deprived them of their day in court.

Consequently, the decision in disregard of such right is null and void. The records showed that while the notice was published in two newspapers of general circulation, the individual notices sent by registered mail were received only by the operators after the hearing. The order required, in addition to the publication, individual notice to the operators affected by the application. Such requirements are in the conjunctive and not in the alternative. Having failed to give adequate notice to the petitioner and having been deprived of his day in court, the court set aside the decision of the Public Service Commission.

C. *Measure of ruinous competition to be a defense*

Mere allegation by the oppositor that its business would be ruined are not sufficient to warrant this court to revoke the order of the Commission.[66] It is a well established doctrine that the possibility of deterioration in the income of the business is not sufficient to prove ruinous competition. The competition should be such as would deprive an operator of just compensation in proportion to the capital invested.[67]

This ruling was reiterated in the case of *Fortunato Halili v. Eusebio Daplas*,[68] where the court declared that in order that the opposition based on ruinous competition may prosper, it must be shown that the opponent would be deprived of fair profits on the capital invested in its business. The mere possibility of reduction

[65] G.R. No. L-20699, February 26, 1965.
[66] Ice and Cold Storage Industries of the Phil. v. Valero, 85 Phil. 7 (1949).
[67] Halili v. Ice and Cold Storage Co., 44 O.G. 1151 (1947).
[68] G.R. No. L-20282, May 19, 1965.

in the earnings of a business is not sufficient to prove ruinous competition. It must be shown that the business would not have sufficient gains to pay a fair rate of interest on its capital investment.

D. *Revocation of a certificate of public convenience*

Paragraphs (m) and (n) of section 16 of the Public Service Act permit amendment, modification, or revocation of a certificate of public convenience at any time.

This rule is however qualified by the decision of the Supreme Court in the case of *Roque Escano v. Rodrigo Lim*,[69] when it declared that while a violation of the condition of a certificate entitled the Public Service Commission to revoke the violated certificate, it was never held that such violation alone could also result in the forfeiture of a totally different nature. The petitioner in this case applied for the operation of 10 taxicab units. The operator moved for reconsideration on the ground of violation of the certificates referring to the charges instituted before the Commission against the petitioner for violation of certificates in the TPU and AC services. In a decision on these charges, the Commission found petitioner guilty of allowing third persons to operate vehicles under his certificates for a fee and forthwith cancelled said TPU and AC certificates but petitioner filed a motion for reconsideration and said motion has been unacted upon. Not being final, said conviction could not constitute a reasonable basis for revoking a totally different certificate to operate a taxi service, especially because the nature of his service is different from the services the conditions of which are alleged to have been violated.

The decision to reverse the order of the Commission to revoke the petitioner's taxicab permit was based mainly on the fact that the finding of guilt of violation of the conditions of the TPU and AC certificates has not become final because the motion for reconsideration has been unacted upon and that the same could be subject to review by the Supreme Court. The court will not readily allow revocation of a certificate unless the holder has violated or deliberately refused to comply with the orders, rules and regulations of the Commission and with the provisions of Public Service Act (paragraph [n] Sec. 16). Violation of the certificates of public convenience for service distinct from that being applied for is not enough to revoke the certificate. Mere violation standing alone, will not warrant the outright revocation of the same.

[69] G.R. No. L-20737, May 31, 1965.

NEGOTIABLE INSTRUMENTS LAW

Liability of the maker of a negotiable instrument under Section 60

Section 60 of the Negotiable Instruments Law provides that the maker of a negotiable instrument by making it engages that he will pay it according to its tenor and admits the existence of the payee and his then capacity to endorse.

Whether or not the maker may exempt himself from the liability to pay the amount involved in a promissory note executed by him by shifting the obligation to another, without the consent of the payee is the issue in the case of *Araneta v. Perez.*[70] In the case at bar, defendant executed a promissory note in favor of the plaintiff wherein they agreed that if the note is not paid on the date of maturity, the defendant shall pay the interest at 9% per annum. Said defendant failed to pay it but averred that the proceeds thereof was applied by him to the payment of the medical treatment of his minor daughter, who is the beneficiary of the trust then administered by plaintiff, and therefore, the trust estate is bound to pay the said expenses.

The court held that under the promissory note, appellant bound himself to pay personally said note which he can not shift to another without the consent of the payee. Such is the undertaking of the maker under section 60 of the Negotiable Instruments Law. The appellant can not escape liability by alleging that he spent the money for the medical treatment of his daughter since it is not the payee's concern but that of the maker. Payee's interest is merely to see that the note be paid according to its terms.

GENERAL BONDED WAREHOUSING ACT
(Act 3893, as amended by Rep. Act No. 247)

Under section 2 of Act 3893 as amended by Rep. Act No. 247, the business of receiving rice for storage shall include the following:

1. Any contract or transaction wherein the warehouseman is obligated to return the very same rice delivered to him or pay its value;
2. Any contract or transaction wherein the rice delivered to him is to be milled for and on account of the owner thereof;
3. Any contract or transaction wherein the rice delivered is commingled with rice delivered by or belonging to other persons and the warehouseman is obligated to return rice of the same kind or pay its value.

The point of inquiry is to determine if palay delivered to be milled for and on account of the owner shall be deemed included in the business of receiving rice for storage for the purpose of the

[70] G.R. No. L-20787, June 29, 1965.

act. The next point of inquiry is to determine if the statute covers such cases where the goods are stored in a "camalig". If the statute properly covered both cases, operation of the rice mill without a license would be a violation of this Act.

The Court in the case of *People v. Versola*[71] has ruled the questions in the affirmative. The court said that: "Whenever a rice mill engaged in the business of hulling palay for others is housed in a "camarin" like that of the appellant, the keeping of *palay* or rice follows as a necessary consequence. This is true even if the grains were received therein exclusively for milling purposes. The rice-mill possession and public policy or pubilc interest demand that the rights of the owners be duly protected."

The same question was raised in the case of *Virginia Vda. de Limjoco v. Director of Commerce.*[72] The petitioner herein submits in substance that the test to determine the applicability of Act 3893 as amended is whether or not she is engaged in the business of receiving palay for storage; that the clause in section 2 refers to "any contract or transaction wherein the rice delivered is to be milled for and on account of the owner" must be understood in relation to the subject matter of the statute as expressed in the title, namely, "An act to regulate the business of receiving commodity for storage" and that since her business is the milling of palay, the delivery thereof to her is merely incidental to such business and does not constitute storage within the meaning of the statute.

The court ruled that section 2 is too clear to permit any exercise in construction or semantics. It does not stop at the bare use of the word "storage" for the purpose of the Act. Thus, it is enough that the palay is delivered even if only to have it milled.

The appellant further claims that the case is not covered by the statute due to the inadequacy of the construction for storage of palay which in this case was a "camalig". The court ruled that the inadequacy of the construction insofar as the safety of the palay is concerned is not a valid reason to remove it from the operation of the statute for otherwise, the very fact of non-compliance with the legal requirements in this respect would be its own excuse from the liabilities imposed.

---

[71] G.R. No. L-57071, March 27, 1965.
[72] G.R. No. L-17640, November 29, 1965.