COMMERCIAL LAW

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Although most of the Supreme Court decisions during the year 1966 on commercial law merely reiterated well-settled principles, some of them presented novel situations of fact to which the same principles were made applicable. A few cases involved issues of first impression and one impliedly repudiated a former Supreme Court ruling. Judging by this output, there was no significant contribution to Philippine jurisprudence in the field of commercial law during the year under study.

INSURANCE

Interpretation of contract —

Many of the cases dealing with insurance contracts involve issues relating to the interpretation of the terms thereof, specially in relation to the cause of loss and the coverage of the policy. Perhaps the most important rule of interpretation of an insurance contract is that, it being a contract of adhesion, any ambiguity should be resolved against the insurer, the party who formulates and prepares the contract.

The interpretation of the terms "accident" and "accidental means" in accident insurance has been the subject of much conflict in American jurisdiction. Until the case of *De la Cruz v. Capital Insurance & Surety Co., Inc.,*[1] our Supreme Court had no opportunity to interpret these terms, although the Court of Appeals had already done so as early as 1947, by refusing to distinguish between them and treating them synonymously.[2] The view which insists that there is a difference in the meaning of the terms explains that in order that death may be due to "accidental means", two requisites must be present: (1) the injury must have been accidental or unforeseen, and (2) there must be something unforeseen or unexpected, or unusual in the act which preceded the cause of death.[3] And where the death or injury, although unforeseen or unexpected, results directly from insured's voluntary act, unaccompanied by any-

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[1] G.R. No. 21574, June 30, 1966.

[2] See Gozo v. National Life Ins. Co. 43 O.G. 4711 (CA) (Nov. 1947).

[3] *Ibid.*

thing unexpected, unusual or unforeseen, it is not death or injury by accidental means, although the result may be such as to constitute an accidental injury. In the latter case, it is, according to this view, a death by "accident" and not by "accidental means."

In the case of *De la Cruz v. Capital Insurance & Surety Co., Inc.*,[4] our Supreme Court, citing the majority view in the United States, refused to distinguish between the terms, and granted recovery to the beneficiary under an accident policy covering death by "accidental means." The insured in this case was a non-professional boxer. In one of his boxing bouts, his foot slipped thereby giving his opponent the opportunity to hit him on the left side of his head, and causing the insured to fall with his head hitting the rope of the rings. He died the next day as a result of intracranial hemorrhage. His father filed a claim as beneficiary, but the insurer refused to pay on the ground that the cause of death was not accidental and therefore not covered by the policy. It claimed that the head injury was sustained because of the insured's voluntary participation in the boxing contest; that the participation was the "means" that produced the injury which in turn caused the death. Since his inclusion in the boxing bout was voluntary on the part of the insured, he cannot be considered, according to the insurer, to have met his death by "accidental means".

In refusing to uphold the defendant's contention, the Supreme Court said:

> "The terms 'accident' and 'accidental means' as used in insurance contracts, have not acquired any technical meaning, and are construed by the courts in the ordinary and common acceptation. Thus, the terms have been taken to mean that which happen by chance or fortuitously, without intention or design, and which is unexpected, unusual, or unforeseen."[5]

However, the Supreme Court went on further and held that even under the insurer's theory, the death of the insured would still be covered by the policy. According to the Court, "the generally accepted rule is that, death or injury does not result from accident or accidental means within an accident policy if it is the natural result of the insured's voluntary act, unaccompanied by anything unforeseen except the death or injury. There is no accident when a deliberate act is performed, unless some additional, unexpected, independent and unforeseen happening occurs which produces the death. In other words, where the death is not the natural or probable result of the insured's voluntary act, or if something un-

[4] *Supra.*, note 1.
[5] The Court cited American cases.

foreseen occurs in the doing of the act which precedes the injury, the resulting death is within the protection of policies insuring against death or injury from accident." Applying this rule to the facts of the case, the Court reasoned that while participation in the boxing was voluntary, the injury was sustained when the insured slid and was hit by his opponent causing his head to hit the rope. Without this unfortunate incident, i.e., the unintentional slipping of the deceased, perhaps he would not have received the blow and would not have died. The fact that boxing is attended with some risks of external injuries does not make the injuries received in the course of the game not accidental. In boxing, as in other equally physically rigorous sports, such as basketball, death is not ordinarily anticipated to result. The Court concluded, therefore, that if death ever does result, it can only be accidental. This conclusion of the Court is in accord with the rule that interpretation of the policy should be, if possible. in favor of the insured. An insured would usually not be aware of any hairline distinction between accidental death and death by accidental means. To an ordinary layman, an accident policy would usually cover any death or injury which is unexpected, or unforeseen, or unusual under the circumstances.

One other point which supported the plaintiff's right to recover in this case was the fact that although the policy specifically excluded from coverage death or disability consequent upon the insured engaging in football, hunting and other specified sports, boxing was not mentioned. The Court therefore interpreted this to mean that the insurance company did not intend to limit or exempt itself from liability for death in a boxing bout.

In the case of *Laurente v. Rizal Surety & Ins. Co.*,[6] the Supreme Court applied the rule of strict interpretation against the insurer to a suretyship contract.[7] This case involved a bond filed by a surety company on behalf of a guardian. The bond was silent as to its date of effectivity, but the court order under which it was filed made it plain that the bond should be effective "as of the date of appointment" of the guardian. On a suit on the bond, the surety company defended on the ground that the defalcations of the guardian were committed prior to the filing of the bond, and that the same should be strictly construed and cannot be given a retroactive effect. The Court brushed aside this contention and held the surety liable on the bond distinguishing between a private surety and a

[6] G.R. No. 21250, March 31, 1966.

[7] Under sec. 194 of the Insurance Act, any corporation organized to guarantee the obligations or debts of another is an insurance corporation and is subject to the same requirements as such insurance corporations.

corporate surety. It explained that a corporate surety, unlike the usual private surety, enters into the contract for a consideration and like an insurance company, is the one who prepares the instrument. The rules of interpretation appertaining to contracts of insurance should therefore apply and not the rule of *strictissimi juris.*

Where, however, the terms of the insurance contract are clear and unambiguous, they must be followed even if these may seem onerous to the insured. Thus in the case of *Misamis Lumber Corporation v. Capital Insurance and Surety Co.*,[8] where the automobile liability policy provided that the insurer would not be liable for more than ₱150 if the insured undertook the repairs of the car subject of the insurance without the knowledge of the insurer, the Court refused to grant a greater amount to the insured who had actually spent ₱302.27 for repairs of his car due to an accident covered by the policy. The Court found that he had authorized the repairs without first notifying the insurer. The Court said that although the contract may be rather onerous, that fact alone would not justify the abrogation of its express terms, which the insured accepted and which is the law between the parties. The Court also refused to uphold the plaintiff's contention that the insurer had the burden of proving that the cost of repairs was unreasonable, because it had no opportunity to inspect the damage before the repairs were made.

In a similar vein, the Supreme Court refused recovery to the insured in the case of *Ty v. Filipinas Compania de Seguros et al.*[9] In this case the insurer undertook to pay, among other things, for loss of a hand due to amputation. The insured suffered injuries to his left hand on which a heavy object had fallen. Although the insured's hand was not amputated, he was temporarily disabled to such an extent that he could not perform his usual work. He argued that what was compensable under the policy was disability and not amputation of the hand. The court however adhered to the clear provisions of the policy since these constituted the law between the parties.

In *Lopez v. Filipinas Compania de Seguros*,[10] the issue presented involved the interpretation of a prescriptive clause which provided that if a claim be made and rejected, an "action or suit" should be commenced within twelve months after such rejection, otherwise the claim would prescribe. The insured, one month after his claim was rejected by the insurer, filed a complaint before the Insurance Commissioner, and when this did not succeed, filed the present action

[8] G.R. No. 21380, May 20, 1966.
[9] G.R. No. 21821-22, 21824-27, May 31, 1966.
[10] G.R. No. 19613, April 30, 1966.

seventeen months after said rejection. The Supreme Court held that the words "action or suit" in the policy refer to a claim or demand in a court of justice. The action had therefore prescribed.

Insurance Commissioner — extent of power and jurisdiction —

In the same case of *Lopez,* the Court pointed out that the filing of the complaint with the Insurance Commissioner could not have stopped the prescription because there is nothing in the Insurance Law or any allied law which empowers the Insurance Commissioner to adjudicate disputes relating to an insurance company's liability to an insured under a policy. The insured's claim, its amount, and all such other matters as might involve the interpretation and construction of the insurance policy, are issues which only a regular court of justice may resolve and settle.

The Insurance Commissioner, however, has complete and exclusive jurisdiction to determine and approve the rate of premium which an insurance company in the Philippines may charge. This was pointed out by the Supreme Court in the case of *Filipinas Compania de Seguros v. Mandanas.*[11] This was a petition for declaratory relief filed by the Philippine Rating Bureau, an association of non-life insurance companies, for the determination of the validity of one of the provisions in its constitution which was claimed by the Insurance Commissioner to be an illegal agreement or combination in restraint of trade. The Insurance Commissioner had threatened to suspend the certificate of authority of any insurance company who would follow said provision, which reads:

> "In respect to the classes of insurance specified in the objects of the Bureau and for Philippine business only, the members of this Bureau agree not to represent nor to effect reinsurance with, nor to accept reinsurance from, any company, body, or underwriter licensed to do business in the Philippines not a member in good standing of this Bureau."

The petitioning insurance companies justified this provision as a means to maintain a high standard of ethical practice, calculated to discourage or eliminate underrating which resulted in unfair competition. The Supreme Court upheld the validity of the provision, stating that it tends to eliminate, not all competition, but only unfair competition through underrating, which eventually will result in injury to the insuring public. The Supreme Court added that, whatever the Philippine Rating Bureau may do in the matter of rate-fixing is not decisive insofar as the public is concerned, for no

[11] G.R. No. 19638, June 20, 1966.

insurance company in the Philippines may charge a rate of premium that has not been approved by the Insurance Commissioner.

Is life insurance premium a debt?

As a general rule, in the case of life insurance contracts, the insured is under no obligation to pay the premiums, other than the first one, non-payment being merely a ground for the insurer to forfeit or cancel the policy. The insurer, therefore, cannot compel the insured to pay the premium.[12] In *Filipinas Life Assurance Co. et al v. Nava,*[13] however, the Supreme Court did not apply this principle. Here, the insured paid premiums on eighteen policies from 1936 to 1941 in Philippine currency, then from 1942 to 1945 in fiat money. The premiums up to 1948 reached a total of more than ₱34,000. In that year, the insured applied for a policy loan of ₱5000. The insurer refused to grant the loan at the time, on the excuse that certain regulations of the Insurance Commissioner issued in 1946 required the insurance company to withhold payments on premiums paid during the Japanese occupation because the same shall be subject to future adjustments "as soon as debtor-creditor relationship is established." The insured claimed however that under the Haw Pia ruling in 1948, his payments during the Japanese occupation were valid. The issue therefore was whether the Haw Pia ruling, which declared valid all payments in military notes on account of *contractual obligations* entered into before the war, applies to the payment of life insurance premiums, which according to the insurer is not a debt nor an obligation of the insured. In holding that the said ruling was applicable, the Court said that a life insurance policy involves a contractual obligation wherein the insured has to pay the premiums, lest his policy lapse. Consequently, the payment of the premiums by the insured before and during the war up to the time he applied for the loan in question should be considered as valid payments. In effect, they were payments made by a debtor to a creditor within the meaning of the requirement of the regulation of the Insurance Commissioner, and as such the defendant insurer had no excuse for refusing to grant the loan as contemplated in the loan clause embodied in the policies in question.

The above ruling of the Supreme Court should, however, be understood to apply only to the particular issue and set of facts involved insofar as it relates to the validity of premiums paid in fiat money. The rule that an insured is not a debtor and the insurer is not a

[12] See Vance on Insurance, 3rd ed., 296 et seq. See also Paulin v. Insular Life Ass. Co. 47 O.G. 3012 (CA) (June 1951).
[13] G.R. No. 20552, May 20, 1966.

creditor still holds true, for it cannot be denied that the insurer cannot compel the insured to pay the premium in a life policy. It follows that a life insurance premium other than the first, is neither a debt nor an obligation.

Right of insured to rescind — amount of recovery in rescission —

In the same case of *Filipinas Compania de Seguros v. Nava,* the insured asked for the rescission of the contract due to the insurer's refusal to grant the loan applied for although this was expressly agreed upon in the policies. The Court granted the rescission citing section 69 of the Insurance Act,[14] and held that since the insurer had clearly violated the loan clause in the policies, the insured was entitled to rescind the contract. The case presented for the first time before the Supreme Court this issue: how much is an insured entitled to recover against the insurer when he sues for rescission due to the insurer's breach of contract? The insurers insisted that the insured was entitled only to the cash surrender value of the policies on the theory that he had fully enjoyed the protection of the insurance during the period of the policies to the extent that, during that time, the insurers had assumed the risk of the death of the insured. Although this theory seemed plausible, the Supreme Court brushed it aside and held that since the Insurance Act has no provisions regarding the amount of recovery, the rule found in the Civil Code should apply, and under the Civil Code,[15] rescission makes necessary the return of the things which were the subject matter of the contract. The Court also pointed out, to further support this conclusion, that the insurers had already derived material benefits from the use of the premiums paid by the insured during and after the last war, from which they must have realized huge profits, and for this reason, the insurers could not claim prejudice or unfairness if they were ordered to refund the premiums paid by the insured. The insured therefore was allowed to recover the full amount of the premiums paid by him up to the filing of the action.

This decision seems reasonable under the circumstances, specially if we take into account the prohibitive rate of premiums which the insured, at his present age, would have to pay if he takes a new policy with another insurer.

[14] Sec. 69, "The violation of a material warranty, or other material provision of a policy; on the part of either party thereto, entitles the other to rescind."

[15] Art. 1385 C.C. "Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; . . ."

Benefits under the Social Security System — disqualification of beneficiary —

In *Social Security System v. Davac,*[16] the beneficiary designated by the employee-member of the Social Security System was his "wife, Candelaria Davac". After his death, however, it was discovered that he had contracted two marriages. Both spouses claimed the benefits under the System. Candelaria Davac, the designated beneficiary, was the second wife, and therefore the marriage to her was illegal and void. The first and real wife claimed that although Candelaria was named beneficiary, she was disqualified to be so designated because under the Civil Code persons who are guilty of concubinage cannot donate to or name each other as beneficiary under a life insurance policy.[17] Without deciding whether the naming of a beneficiary under the Social Security System is a donation or creates a situation analogous to the relation of an insured and beneficiary under a life insurance policy, the Court stated that the disqualification in the Civil Code cannot apply to Candelaria because she was not guilty of concubinage, there being no proof that she had knowledge of the previous marriage of her husband. She was therefore not disqualified to be the beneficiary of the deceased member.

The first wife also claimed that the benefits accruing upon the death of her husband formed part of the conjugal property and therefore not all of the amount thereof could go to the designated beneficiary. She also argued that her child by the deceased should inherit part of the benefits under the laws of succession. The Supreme Court disregarded both contentions and held that the benefits accruing from membership in the Social Security System do not form part of the conjugal property nor of the estate of the deceased member since they are disbursed from a public special fund created by Congress to provide social security to the workingman. The laws of succession therefore cannot apply, unless there is no designated beneficiary or when the designation is void. The designation of the beneficiary being valid and binding, all the benefits went to her.

CORPORATION LAW

Issuance of certificate of stock —

In *British American Engineering Corporation v. Alto Surety Ins. Co., Inc.,*[18] the plaintiff sued to compel the defendant to issue cer-

[16] G.R. No. 21642, July 30, 1966.
[17] See Civil Code, Arts 2012 and 739.
[18] G.R. No. 17009, Sept. 13, 1966.

tificates of stock in its favor for 2,500 shares. It appeared that plaintiff and the spouses Quirino had agreed on a joint venture whereby plaintiff allegedly gave to Mrs. Quirino the amount of ₱250,000. Plaintiff claimed that this amount was understood to be in payment of 2,500 shares of stock in the defendant corporation in whose name the venture would be undertaken. The defendant corporation, having the Quirino spouses among its officers, issued 2,500 shares of stock to the latter and credited the ₱250,000 allegedly given by the plaintiff to the full payment of the subscription price of said shares. Certificates of stocks were issued in the spouses' names. The lower court, after hearing, rendered judgment ordering defendant corporation to issue a certificate of stock for 2,500 shares in plaintiff's name. On appeal, the Supreme Court reversed the judgment stating that if it were carried out, an anomalous and illegal situation would result. The 2,500 shares in the Quirinos' names would remain outstanding because the judgment did not provide for their cancellation. In addition, another 2,500 shares would be in the name of the plaintiff — making a total of 5000 shares with a total par value of ₱500,000, while what had actually been paid was only one half of said amount. To the extent not covered by any valuable consideration, the shares became "watered stock." Plaintiff's cause of action, according to the Court, was against the parties in whose names the certificates were issued. Since the Quirinos were not parties to the action in their personal capacities, the action was dismissed. It would seem therefore that the proper course of action was to include the Quirinos as party defendants.

Appointment of receiver is discretionary with court —

The case of *Chase v. Court of First Instance of Manila,*[19] reiterates the well-settled rule in this jurisdiction that where corporate directors are guilty of breach of trust and intracorporate remedy is futile, the minority stockholder may resort to the courts for appropriate relief and incidentally, ask for the appointment of a receiver.[20] The appointment of such receiver however is a matter addressed to the sound discretion of the court, and such discretion should be exercised with great caution and only when the necessity therefore is clear.[21] The case of *Chase* was a derivative suit wherein the directors of the AMPARTS corporation were found guilty of gross mismanagement and were ordered to pay damages to the corporation. Chase, a minority stockholder, filed a petition for the appointment

[19] G.R. No. 20457, Oct. 29, 1966.
[20] See Reyes v. Tan G.R. 16982, Sept. 30, 1961.
[21] Chase v. CFI of Manila, *supra*. See also China Banking Corp. v. Michelin & Cie, 58 Phil. 261 (1933).

of a receiver to take over the corporate assets until the full amount of the judgment was paid or until the corporation was dissolved. Instead of appointing a receiver, the lower court, after hearing, issued an order granting Chase free access to the records of the corporation and directing that all management decisions be made known to Chase and if he objected thereto, that they be referred to the court for resolution, pending which the management decision shall not be enforced. The petitioner appealed and alleged abuse of court's discretion in the issuance of the order, and insisted that a receiver be appointed. Applying the well-settled rule quoted above, the Supreme Court stated that upon the facts of the case, and considering the precautionary measures adopted by the respondent court for the protection of the petitioners' rights and interest in the corporation, the lower court cannot be said to have committed a grave abuse of discretion in issuing the order complained of instead of appointing a receiver.

When service of lawyer binding; waiver of personal jurisdiction —

Under section 13, Rule 14 of the Rules of Court, service upon a private domestic corporation may be made on the president, manager. secretary, cashier, agent, or any of its directors. In the tax case of *Republic v. Ker & Co. Ltd.*,[22] summons was served not on the defendant corporation or any of its officers but on its lawyers. The defendant taxpayer moved to dismiss the complaint on the ground that since the summons was not properly served, the court had not acquired jurisdiction over its person and that the plaintiff's cause of action had prescribed. It appeared that the lawyers on whom the summons was served acted as counsel for the corporation when the tax case was in its administrative stage. They also represented the corporation before the Court of Tax Appeals. In all correspondences with the Bureau of Internal Revenue, the lawyers made the reply. In view of these, the Supreme Court held that the lawyers were "agents" of the corporation within the meaning of the Rules of Court, and therefore the service on them was sufficient to confer jurisdiction on the person of the corporation. The Court further held that the defendant's prayer for dismissal on the ground of prescription constituted voluntary appearance and cured the defects of summons, if any.[23] A defendant, according to the Court, cannot be permitted to speculate upon the judgment of the court by objecting to the court's jurisdiction over its person if the judgment is adverse

[22] G.R. No. 21609, Sept. 29, 1966.

[23] The Court cited Infante v. Toledo 44 Phil. 834 (1918) and Ramos v. Mañalac 89 Phil. 270 (1951).

to it, and acceding to jurisdiction over its person if and when the judgment sustains its defense.

Foreign corporation's right to sue: requirement of pleading —

Prior to the revision of the Rules of Court, a complaint did not need to aver the capacity of the party to sue.[24] In the early case of *Marshall-Wells Co. v. Henry W. Elser & Co.*,[25] the lower court dismissed the complaint filed by a foreign corporation because it did not show that plaintiff had complied with Philippine law by procuring a license to do business here. On appeal, the Supreme Court set aside the order of dismissal and said:

> "The noncompliance of a foreign corporation with the statute may be pleaded as an affirmative defense. Thereafter, it must appear from the evidence, first, that the plaintiff is a foreign corporation, second, that it is doing business in the Philippines, and third, that it has not obtained the proper license as provided by statute."

The above ruling was impliedly repudiated in the 1966 case of *Atlantic Mutual Insurance Company v. Cebu Stevedoring Co., Inc.*,[26] where the issue raised was whether a foreign corporation's complaint should be dismissed because it failed to aver compliance with section 69 of the Corporation Law, i. e., the securing of a license to do business in the Philippines. When the plaintiff corporation refused to amend its complaint, the lower court dismissed the case. On appeal, the foreign corporation claimed that the lower court's ruling was wrong because it implied that without a license a foreign corporation may not sue in our courts, and that this is not true because if a foreign corporation is not doing business here, it is not barred from suing on an isolated transaction, even if it has no license. The Supreme Court observed that although it is true that a foreign corporation not doing business here may sue in an isolated transaction, even without a license, there are certain requirements of pleading and procedure which must be present. The complaint in this case merely averred that the plaintiff is a foreign corporation existing under American law. The averment, according to the Court, conjures two alternative possibilities: either it is engaged in business in the Philippines or it is not so engaged. If the first, it must have been duly licensed in order to maintain this suit; if the second, if the

[24] See sec. 11, Rule 15 of the old Rules of Court. The revised rule found in Sec. 4, Rule 8 provides: "*Capacity.* — Facts showing the capacity of a party to sue or to be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. ..."

[25] 46 Phil. 70 (1924).

[26] G.R. No. 18961, Aug. 31, 1966.

transaction sued upon is singular and isolated, no such license is required. In either case, the Court pointed, the qualifying circumstance is an essential part of the element of plaintiff's capacity to sue and must be affirmatively pleaded. The Court was of the opinion that although under the old Rules of Court (which was applicable to the case at bar), the averment of capacity to sue was unnecessary, such rule could not apply to all situations under all circumstances. The Court said:

> "Where the law denies to a foreign corporation the right to maintain suit unless it has previously complied with a certain requirement, then such compliance, or the fact that the suing corporation is exempt therefrom, becomes a necessary averment in the complaint. These are matters peculiarly within the knowledge of appellants alone, and it would be unfair to impose upon the defendants the burden of ascertaining and proving the contrary. It is enough that foreign corporations are allowed by law to seek redress in our courts under certain conditions: the interpretation of the law should not go so far as to include, in effect, an inference that those conditions have been met from the mere fact that the party suing is a foreign corporation."

The Court finally noted that it was in the "light of these and other considerations, that this Court has seen fit to amend the former rule." In view of this case and the new Rules of Court, therefore, capacity of a foreign corporation to sue must be averred. This would include an averment of an existing license to do business here or of exemption from such requirement.

The San Jose Petroleum case —

Easily the most significant of the 1966 decisions of the Supreme Court was the case of *Palting v. San Jose Petroleum Co.*[27] Its significance lies mainly in its constitutional aspect which is ably discussed elsewhere in this issue. There are however other less important points in the case which merit some comments and observations.

The respondent foreign corporation applied for the registration and license to sell its securities. The proceeds from the sale of the securities were intended to be used to finance a domestic mining corporation, the San Jose Oil Co., Inc. One of the grounds for the petitioner's opposition to this application was that under section 13 of the Corporation Law, a mining corporation is prohibited to be in anywise interested in another mining corporation. The petitioner claimed that even assuming that the respondent corporation could be favorably covered by the Laurel-Langley agreement, still since

[27] G.R. No. 14441, Dec. 17, 1966.

the above prohibition applies to domestic and Filipino-owned corporations, it must with the same force and effect be applied to American-owned corporations. The Supreme Court however avoided the issue on the ground that there was no need to decide said question since the Securities and Exchange Commission had found that the principal activity of the respondent was limited to the financing and to the giving of technical assistance to San Jose Oil Co.

Even assuming however that the respondent was not a mining corporation, would not the prohibition in the same section of the Corporation Law to the effect that *no corporation* can own *more than* 15% of the outstanding stock of any mining corporation be pertinent to the case? It was admitted that the respondent corporation owned 90% of the outstanding capital stock of San Jose Oil, a mining corporation. Aside from the constitutional issue therefore, and to support its conclusion the more strongly, could not the Supreme Court have used this prohibition as another basis to set aside the order of registration and license to sell the securities in question? The petitioner, it is true, did not invoke this particular prohibition and it is unfortunate that the bar has been deprived, so to speak, of the opportunity to obtain a Supreme Court declaration as to whether or not this prohibition should apply with equal force to an American-owned corporation enjoying parity rights.

The Supreme Court also held in this case that the sale of San Jose's securities would work or tend to work fraud on Philippine investors and for this reason, among others, set aside the orders of the SEC allowing the registration and licensing of said securities. Aside from the lack of sufficient assets to back up the valuation of respondent's shares, the Court cited the following provisions in the respondent's Articles of Incorporation as additional reasons for setting aside the SEC order:

> "(1) The directors of the Company need not be shareholders;
> (2) that in the meetings of the board of directors, any director may be represented and may vote through a proxy who also need not be a director or stockholder; and
> (3) that no contract or transaction between the corporation and any other association or partnership will be affected, except in case of fraud, by the fact that any of the directors or officers of the corporation is interested in, or is a director or officer of, such association or partnership, and that no such contract or transaction of the corporation with any other person or persons, firm, association or partnership shall be affected by the fact that any director or officer of the corporation is a party to or has an interest in such contract or transaction, or has in any way connection with such other person or persons, firm, association or partnership;

and finally that all and any of the persons who may become director or officer of the corporation shall be relieved from all responsibility for which they may otherwise be liable by reason of any contract entered into with the corporation, whether it be for his benefit or for the benefit of any other persons, firm, association or partnership in which he may be interested."

The Court considered these provisions as in "direct opposition to our corporation law and corporate practices in this country. These provisions alone would outlaw any corporation locally organized or doing business in this jurisdiction".

As to provisions number 1 and 2 above, there can be no doubt that these are against the principles obtaining in this jurisdiction. Our Corporation Law requires that a director must own at least one share in the corporation.[28] A director is elected for his personal qualifications and he should therefore exercise his judgment and discretion personally. He must attend a directors' meeting personally and cannot act by proxy, whether said proxy be also a director or not.[29] On provision number 3 above, the Court made the following observation:

"The impact of these provisions upon the traditional fiduciary relationship between the directors and the stockholders of a corporation is too obvious to escape notice by those who are called upon to protect the interest of investors. The directors and officers of the company can do anything, short of actual fraud, with the affairs of the corporation even to benefit themselves directly or other persons or entities in which they are interested, and with immunity because of the advanced condonation or relief from responsibility by reason of such acts . . ."

Although this observation of the court is undoubtedly sound, it lends itself to certain implications which it may not have intended to make. Did the Court mean that a director may not at all deal with the corporation? Although the English rule is that he may not, the weight of American decisions allows him to do so provided that (a) there is a disinterested quorum and voting majority, and (b) the transaction is proven to be fair.[30] As noted by a well-known authority on Corporation law, "it has been found impractical to disqualify directors from any or all dealings with the corporation for fear of possible dishonesty or unfairness, when they may have the greatest interest in its welfare and may be willing to deal with it upon reasonable terms. The policy of facilitating business has pre-

[28] Sec. 30, Corp. Law.

[29] Perry v. Tuscaloosa Cotton-Seed Oil Mill Co., 93 Ala. 364, 9 So. 217 (1891); Dowdle v. Central Brick Co., 200 Ind. 242, 189 NE 145 (1934).

[30] See Ballantine on Corporations, Rev. Ed., 171-172.

vailed over the policy of removal of temptation."[31] This American view has been followed in this jurisdiction for as early as 1911, our Supreme Court, in the case of *Mead v. McCullough*,[32] stated:

> "While a corporation remains solvent, we can see no reason why a director or officer, by the authority of a majority of the stockholders or board of managers, may not deal with the corporation, loan it money or buy property from it, in like manner as a stranger.
>
> . . . a director or officer may in good faith and for an adequate consideration purchase from a majority of the directors or stockholders property even of an insolvent corporation, and sale thus made to him is valid and binding upon the minority."

It is submitted that the statements of the Court in the San Jose case, though quite broad in its terms, should not be taken as a repudiation of the ruling in the Mead case, because, as already pointed out, the rule grew out of business necessity.

As a final reason for holding that the sale of the securities would tend to work a fraud on Philippine investors, the Supreme Court questioned the voting trust agreement entered into between the only stockholder of the San Jose Petroleum with two trustees. The provisions of said agreement which the Court seemed to have considered as contrary to Philippine legal principles are:

> "(a) At all elections of directors, the Trustees will designate a suitable proxy or proxies to vote for the election of directors designated by the Trustees in their own discretion, having in mind the best interests of the holders of the voting trust certificates, it being understood that any and all of the Trustees shall be eligible for election as directors;
>
> (b) On any proposition for removal of a director, the Trustees shall designate a suitable proxy or proxies to vote for or against such proposition as the trustees in their own discretion may determine, having in mind the best interest of the holders of the voting trust certificates;
>
> (c) With respect to all other matters arising at any meeting of stockholders, the Trustees will instruct such proxy or proxies attending such meeting to vote the shares of stock held by the Trustees in accordance with the written instruction of each holder of voting trust certificates."

The Court also seemed to object to the fact that the voting trust agreement should be binding on all future holders of voting trust certificates. The provisions quoted above seem to be in accordance with law. Section 36 of the Corporation Law expressly allows a voting trust agreement and provides that the trustee may

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[31] *Ibid.*
[32] 21 Phil. 95 (1911).

vote in person or by proxy. The trustee, in law, becomes the owner. As such legal owner therefore, the trustee is entitled to exercise all the rights of ownership, subject to the terms of the trust agreement.[33] The law also expressly provides that any stockholder may transfer his shares to the trustee under the same terms of the voting trust agreement. This would certainly include both present and future stockholders, since the law makes no distinction. The only legal objection to the above trust agreement is that it was for a period of 10 years — 5 years longer than what is allowed by our law. But on this point the Court made no observation, perhaps because the agreement was to expire anyway a few months after the decision was promulgated.[34]

Considering these provisions of our Corporation Law, it is therefore not difficult to see why the SEC found no objection against the voting trust agreement and, at least from this standpoint, saw no reason to say that sale of the voting trust certificates as securities would "work or tend to work a fraud on Philippine investors", specially if we consider the condition imposed on the trustee to have in mind "the best interest of the holders of the voting trust certificates."

COMMON CARRIERS

Liability for negligence —

A common carrier is bound to exercise extraordinary diligence in transporting its passengers safely to their destination, and in the absence of proof to the contrary, the carrier is presumed negligent in case injury to or death of the passenger results. In *La Mallorca & Pampanga Bus Co., Inc. v. de Jesus,*[35] a passenger died in a collision which was due to the driver's loss of control of the wheel when the front tire of the carrier suddenly exploded. The tire was described by the driver as "not so very worn out." The evidence also showed that the inner tube of the tire was pressed between the inner circle of the wheel and the rim, which had slipped out of the wheel. The Supreme Court refused to entertain the defense of fortuitous event reasoning that the defect was easily discoverable, if the bus had been subjected to a more rigid check-up before it took to the road.

In *Laguna Tayabas Bus Co. v. Tiongson,*[36] the Supreme Court found that not only did the carrier fail to disprove the presumption

[33] 3 Fletcher, Encyclopedia on Corporation, 2873, Sec. 2092.
[34] It expired in April 7, 1967.
[35] G.R. No. 21486, May 14, 1966.
[36] G.R. No. 22143, April 30, 1966.

of negligence but that, on the contrary, its negligence had been established by more than mere preponderance of evidence. The petitioner's driver, though he was aware of a depression in the road since he had been travelling along the same route for a considerable time before the accident, failed to slow down when approaching it, and applied the brakes only when an on-coming vehicle was only ten meters away. The resulting collision caused the death of a passenger. The Court also found the testimony of petitioner's own chief clerk as showing that the company had not exercised due care in hiring the driver. It held that liability for breach of contract was therefore properly imposed by the lower court on the petitioner.

Last clear chance rule not applicable to contract of carriage —

The case of *Anuran v. Buño,*[37] involved a passenger jeepney which was parked negligently with a portion thereof occupying the road. It was hit from behind by a truck which was running at a high speed. A passenger of the jeepney died. The lower court as well as the Court of Appeals held that the negligence of the truck driver was the greater and the efficient cause of the collision, and applying the "last clear chance rule", absolved the negligent jeepney driver and the jeepney owner from all liability. On appeal, the Supreme Court reversed both courts and held that the jeepney owner and his driver must answer for the injury to its passengers because the carrier is presumed negligent unless it proves the exercise of extraordinary diligence. Here, the evidence even showed negligence of the jeepney driver. The "last clear chance rule" may apply between the owners and drivers of two colliding vehicles, but it cannot apply where a passenger demands responsibility from the carrier to enforce its contractual obligation. The owner and driver of the jeepney were therefore held solidarily liable with the owner and driver of the truck.

Nature of liability of owner and driver —

In *Viluan v. Court of Appeals,*[38] some of the carrier's passengers were killed and others injured due to an accident arising from the gross negligence of the driver. The lower court held the driver and the owner of the bus jointly and severally liable for damages. The Court of Appeals, however, although affirming the negligence of the driver, held that he could not be made jointly and severally liable with the owner because he was merely the latter's employee, and was in no way a party to the contract of carriage. In modifying

[37] G.R. No. 21353 & 21354, May 20, 1966.
[38] G.R. No. 21477-81, April 21, 1966.

the decision of the Court of Appeals, the Supreme Court stated that it should not make any difference that the liability of the bus owner springs from contract and that of the driver arises from quasidelict. The negligent driver as well as the owner should be jointly and severally liable for damages.[39]

Liability for acts of strangers. —

Under Article 1763 of the Civil Code, a common carrier is responsible for injuries to passengers on account of the willful act or negligence of other passengers or strangers, if the common carrier's employees through the exercise of diligence of a good father of a family could have prevented or stopped the act or omission. This provision was applied by the Supreme Court in the case of *Manila Railroad Co. v. Ballesteros.*[40] Here, the petitioner's driver stopped the bus to replace a defective spark plug. While thus engaged, an auditor assigned by the General Auditing Office to petitioner took the wheel. The petitioner's driver did not take the wheel back although the bus stopped on two occasions. An accident occurred due to the auditor's negligent driving. On a complaint filed against the petitioner by the injured passengers, the defense raised was that the auditor was not its employee, and therefore it could not be responsible for his negligence. The trial court held that the petitioner was liable. When it filed a petition for mandamus to compel the trial court to approve and certify its appeal, the Supreme Court denied the writ saying that the appeal would be frivolous because there could be no doubt as to petitioner's liability in view of the above-quoted provision of the Civil Code. The Supreme Court opined that the failure of the petitioner's driver to take back the wheel constituted "reckless imprudence and wanton injurious conduct on the part of the Manila Railroad Company's employees."

Duration of contract of carriage —

It is a well-settled rule that the relation of carrier and passenger does not cease at the moment the passenger alights from the carrier's vehicle at a place selected by the carrier at the point of destination, but continues until the passenger has had a reasonable time or opportunity to leave the carrier's premises. And what is a reasonable time or a reasonable delay within this rule is to be determined from all the circumstances.[41]

[39] The Court cited Gutierrez v. Gutierrez, 56 Phil. 177 (1931). Some members of the Court were of the view, however, that under the circumstances, their liability is on quasi-delict.
[40] G.R. No. 19161, April 29, 1966.
[41] Cited in La Mallorca, v. CA et. al., G.R. 20761, July 27, 1966.

The case of *La Mallorca v. Court of Appeal et al*[42] presents a new angle to the above rule. The passengers involved in this case consisted of a family of five — father, mother and three small children. At their destination, the driver stopped the bus, without however shutting off the motor, and allowed the passengers to alight. The father took his family to a shaded spot on the side of the road about four or five meters away from the bus and went back to get a "bayong" which was still in the bus. Unknown to him, his four-year old daughter followed him. While he was on the running board of the bus waiting for the conductor to hand him his "bayong", the bus suddenly started moving forward. The father immediately jumped from the running board without getting his "bayong". His child was however hit and killed by the bus. From the decision of the trial court holding the petitioner guilty of breach of contract of carriage, the carrier appealed to the Court of Appeals which upheld its contention that the child was no longer a passenger at the time of the accident, but holding the driver liable on quasi-delict. A petition for review was brought before the Supreme Court. This Court first noted that there could be no controversy that as far as the father was concerned, when he returned to the bus for his "bayong", the relation of carrier and passenger between him and the petitioner remained subsisting, for such relation does not cease where the passenger aids the carrier's servant or employee in removing the baggage from the bus. The more vexing question before the Court was whether as to the child, who had already been led by the father to a place about five meters from the bus, the liability of the carrier for her safety under the contract of carriage also persisted. In holding that such liability did persist, the Court stated:

> "In the circumstances, it cannot be claimed that the carrier's agent had exercised the 'utmost diligence' of a 'very cautious person' required by Article 1755 of the Civil Code to be observed by a common carrier. In the first place, the driver, although stopping the bus, nevertheless did not put off the engine. Secondly, he started to run the bus even before the bus conductor gave him the signal to go and while the latter was still unloading part of the baggage of the pasengers. The presence of said passengers near the bus was not unreasonable and they are therefore to be considered still as passengers of the carrier, entitled to protection under the contract of carriage."

And the Court went on to say that even assuming *arguendo* that the contract of carriage had already terminated, the petitioner could be held liable on quasi-delict for the negligence of its driver.

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[42] *Ibid.*

Moral and exemplary damages, when recoverable —

Moral damages are allowable where death of a passenger occurs as a result of the negligence of the common carrier.[43] Where no death results, but merely injury, moral damages cannot be recovered.[44]

Where however the driver is guilty of *bad faith,* moral damages are allowable whether or not death results from the breach of contract. The application of this principle is aptly illustrated in two cases.

In *Lopez v. Pan American World Airways,*[45] the plaintiff and three other members of his family bought first class plane tickets from defendant from Tokyo to San Francisco. Without their knowledge, their reservations were cancelled by defendant's San Francisco office due to some mistake. In spite of repeated requests of the local office to reinstate plaintiff's seats, no reinstatement was made by the San Francisco office because all seats for that date had been filled up. This information was intentionally kept from the plaintiffs, who, when already on the plane, were forced to sit in the tourist class and suffer its discomforts and inconveniences despite their having paid for first class accommodations. In upholding the lower court's decision to grant moral damages, the Supreme Court observed that the evidence clearly showed that the conduct of the defendant's employees was characterized by bad faith, or at least by negligence so gross and reckless as to amount to bad faith. The Court also increased the moral damages awarded by the lower court considering the official, social, political and financial standing of the plaintiffs.

A similar decision was arrived at by the Supreme Court in the case of *Air France v. Carrascoso.*[46] The passenger in this case had bought a first class ticket from the airline for a trip from Manila to Rome. At Bangkok, he was forced to vacate his first class seat in favor of a "white man", who according to the airline's manager had a better right to the seat. Carrascoso was therefore sent against his will and only after a heated argument, to the tourist class. Although the airline tried to prove that Carrascoso knew that his first class seat was subject to confirmation in Hongkong, the Court held that oral evidence could not prevail over the written evidence consisting of the ticket which was issued without any reservation whatsoever.

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[43] La Mallorca v. de Jesus, *supra,* and Laguna Tayabas Bus Co. v. Tiongson, *supra.*

[44] Viluan v. CA, *supra.*

[45] G.R. No. 22415, March 30, 1966.

[46] G.R. No. 21438, Sept. 28, 1966.

In upholding the Court of Appeals' award of moral and exemplary damages, the Supreme Court said:

> ". . . . The Manager not only prevented Carrascoso from enjoying his right to a first class seat; worse, he imposed his arbitrary will; he forcibly ejected him from his seat; made him suffer the humiliation of having to go to the tourist class compartment — just to give way to another passenger whose right thereto has not been established. Certainly this is bad faith. Unless, of course, bad faith has assumed a meaning different from what is understood in law. For, 'bad faith' contemplates a 'state of mind affirmatively operating with furtive design or with some motive of self-interest or ill-will or for ulterior purpose.'"

The Court further observed:

> "Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, that any rule or discourteous conduct on the part of the employees towards a passenger gives the latter an action for damages against the carriers."

The Court therefore granted not only moral damages but also exemplary damages because the defendant not only acted in bad faith but also in a "wanton, fraudulent, reckless, oppressive or malevolent manner."

Limitation of liability for carriage of goods —

Although a common carrier cannot in any way limit its liability to passengers, it may however make such a limitation on liability for the loss of goods it carries, as long as the limitation is "reasonable and just under the circumstances and has been fairly and freely agreed upon.[47]

The case of *Pamanand Shewaram v. Philippine Airlines Inc.*[48] involved a passenger's suitcase which was wrongly tagged by defendant's employees. As a consequence of this negligence, the plaintiff suffered the loss of his camera and a transistor radio which were inside the suitcase. The lower court held the carrier liable for ₱352 despite defendant's contention that it had limited its liability to ₱150 as evidenced by the provision appearing on the back of the ticket stub issued to plaintiff. On appeal, the Supreme Court upheld the lower court and held that the limitation was not applicable to the plaintiff. The Court pointed out that the requirements of Article

[47] Civil Code, Art 1750.
[48] G.R. No. 20099, July 7, 1966.

1750 quoted above must be met. Here, such requirements were not met. The Court observed that the provision on the back of the ticket stub were in such small letters that they were hard to read, so that this could not warrant a conclusion that the plaintiff was aware of the provision such that he had "fairly and freely agreed" to it. Moreover, the plaintiff did not sign his ticket. Under these circumstances, the Court held that the passenger could not be bound by the conditions of carriage found at the back of the ticket stub.

The Court further reiterated the rule that a carrier cannot limit its liability for injury to or loss of goods shipped where such injury or loss was caused by its own *negligence*. The natural effect of such a limitation, according to the Court, is to "induce want of care on the part of the carrier in the performance of its duty. The shipper and the common carrier are not on equal terms; the shipper must send his freight by the common carrier, or not at all; he is therefore entirely at the mercy of the carrier unless protected by the higher power of the law against being forced into contracts limiting the carrier's liability." Such contracts, concluded the Court, are wanting in the element of voluntary assent.[49]

ADMIRALTY

Exclusive jurisdiction of CFI —

Under our law, the Court of First Instance has exclusive original jurisdiction over all cases in admiralty regardless of the amount involved.[50]

The case of *Negre v. Cabahug Shipping Co.*[51] involved a contract to ship plaintiff's cargo on board defendant's motor ship bound for Manila from Cebu. Due to defendant's gross negligence, the boat became flooded with sea water, totally destroying the said cargo. When the plaintiff brought action before the Court of First Instance of Cebu, defendant admitted its liability in the amount of ₱3,774.90, but moved to dismiss the complaint on the ground that the case, involving less than ₱5000 was not within the original jurisdiction of the CFI but of the municipal court. On appeal from the lower court's dismissal of the case, the Supreme Court held that since the contract related to the trade and business of the sea, the action was

[49] The Court cited Juan Ysmael & Co. v. Gabino Barretto & Co. 51 Phil. 90 (1927).

[50] Under Sec. 44 of RA 296 as amended (Judiciary Act), the CFI has original jurisdiction: "(d) In all actions in admiralty and maritime jurisdiction irrespective of the value of the property in controversy or the amount of the demand."

[51] G.R. No. 19609, April 29, 1966.

one in admiralty and was therefore within the original jurisdiction of the CFI irrespective of the amount involved.

This exclusive jurisdiction of the CFI in admiralty cases is not affected by the fact that the complaint states alternative causes of action, one of which is within the exclusive original jurisdiction of the municipal court. Thus, in three 1966 cases,[52] all involving less than ₱5000, the shippers, not knowing whether the loss of their cargo occurred while in transit or in the arrastre contractor's custody, filed actions against both the maritime carriers and the arrastre contractors in the alternative. The Supreme Court upheld the jurisdiction of the CFI. Since the causes of action against both defendants arose out of the same transactions, they were properly joined,[53] and since said transactions were all in admiralty, the complaints were properly brought before the CFI.[54] Nor would the subsequent dismissal of the case against the maritime carrier deprive the CFI of the jurisdiction which it had already acquired over the case when the complaint was filed, since it is a well-settled rule that jurisdiction once acquired is not lost but continues until the case is finally terminated.[55]

PUBLIC SERVICE ACT

What water transportation exempt from certificate of public convenience —

Under section 13 (a) of the Public Service Act, "steamboats, motorship, and steamship lines" are exempt from obtaining a certificate of public convenience from the Public Service Commission. Whether this exemption includes motorboat services for passenger and freight on navigable inland rivers was the issue raised in *Sorita v. PSC.*[56] In holding such motorboats *not* exempt, the Court pointed out that although section 13a speaks alone of "steamboats, motorship and steamship lines," section 13b includes in the definition of "public service" the following: "steamboat or steamship line, pontines, ferries and water craft." The Court believed that evidently the law contemplates to exempt from the requisite certificate, not every species or kind of water vessel, but only such as would properly fall within

[52] Switzerland General Ins. Co. Ltd. v. Java Pacific & Hoegh Lines et al. G.R. No. 21760, April 30, 1966; Rizal Surety & Ins. Co. v. Manila Railroad et. al. G.R. No. 20875, April 30, 1966 and Insurance Co. of North America v. CF Sharp. & Co., Inc. G.R. No. 22974, Oct. 28, 1966.

[53] The Court cited Sec. 5, Rule 2 of the Rules of Court.

[54] The Court cited International Harvester Co. v. Aragon 84 Phil. 363 (1949).

[55] Rizal Surety & Ins. Co. v. MRR et. al., *supra;* Insurance Co. of North America v. United States Lines et. al., G.R. No. 21021, May 27, 1966.

[56] G.R. No. 20965, Oct. 29, 1966.

the class of "steamships, motorships and steamship lines." The Court distinguished between "pontines, ferries and water crafts" on the one hand, and "steamboats, motorships and steamship lines" on the other. The former usually apply to small vessels, while the latter to larger ones. Considering this distinction, the Court concluded that motorboats and water crafts intended for and actually devoted to inter-municipal transportation service, plying on inland water routes like municipal rivers and channels, must be set apart from the vehicles specified in section 13a which by their size, nature and purpose, are incapable of navigating on municipal rivers.

Public interest and convenience as first consideration —

In *Valle Bros. Inc. v. PSC,*[57] the PSC granted an application for a certificate of public convenience to operate twelve auto trucks on the Taguig-Divisoria line via Makati. It appeared however that the PSC had previously issued a memorandum order which provided: "Until further orders, no application proposing the operation of new TPU, TH, Taxi, G, PU and AC services within the City of Manila and its environs shall be accepted for docketing in the Commission." The oppositor claimed, among other things, that in view of this order, the PSC could not grant the certificate applied for. In brushing aside this contention, the Supreme Court held that in the Commission's exercise of authority, the first consideration is and should always be public interest and convenience. In view of the PSC's positive finding of public need for the services applied for, the Court believed that its decision should be sustained because between the public interest and an administrative rule of the Commission, public welfare and convenience deserve preference.

Justification for increase of rates — the MERALCO case —

Sometime in 1964, the MERALCO filed a petition within the PSC to increase its rates "for the purpose of providing a fair return on the present value of its property now devoted to public service and of attracting foreign capital with which to expand its facilities in order to meet the requirements of its present and future customers." Several oppositions were filed, among them those of the Republic of the Philippines and the City of Manila.

After hearing, the PSC rendered a decision increasing the rates, but not as high as what the MERALCO applied for. The increase was to be effective from the date of the decision, but subject to the condition that the increase would go to the acquisition of equipment

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[57] G.R. No. 18694, Jan. 31, 1966.

and supplies for the improvement and expansion of its present facilities. The MERALCO and the oppositors, atfer their motions for reconsideration had been denied, appealed to the Supreme Court.[58] One of the issues raised was whether rate increases were proper considering the circumstances obtaining in the case. The oppositors claimed that such increases were not justified because the profits which the MERALCO had made constituted already a fair and reasonable return of their capital.

The Supreme Court recognized the need and wisdom of the increase of rates. It quoted with approval from the PSC decision:

> ". . . . . The Commission would like to avoid a repetition of the state of affairs of PLDT: the unpleasant deterioration of the PLDT's public service, its apparent failure to cope with the situation and to satisfy the demands of the public since 1959 earlier should not be repeated. The situation was so alarming, that in 1963, the PSC had no other alternative but to accede to and approve a 47% rate increase for commercial and 40% increase for residential telephones, over and above the rates already increased by 50% since 1950 for the purpose of enabling the PLDT to obatin a large foreign loan which it could not obtain locally in order to prosecute an urgently needed reconstruction and expansion program to improve the service and to meet demands of the public. The same thing will happen to Meralco's service a few years from now, unless some bold step is taken to meet the demands of public service. It is therefore our considered opinion that it is better to approve now a modest increase . . . . than to have to approve later on a 50% increase plus another 40% and 47% increase, as it happened with the PLDT, with the added advantage that the satisfactory and adequate service rendered by MERALCO today will not be interrupted . . . . ."

In view of the above observations of the PSC, the Supreme Court felt that it was imperative, not only that measures be taken to offset the effects of the wear and tear upon MERALCO's lines, equipment and other facilities and to avoid a deterioration of the adequate and satisfactory services it has heretofore rendered, but also, that additional and improved equipment and facilities be acquired, installed and used to meet the ever growing demands for electricity in all fields of endeavor. These measures, the Court admitted, represent a financial outlay of such magnitude that the MERALCO was incapable of making with its existing resources. Although it could raise the necessary funds by increasing capitalization or through loans, the Court believed that the first alternative is fraught with

[58] MERALCO v. PSC G.R. No. 24762; Rosal v. MERALCO G.R. No. 24841; Republic of the Phil. v. PSC & MERALCO, G.R. No. 24854 and City of Manila v. PSC & MERALCO, G.R. No. 24872, all prom. on Nov. 14, 1966.

danger — "which is clear and present, owing to the scarcity and timidity of local capital — that foreigners may eventually, if not surely, control an industry so vital to our economy and national security." The only alternative left therefore was, according to the Court, to secure foreign loans. And the Court observed that foreign capitalists would not extend their credit without a reasonable assurance that the borrower is financially able to comply with its obligations. The revenues of the MERALCO must therefore be such as to justify the expectation that it could and would reasonably meet said obligations. And such revenues depend upon its rate schedules — hence the need for increasing them.

Another important issue invloved in the case was: what is the fair rate of return or profit upon which the schedule of rates chargeable by the MERALCO should be based? The PSC fixed it at 12% of the present value of the MERALCO assets devoted to public service. The oppositors assailed this conclusion claiming that 12% was too high a rate of earning. Upholding the PSC, the Supreme Court stated:

> ". . . . In the Philippines, our decisions have consistently adopted the 12% rate for public utilities and the PSC has done no more than adhere to the established jurisprudence thereon. Indeed, the GAO report concedes that 12% is the fair rate of return for the MERALCO. This is not the proper occasion to inquire into the wisdom of such jurisprudence, although it is a matter of common knowledge that the prevailing rates of interest on loans in the Philippines are generally higher than those charged in the United States. The fact is that, in view of this circumstance, *nobody would lend the necessary funds to the MERALCO, if its returns were fixed at a lower rate. The reason is obvious*: capitalists would prefer to lend their resources to *other* public utilities, because the latter would, generally, be in a better position to pay a higher rate of interest and offer a greater assurance of stability and capacity to meet its obligations, all other things being equal.
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> "Then also, the interest due to the lenders would have to be paid by the MERALCO *out of its net earnings.* As a consequence, the same would have to be somewhat higher than otherwise, in order that the borrower could reasonably warrant to the lender its (borrower's) ability to pay the debt, and *still retain a margin of earnings sufficient to encourage or justify its* (bororwers') investment in the enterprise. Otherwise, the stockholders of the public utility would prefer, either to *withdraw* their investment and shift the same to *another* more profitable venture, or to *refrain,* at least for the time being, from embarking on a program of replacement of its old lines, installations, equipment and other facilities, as well as of expansion and improvement of his services. In either case, *the public would suffer thereby*".

A third issue involved the basis upon which the rate of earnings allowable to the MERALCO should be computed. The Supreme Court refused to use the "historical cost" formula insisted by the oppositors and upheld the PSC's adoption of the present or market value theory on the ground that it was in consonance with the practice consistently adhered to in this jurisdiction and upheld in an uninterrupted line of decisions of the Court,[59] and borne out by the weight of authority in other jurisdictions.[60]

"Colorum" operators: —

Although previous unauthorized operation of public utilities should not be countenanced and thus should be a bar to a subsequent application for a certificate of public convenience to operate said utilities, there may be circumstances under which the PSC may disregard this fact and authorize the issuance of a certificate. Such circumstances were found to be present in the case of *Mandaluyong Bus Co., Inc. et al. v. Enrique.*[61] This was a petition to review a PSC decision granting the respondent a certificate to operate eight jeepneys in Pasig. The PSC found that there was a real public need for additional jeepneys on the line applied for. The petitioners claimed that the certificate should be denied because the respondent had already been operating four jeepneys on the line without first obtaining a certificate. The PSC found however that due to the collapse of certain bridge in Pasig and the closure to vehicular traffic of another bridge, a great number of commuters found themselves stranded. These were mostly of the laboring class. This induced the "colorum" operation of about 30 jeepneys to ease the situation. The municipality of Pasig took stock of the situation and offered direct help to the unlicensed operators to procure approval of their certificates of public convenience. The respondent filed his application for a certificate on the following day.

In upholding the order granting the certificate, the Supreme Court said that stern necessity should take respondent's case out of the rule which normally should ban approval of his application. The Court believed that respondent's operation was in good faith and was "in response to a pressing need. At least respondent exhibited no willful disregard of the law", since he promptly filed his

[59] Court cited Ynchausti v. PSC 42 Phil. 621 (1922) Metropolitan Water District v. PSC, 58 Phil. 397 (1933). Mun. of Pagsanjan v. Cacho, G.R. No. 36544 (1933); Philippine Railway v. Asturias Sugar Central 72 Phil. 454 (1941) and Halili v. Ice & Cold Storage 77 Phil. 823 (1947).

[60] Court quoted from Guiding Principles of Public Service Regulation, by Henry C. Spur, 1924 ed., Vol. 1, p. 222.

[61] G.R. No. 21964, Oct. 19, 1966.

application. The Court considered the interests of the commuters paramount and felt that the respondent's application should not be turned down on this score.

Operation of ice plant —

In *Valenzuela v. Dupaya*,[62] an application to establish and operate an ice plant in Lal-lo, Cagayan was filed. The petitioner opposed the application on the ground that her ice plant in Aparri produced more than sufficient ice to supply the municipalities where she was authorized to distribute, including some towns in the application. The PSC granted the application on the strength of the evidence to the effect that the petitioner did not distribute ice outside Aparri, so that the people in other towns had to proceed to Aparri to get ice. The Supreme Court upheld the Commission's decision and said that no evidence was necessary to show that an ice plant in the locality is much more advantageous to the general public as to facility in acquiring the commodity.

Jurisdiction of the PSC —

In the case of *Batangas Laguna Tayabas Bus Co. v. PSC*,[63] an agreement between the Eastern Tayabas Bus Co. and the Laguna Tayabas Bus Co. was entered into by virtue of which the former leased to the latter for five years, its lines and equipment authorized under various certificates of public convenience. The PSC had approved the lease. Subsequently, the Laguna Tayabas Bus Co. merged with the Batangas Transportation Co. and the lease was renewed with the new corporation — the Batangas Laguna Tayabas Bus Co. (BLTB). This was also approved by the PSC. Eight months thereafter, the Eastern Tayabas Bus Co. wrote the BLTB cancelling the lease under a provision of the lease agreement allowing a termination, after a 60-day notice, for specified reasons. The Eastern Tayabas Bus Co. filed an application with the PSC stating the termination and asking that all lines and additional trips acquired in its name by the BLTB in the territory of the applicant be returned to the latter. The BLTB filed a motion to dismiss the application for lack of jurisdiction but this was denied. Subsequently, the BLTB filed a suit in the Court of First Instance of Laguna alleging, among other things, that the arbitration clause of the lease agreement be complied with, that a certain stipulation in the contract was void because it was fraudulently inserted, and seeking determination and liquidation of an alleged indebtedness of Eastern Tayabas under the lease agreement.

62 G.R. No. 16852, July 26, 1966.
63 G.R. No. 25994, Aug. 31, 1966 nos. 25994 26004, 26046.

The BLTB asked the PSC to stay the proceedings before it pending determination of the CFI suit and again this was denied. It therefore asked the Supreme Court to restrain the PSC from assuming jurisdiction over the Eastern Tayabas Bus Co.'s application. Since the main issue was whether the Eastern Tayabas had the right to terminate the lease by giving the 60-day notice and since the petitioner also invoked the arbitration clause, the Supreme Court held that the jurisdiction could not pertain to the PSC but to the ordinary courts. The Court noted that the issue involved the interpretation or proper construction of some provisions of a lease contract which had already been approved by the PSC. The Court distinguished this case from *Garcia v. Bonifacio,*[64] where the sale of the franchise involved had not yet been approved by the PSC. In such case, the parties asserting rights to said franchise by virtue of the sale had to go to the PSC and there, in seeking approval of the sale, could thresh out their respective claims to the franchise. In the case at bar, however, the resolution of the dispute as to the rights of the parties would no longer be a necessary incident in the exercise of the power to approve the lease agreement. The Supreme Court therefore restrained the PSC from assuming jurisdiction over the application until final judgment was rendered by the CFI of Laguna.

Bus ban ordinance valid —

On July 16, 1964, the City of Manila passed an ordinance banning provincial buses from the city.[65] Whether this ordinance was valid in view of the Public Service Act was the issue raised in *Lagman v. City of Manila.*[66] The petitioner had a certificate of public convenience to operate fifteen autotrucks with fixed routes from certain towns in Bulacan and Rizal to Manila and within Manila. Petitioner claimed that the bus ban ordinance was null and void on the ground, among others, that it in effect amends his certificate of public convenience which only the PSC can do under section 16m of the Public Service Act. He also contended that even assuming that the ordinance was valid, it is only the PSC which can require compliance with its provisions under section 17j of the said Act and since the implementation of the ordinance was without the sanction or approval of the PSC, its enforcement was unauthorized and illegal. The Supreme Court, in upholding the validity of the ordinance, held that although the PSC is empowered under section 16m of the Public Service Act to amend, modify or revoke a certificate of public convenience after

[64] 55 O.G. 6014 (Aug. 1958).

[65] Ordinance No. 4986 approved on July 13, 1964 by the City of Manila.

[66] G.R. No. 23305, June 30, 1966.

notice and hearing, yet there is nothing in the statute which vests power in the PSC to superintend, regulate or control the streets of the City of Manila or suspend its power to license or prohibit occupancy thereof. On the other hand, the Court noted, this right or authority is conferred on the City by its Charter.[67] The power vested in the PSC under section 16m is therefore subordinate to the authority granted to the City under section 18hh of its Charter. Since the Revised Charter of the City of Manila is a special law and of later enactment than the Public Service Act, in case of any conflict between them, the charter should prevail.

With respect to the contention that under section 17j of the Public Service Act, the city ordinance can only be enforced by the PSC, the Court considered this unsound. Said section refers not only to ordinances but also to "the laws of the Philippines," and it is plainly absurd, according to the Court, to assume that even laws relating to public services are to remain a dead letter without the *placet* of the PSC — and the section makes no distinction whatever between enforcement of laws and that of municipal ordinances. Furthermore, the Court stated, the very fact that the PSC is empowered, but not required, to demand compliance with opposite laws and ordinances proves that the Commission's powers are merely supplementary to those of state organs, such as the police, upon which the enforcement of laws primarily rests.

When case deemed "uncontested" —

When a case before the PSC is uncontested, the decision thereof may be made by only one Commissioner, except only as to the fixing of rates.[68] In *Valle Bros. Inc. v. PSC*,[69] one of the oppositors to the application lost his standing by default. The other oppositors withdrew their opposition after arriving at a compromise with the applicant. The Supreme Court considered this as an "uncontested" case and held that the decision signed by only one Commissioner was not irregular and was therefore valid and binding.

Findings of fact of PSC binding —

The oft-repeated rule that the findings of fact of the PSC are binding on the Supreme Court if the same is substantially supported by the evidence, was again applied in several cases.[70] These involved

[67] Sec. 18 hh of the Charter.
[68] Sec. 3, Public Service Act.
[69] G.R. No. 18694, Jan. 31, 1966.
[70] Del Pilar Transit Inc. v. Jose M. Silva, et. al., G.R. No. 21547, July 15, 1966; A. L. Ammen Tranps. Co., Inc. v. Froilan Japa, G.R. No. 19643, July 26, 1966; Bachrach Transp. Co., Inc. v. Gavino Camunayan G.R. No. 21168, Dec. 16, 1966; La Mallorca v. Mendiola G.R. No. 19558 April 29, 1966 and Mandaluyong Bus Co. v. Enrique, *supra*.

findings as to the financial capacity of the applicant[71] and as to the existence of public necessity and convenience.[72] In one of these cases, the Supreme Court was asked to examine "new evidence" to show financial inability of the applicant. In refusing to do so, the Supreme Court stated:

> " . . . . In reviewing a decision of the Public Service Commission, the Supreme Court is not required to examine proof *de novo*. Its only function is to determine whether there is sufficient evidence before the Commission upon which its decision can be reasonably based. Therefore "new" evidence cannot be considered, otherwise the Court would be evaluating evidence which the trial court did not have before it, and certainly the Court cannot declare the Commission had abused its discretion forfailing to evaluate this evidence which the PSC could not have foreseen."[73]

NEGOTIABLE INSTRUMENTS

Issuance of check without funds —

In the case of *Firestone Tire & Rubber Co. of the Philippines v. Ines Chaves & Co. Ltd.*,[74] the defendant issued a check in favor of the plaintiff as part payment of the purchase price of certain automobile tires. The drawee bank dishonored the check for lack of funds of the drawer. Upon a complaint filed by the payee of the check, the lower court after hearing, gave judgment for the plaintiff for the principal amount and in addition, required the defendant to pay 25% of the principal as attorney's fees, after finding the defendants guilty of bad faith in issuing the check. On appeal, the Supreme Court stated that if the plaintiff had agreed to accept the check knowing that it was not covered by adequate funds, no finding of bad faith could be made against the defendant.[75] But since there was nothing in the record to show that the plaintiff knew that there were no funds in the bank when it accepted the check, and on the contrary, by issuing the check, the defendant had in effect represented that there were funds in the bank for its payment, the Court

[71] A. L. Ammen Transp. Co. v. Japa, *supra;* Del Pilar Transit v. Silva, *supra* and Mandaluyong Bus Co. v. Enrique, *supra.*

[72] Del Pilar Transit v. Silva *supra;* Bachrach Transp. Co. v. Camunayan, *supra;* La Malorca v. Mendiola, *supra* and Mandaluyong Bus Co. v. Enrique, *supra.*

[73] A. L. Ammen Transp. Co. v. Japa, *supra.*

[74] G.R. No. 17106, Oct. 19, 1966.

[75] The Court cited cases to the effect that where a person issues a postdated check without funds and informs the payee thereof, he cannot be held guilty of estafa because there is no deceit. People v. Villapando 56 Phil. 31 (1931) and People v. Lilius 59 Phil. 339 (1933). Undei sec. 12 of the Negotiable Instruments Law, an instrument is not valid for the reason only that it is antedated or postdated, provided it is not done for an illegal purpose.

held that the finding of bad faith and the award of attorney's fees were warranted.

Signer of promissory note is personally liable —

Where a person signs a promissory note in his own name and makes no indication of any principal for whom he signs, he is liable personally, and no evidence to the contrary may be admitted to relieve him from personal liability.[76] This rule was applied in the case of *Granada v. Philippine National Bank.*[77] The petitioners claimed that they signed the promissory note subject of the complaint on behalf of their parents and that the money represented by the note was used for the benefit of their parents. Nothing however on the face of the note indicated their representative capacity, nor were their parents mentioned therein. It appeared, however, that the plaintiff PNB amended the original complaint by inserting therein, after the petitioner's names, the words "as representatives of their parents, Cristeta Granada and Matias Granada." Solely on this basis, the lower court held that the makers of the note not personally liable since they had acted merely as agents. The Supreme Court however reversed the lower court and held the makers personally liable, jointly and severally, to the PNB.

Interpretation of terms of promissory note —

The case of *Zaballero-Tady v. Rural Bank of Lucena Inc.*[78] involved the interpretation of the following in a promissory note:

> "In the event this note is placed in the hands of an attorney for collection, the makers and indorsers shall pay ten percent of the amount due on the note as attorney's fees."

The facts of the case showed that the maker of the promissory note died long before it became due and payable. The Rural Bank, which was the payee of the note, filed a claim in the interstate proceedings of the deceased's estate as ordered by the settlement court. In its claim, the bank charged 10% interest as attorney's fees, which the lower court approved. On appeal to the Supreme Court, the issue raised was whether or not a claim against the estate of a deceased, based on a promissory note not yet due, is equivalent to an action for collection under the terms of the note. In deciding that it was not, the Court said that the above provision of the note contemplated a situation wherein the "note becomes due and demandable and the debtor has refused to pay, or in case where demand is waived, the

[76] See Section 20, Negotiable Instruments Law.
[77] G.R. No. 20745, Sept. 2, 1966.
[78] G.R. No. 18089, Dec. 17, 1966.

debtor neglected to pay. For only then is there reason to place the note in the hands of an attorney 'for collection'." The claim filed in this case, according to the court, was merely to inform the estate of a contingent obligation that must be settled before distribution of the deecased's property to the heirs. If any attorney filed it for the Rural Bank, it was not, observed the Court, out of necessity but merely because the bank, undoubtedly retaining a legal counsel, would naturally assign the matter to the counsel as routine. The Court further stated that the words "to collect" when applied to indebtedness mean "that which may lawfully be done by the holder of the *obligation to secure its payment or liquidation after its maturity.*" The Court concluded, therefore, that attorney's fees could not be claimed under the promissory note for securing the services of an attorney to demand payment before it was due.

INSOLVENCY LAW

In the case of *De la Paz v. Garcia,*[79] Enrique Gatbonton and his wife sold three parcels of land on July 21, 1952 to Patria Anonas, with a right to repurchase it within a period of one year. The purchase price was ₱10,000. Before the year expired, i.e., on October 16, 1952, Anonas sold said lands to the petitioner, who was Gatbonton's brother-in-law, for ₱9,000. A month before that, Gatbonton sold his house, which was built on land belonging to another, also to the petitioner. On October 21, 1952, Gatbonton filed a petition for voluntary insolvency and Garcia, the respondent, was appointed assignee. Garcia filed a case against the petitioners to recover the lands as well as the house on the ground that the redemption by petitioner of the lands was for the benefit of the insolvent, thus preventing the land from coming into the hands of the assignee. The lower Court, as well as the Court of Appeals, found the sales fraudulent. Petitioners claimed that the contract cannot be rescinded unless the creditor can prove that he cannot recover from the insolvent in any other way, citing Article 1383 of the Civil Code. The Supreme Court however held that the Insolvency Law and not the Civil Code was applicable to the case. Section 70 of the Insolvency Law declares fraudulent any transfer made by the insolvent within thirty days from the filing of the petition for insolvency by or against him, unless the transfer is for valuable consideration and made in good faith. Considering the relationship of the insolvent to the petitioner, the time between the supposed purchase and the filing of the insolvency petition, the price at which the properties were sold, and

[79] G.R. No. 18500, Nov. 24, 1966.

other circumstances, the Court was convinced that the transfer was fraudulent.

With respect to the sale of the house, the evidence showed that although the sale took place on September 2, 1952, it was not registered until October 14, 1952. Since the petition for insolvency was filed on October 21, 1952, the date of registration came within the 30-day period within which all transfers made by the insolvent are deemed fraudulent. The petitioner claimed that the 30-day period should be counted, not from the date of registration, but from the date of sale. The Court however said that although it may be true that there is no registry of buildings apart from the lands on which they stand, and that there is no compulsion to register transactions relating to such buildings which do not belong to the owners of the land on which they stand, yet if the vendee registers the sale to him of the building, as the petitioner did, then he cannot escape the effects of the registration. Therefore, the Court held that the date of registration was correctly considered by the lower court in determining whether the sale was within the prohibition of the Insolvency Law.

TRADEMARKS

Test of Similarity —

In two separate decisions, the Supreme Court ruled that BUFFERIN and BIOFERIN,[80] and ATTUSSIN and PERTUSSIN,[81] do not appear to be similar to each other and that each of them could be registered as trademarks. The Court reiterated the rule that the test of similarity is not merely to take the words and compare their spelling and pronunciation, but that the two marks should be taken in their entirety, as they appear in the respective labels, in relation to the goods to which they are attached.[82] The Court said that inspection should be made from the viewpoint of a prospective buyer and in both cases the Court found that their appearance was so different from each other that there was no danger of confusing them.

In the second case,[83] the Court said the following:

> "In solution of trademark infringement problems, regard too should be given to the *class* of persons who buy the particular product and the circumstances ordinarily attendant to its acquisition. The medicinal preparations in question, are unlike articles

[80] Bristol Myers Co. v. Director of Patents, G.R. No. 21587, May 19, 1966

[81] Etepha v. Dir. of Patents, G.R. No. 20635, March 31, 1966.

[82] Court cited Mead Johnson Co. v. N.V.J. Van Dorp. Ltd. G.R. No 17501, April 27, 1963.

[83] Etepha v. Director, *supra*.

> of everyday use such as candies, ice cream, milk, soft drinks and the like which may be freely obtained by anyone, anytime, anywhere. Petitioner's and respondent's products are to be dispensed upon medical prescription, as their respective labels say. An intending buyer would have to go first to a doctor; he is given a prescription, he reads it, and he knows what he is to buy. He is not of the incautious, unwary, unobservant or unsuspecting type; he examines the product sold to him; he checks to find out whether it conforms to the medical prescription. The druggist also checks the medicine sold. The margin of error in the acquisition of one or the other is quite remote."

And even conceding the possibility of buying without prescription, the Court believed that when this happens, the buyer must be one thoroughly familiar with what he intends to get, else he would not have the temerity to ask for a medicine specifically needed to cure a given ailment. In which case, the Court concluded, the more improbable it would be to palm off one drug for the other.

In passing, the Court stated also that "Tussin" being merely a descriptive word, it was open to appropriation by everyone, and therefore cannot be registered as a trademark. However, it may be combined with another word or phrase and may thus become a proper subject to trademark.

In the case of *George W. Luft Co., Inc. v. Ngo Guan,*[84] the Court had to decide whether "Tango" was similar to "Tangee", a registered trademark of the petitioner. The Court affirmed the decision of the Director of Patents that the applicant's trademark may be registered. First of all, the petitioner failed to introduce in evidence a sample of its trademark, and since an essential factor in the determination of the issue was the general similarity *in the appearance* of the trademarks in question, the Court could not have any basis for refusing the registration applied for. Furthermore, the Court pointed out, "Tango" is used by Ngo Guan for no other product than hair pomade, in which the petitioner did not deal.

Where no sample of either trademark is submitted, the test of similarity will have to be based on a comparison of the spelling, sound and pronunciation of the two words, specially where they are applied to the same products. In the case of *Marvex Commercial Co., Inc. v. Hawpia & Co.*[85] involving the trademarks SALONPAS and LIONPAS, both of which were used on medicated plaster, the Court reversed the decision of the Director of Patents and refused the registration applied for by Hawpia & Co. Since no samples of *either* trademark were submitted, the Court was restricted to a com-

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[84] G.R. No. 21915, Dec. 17, 1966.
[85] G.R. No. 19297, Dec. 22, 1966.

parison of the spelling, sound and pronunciation of the two words. It concluded that the trademarks were confusingly similar in sound. The Court noted that where the goods are advertised over the radio, similarity in sound is of special significance. Similarity in sound, according to the Court, is sufficient ground to rule that two trademarks are confusingly similar when applied to merchandise of the same descriptive properties.

Applicant must be the owner of trademark —

The main ground however for the court's refusal to order the registration of the trademark LIONPAS in the above case of *Marvex Commercial* was that the evidence failed to show that Hawpia & Co., the applicant, was the owner of the trademark. It appeared that the applicant was an assignee merely of a representative of the manufacturer of the goods to which the trademark attached. There was no proof however that said representative had any authority to assign the trademark in question. On the other hand, the evidence showed that the applicant was merely an "exclusive distributor" of LIONPAS products. The Court stressed that under sections 2 and 2A of the Trademark Law, the right to register trademarks is based on ownership, and the burden is upon the applicant to prove such ownership.[86]

Determination of who is first user —

In *Chung Te v. Ng Giab,*[87] the Court had to decide which of the two parties first used the trademark "Marca Piña" on shirts. The petitioner had filed an application for registration on March 13, 1957, but since he filed to answer the communication of the Trademark Examiner, his application was deemed abandoned. He filed another application on November 25, 1958 alleging use of said mark since 1951. Respondent Ng filed a similar application on July 16, 1957 claiming use of the mark since 1955. Due to the similarity between the two trademarks, an interference was declared as existing between the two applications.[88] At the hearing, both parties presented evidence to prove their respective claims of priority of use but the Director of Patents declared that neither of them satisfactorily proved their asserted dates of first use and therefore, based his decision solely on the dates of their respective applications, and granted Ng's application, disregarding entirely Chung's first application.

[86] Court cited Operators, Inc. v. Director of Patents G.R. No. 17901 Oct. 29, 1965.
[87] G.R. No. 23791, Nov. 23, 1966.
[88] See sec. 10-A, R.A. 166, as amended.

Aside from the fact that there was substantial evidence to show that Chung had started using the trademark first, the Court said that in the peculiar situation obtaining in the case where the testimonial evidence of both parties was entirely disregarded and reliance was placed solely on the filing dates of the application as proof of respective dates of first use, the abandoned application of Chung Te was cogent evidence to show that the petitioner first used his trademark as of the date of its filing.

Finding of fact of Director of Patents — when not binding on Supreme Court —

In the aforequoted case of *Chung Te,* the Court reversed the finding of the Director of Patents that the petitioner was the first user of the trademark on the ground that said finding was not supported by the evidence. The Director had disregarded the first application of the respondent in determining the question of date of first use.

Similarly, in the case of *Marvex Commercial Co.,*[89] the Supreme Court stated that although the Director of Patents is the official vested by law with the power to administer the registration of trademarks and tradenames, his opinion on the matter of similarity or dissimilarity of trademarks and tradenames is not conclusive upon the Court which may pass upon such determination. The Court accordingly reversed the Director's decision and held that SALOMPAS and LIONPAS were confusingly similar.

[89] *Supra.*