COMMERCIAL LAW

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The decisions of the Supreme Court for 1967 yielded no significant changes in the legal principles involving the different commercial laws. Well-settled rules were either applied to situations similar to previous decided cases or were used to meet novel issues. In the latter case, a short background of the law or the principle involved is given, whenever necessary to a full understanding of the effect of the decision.

A survey of pertinent laws passed by Congress in 1967 is also included.

CORPORATION LAW

The theory of corporate entity

The main characteristic of a corporation is that it is a juridical person[1] having a personality of its own, separate and distinct from that of its stockholders. Thus, it can sue and be sued,[2] it can own property in its own name[3] free from attachment for its stockholders' debts.[4] A stockholder cannot therefore maintain an individual suit to recover property belonging to the corporation.[5] In *Stonehill v. Diokno,*[6] several search warrants were issued against the petitioners and the corporations of which they were officers. Some papers and documents were seized from the petitioners as well as from the offices of the corporations. Claiming that the seizure was void, the petitioners filed with the Supreme Court a petition for certiorari, prohibition, mandamus and injunction. The Court issued a writ of preliminary injunction but later partially lifted it in so far as the papers and documents seized from the offices of the corporations were concerned. With respect to these, the Court

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1 New Civil Code, Article 4.
2 Act 1459, Sec. 13(2), (Corporation Law).
3 Corp. Law, Sec. 13(5).
4 Wise & Co. v. Man Sun Lung, 69 Phil. 309 (1940).
5 See Button v. Hoffman, 61 Wis. 20, 20 N.W. 667 (1884).
6 G.R. No. 19550, June 19, 1967.

held that the petitioners had no cause of action since it is well-settled that the legality of a seizure can be contested only by the party whose rights had been impaired. Since the corporations had personalities separate and distinct from the personality of the petitioners, the right to object to the seizure belonged to the former and not to the latter. The Court refused to consider the fact that the petitioners held the controlling stocks in the corporations.[7]

This theory of corporate entity may however be disregarded when it is used to evade a statute, or to perpetrate fraud or a wrong.[8] Thus, in *NAMARCO v. Associated Finance Co.*,[9] the Supreme Court felt justified in piercing through the veil of corporate entity and held the controlling stockholder personally liable on the contract in question. F. Sycip, on behalf of the defendant corporation, had entered into a contract with the NAMARCO under which the corporation was to deliver some bags of refined sugar in exchange for raw sugar. The Associated Finance Co. failed to deliver the refined sugar despite the fact that the NAMARCO had already delivered the raw sugar. Sycip and his wife owned ₱80,000 worth of shares out of a total subscribed capital of ₱105,000 and the evidence showed that Sycip had absolute control of the corporation. It was also proven that at the time of the negotiations, Sycip gave assurances that the corporation was in actual possession of the refined sugar, although he knew fully well not only that the corporation did not have the sugar, but also that it was already insolvent. Sycip's assurances induced the NAMARCO to enter into the exchange agreement. The Court held that Sycip could not escape personal liability by seeking refuge behind the theory of corporate entity. He was therefore held jointly and severally liable with the corporation.

Residence of corporation; where it may be sued

Being a juridical person, a corporation can and does have a place of residence, and this is the place where its principal office

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[7] Justice Castro, though concurring in the granting of the injunction, dissented from the partial lifting thereof as to the corporation's papers and documents. He believed that the petitioners, because of their controlling interest and their position as officers of the corporations, had sufficient standing in court to question the legality of the seizure.

[8] Marvel Building Corp. v. David, 94 Phil. 376 (1954); Palacio v. Fely Transp. Co., G.R. No. 15121, May 31, 1962.

[9] G.R. No. 20886, April 27, 1967.

is established.[10] Therefore, where the action against the corporation is not based on a written contract, it can only be sued in such place.[11] In *Clavecilla Radio System v. Antillon,*[12] an action based on tort was brought against the Clavecilla Radio System in Cagayan de Oro, where it had a branch office. Its main office was in Manila. The corporation filed a motion to dismiss on the ground of improper venue but this the CFI denied. It therefore filed a petition for prohibition before the Supreme Court which reversed the lower court's order, holding that the fact that the corporation "maintains branch offices in some parts of the country does not mean that it can be sued in any of those places. To allow any action to be instituted in any place where the corporate entity has its branch offices would create confusion and work untold inconvenience to the corporation."

Stockholder's derivative suit

As a consequence of the theory of corporate entity, shareholders have no right to maintain actions in their own name for a wrong done to a corporation, since the right of action is in the corporation and any suit should be at the instance of the Board of Directors, the body authorized by law to exercise all corporate powers. However, where the Board refuses to act, or is itself guilty of the wrong complained of, or is under the complete control of the wrongdoer, it is well-settled that a stockholder may bring a derivative suit on behalf of the corporation.[13] The case of *Republic Bank v. Cuaderno,*[14] illustrates a situation where such a derivative suit is proper. The controlling stockholder of the plaintiff banking corporation was being criminally prosecuted for frauds he had allegedly committed in the bank. The complaint alleged that in order to shield him from said criminal action, the controlling stockholder arranged for the appointment of two allegedly influential persons as technical assistant and member of the Board of the bank, respectively. These two appointments were about to be approved by the Monetary Board when Perez, a stockholder of the bank, filed the derivative suit on behalf of the bank, pray-

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10 Clavecilla Radio System v. Antillon, G.R. No. 22238, Feb. 18, 1967.
11 See Rules of Court, Rule 4, sec. 1.
12 *Supra.*
13 See Everett v. Asia Banking Corp., 49 Phil. 513 (1926).
14 G.R. No. 22399, March 30, 1967.

ing for an injunction to prevent the approval of the appointments. The suit included as parties defendant the Board of Directors of the bank, the two persons whose appointments were being questioned and the controlling stockholder of the bank. These named defendants filed a motion to dismiss alleging, among other things, that a mere stockholder had no right to question the appointments because these were corporate acts. In refusing to maintain this contention, the Supreme Court stated:

> "Normally, this is correct, but Philippine jurisprudence is settled that an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock, in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. Plaintiff's action is precisely in conformity with these principles. He is neither alleging nor vindicating his own individual interest or prejudice, but the interest of the Republic Bank and the damage caused to it. The action he has brought is a derivative one, expressly manifested to be for and in behalf of the Republic Bank, because it was futile to demand action by the corporation, since its directors were nominees and creatures of defendant Roman . . . ."

The Court added that the smallness of plaintiff's holdings was no ground for denying him relief, at least at that stage of the case. The Court also believed that the frauds charged were frauds against the bank, since the moneys disbursed to pay the questioned appointees would be an "unlawful wastage or diversion of corporate funds." It was not to the interest of the bank to shield the controlling stockholder from criminal prosecution.

On the question of whether the corporation in a derivative suit should be made a party defendant or a party plaintiff, the Court observed that the English practice is to make the corporation a party planitiff, but that the usage in the United States leans in favor of its being defendant. Without taking either side, the Court stated:

> ". . . . Absence of corporate authority would seem to militate against making the corporation a party plaintiff, while joining it as a defendant places the entity in the awkward position of resisting an action instituted for its benefit. What is important is that the corporation should be made a party in order to make the Court's judgment binding upon it, and thus

bar future relitigation of the issues. On what side the corporation appears loses importance when it is considered that it lay within the power of the trial court to direct such amendments of the pleadings, by adding or dropping parties, as may be required by the interests of justice."

The Court therefore reversed the order dismissing the complaint and ordered a trial on the merits after the filing of defendants' answer.

Who may bind the corporation

The Corporation Law is quite explicit that, except in the instances where it otherwise provides, all corporate powers shall be exercised by the Board of Directors of the corporation duly elected by the stockholders.[15] As a general rule, therefore, only the Board of Directors may legally bind a corporation by contract. However, the Board may authorize, either expressly or impliedly, any corporate officer, such as the general manager, to bind it by contract. And even in the absence of prior authorization, the corporation may still be bound by a subsequent ratification by the Board of Directors, which again may be made either expressly or impliedly.[16] The two latter principles were reiterated by the Supreme Court in *Acuña v. Batac Producers Cooperative Association Inc.*[17] Plaintiff filed a complaint against the defendant corporation based on an agreement he entered into with the corporation's manager. The corporation filed a motion to dismiss on the ground that the complaint did not state a cause of action because the contract was never approved or ratified by the Board, but in fact disapproved by it. The trial court granted the motion to dismiss and plaintiff appealed. The complaint alleged that the plaintiff entered into the tentative agreement with the defendant's manager to obtain ₱20,000 for the corporation to be utilized by it for its Virginia tobacco buying operations; that plaintiff would receive a renumeration of ₱.50 a kilo; that the board had authorized the manager to execute any agreement on behalf of the corporation for the purpose of securing additional funds for the corporation; that the plaintiff met with all the members of the board who made him understand that the tentative agreement with the Manager was acceptable to the corporation; that the Board assured the plaintiff

15 Corp. Law, Sec. 28.
16 See Ramirez v. Orientalist Co., 38 Phil. 634 (1918).
17 G.R. No. 20333, June 30, 1967.

that formal approval of the agreement was no longer necessary since the Board had already previously authorized the Manager to enter into any such agreement; that plaintiff turned over the ₱20,000 to the defendant's treasurer who issued a receipt therefor; that the Board refused to pay him his renumeration and instead formally disapproved the agreement. In view of the foregoing averments, the Court held that the complaint stated a sufficient cause of action because the allegations, if true, indicate approval or at least subsequent ratification by the Board. The Court stated that ratification may be express or implied, and that if implied, it may take diverse forms, "such as by silence or acquiescence, by acts showing approval or adoption of the contract, or by acceptance and rejection of benefits flowing therefrom." The Court therefore set aside the order dismissing the complaint and remanded the case to the lower court for further proceedings.

The extent of the authority of the general manager to bind the corporation even in contracts which may prove unprofitable, was illustrated in the case of *Board of Liquidators v. Heirs of Maximo Kalaw.*[18] Maximo Kalaw, as general manager and board chairman of the defunct National Coconut Corporation (NACOCO), entered into several contracts for the delivery of copra. There was no prior express approval by the Board of Directors of the corporation. Subsequently, the country was visited by four strong typhoons which damaged extensively all coconut trees throughout the Philippines. It was only after this damage occurred that Kalaw decided to submit the contracts to the Board for approval, which was unanimously given. Since NACOCO could only partially fulfill these contracts, it was either faced or threatened with damage suits. It was therefore forced to enter into settlements which amounted to a total of more than one million pesos. This action was brought originally by NACOCO, later continued by the Board of Liquidators after NACOCO's dissolution, to recover against Kalaw and the other directors at the time the contracts were approved. Kalaw was charged with negligence and the other directors with bad faith and/or breach of trust for having approved the contracts which had clearly become unprofitable. Much emphasis was placed by the plaintiff on the provision of the corporate by-laws that

[18] G.R. No. 18805, Aug. 14, 1967.

the general manager should perform or execute on behalf of the corporation, *upon prior approval of the Board,* all contracts necessary to the proper accomplishment of the corporate purposes. Aside from noting the fact that it had been the practice of the NACOCO to allow its general manager to negotiate and execute contracts in its copra trading activities for and on NACOCO's behalf without prior board approval, and the board therefore had through acquiescence, practically laid aside the by-law requirement, the Court considered the nature of the general manager's position in the corporation, and stated:

> ". . . a corporate officer intrusted with the general management and control of its business, has implied authority to make any contract or do any other act which is necessary or appropriate to the conduct of the ordinary business of the corporation . . . . he may, without any special authority from the Board of Directors, perform all acts of an ordinary nature, which by usage or necessity are incident to his office, and may bind the corporation by contracts in matters arising in the usual course of business."

The Court further considered the fact that copra contracts had to be executed on short notice not only because copra loses weight fast, thus decreasing its value, but also because NACOCO's limited funds necessitated a quick turnover. It therefore held that Kalaw could properly enter into the contracts without the prior approval of the Board. Nor was he guilty of negligence since the evidence showed that his acts were not the result of haphazard decisions and that he could not have predicted the coming of the strong typhoons, much less their devastating effects.

Besides, the Court added, the Board had ratified the contracts and such ratification related back to the time of the contract, and was equivalent to original authority.

The business judgment rule

On the question of the liability of the other members of the Board in the Kalaw case, the Court believed that they were not guilty of bad faith nor breach of trust in ratifying the contracts. There was no "dishonest purpose" or "conscious wrongdoing", nor did they act for their private interests. The Court noted that the Board had never protested against those of Kalaw's contracts which had brought enormous profits to the corporation. Fair dealing on their part required that it should also recognize contracts even if they seemed unprofitable. Their ratification was therefore an "act of simple justice and fairness to the general manager and to the best interests of the corporation whose prestige would have been seriously impaired by a rejection by the Board of those contracts which proved disadvantageous." The Court quoted with approval from the case of *Montelibano v. Bacolod Murcia Milling Co.*[19]:

> "They (the directors) hold such office charged with the duty to act for the corporation according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty. Whether the business of a corporation should be operated, at a loss, is a purely business and economic problem to be determined by the directors of a corporation, and not by the Court. It is a well-known rule of law that questions of policy of management are left solely to the honest decision of officers and directors of a corporation, and the court is without authority to substitute its judgment for the judgment of the board of directors; the board is the business manager of the corporation, and so long as it acts in good faith, its orders are not reviewable by the courts. (Fletcher on Corporations, Vol. 2, p. 390)"

All the defendant directors were therefore absolved from liability.

Corporate powers

It is a basic principle of corporation law that a corporation has only such powers as are expressly granted to it by law, and such as may be reasonably implied from such express powers.[20] Thus, it has the authority to enter into contracts or to perform such acts as may be reasonably necessary to accomplish its purpose or to transact its business.[21] In *Teresa Electric and Power Co., Inc. v. Public Service Commission*,[22] one of the issues raised was whether a corporation engaged in the manufacturing of portland cement could operate and maintain an electric plant for the purpose exclusively of supplying electricity to its cement factory in a barrio of Teresa, Rizal, and to its employees living within its factory compound. In holding that the operation of such electric plant was necessarily connected with the business of manufacturing cement, the Court observed that electricity in this age is a virtual necessity for our daily needs, and that it would even be more so in the case of industries like the manufacture of cement.

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[19] G.R. No. 15092, May 18, 1962.
[20] See Corp. Law, sec. 14.
[21] See Corp. Law, sec. 13(3).
[22] G.R. No. 21804, Sept. 25, 1967.

Dissolution of corporation by quo warranto proceedings

A corporation can be dissolved either voluntarily, by action of the stockholders with or without court intervention,[23] or involuntarily, as by *quo warranto* proceedings, which may be brought by the Solicitor General for any of several grounds, including the exercise of a right or privilege in contravention of law.[24] The Supreme Court, however, has been consistently hesitant in meting out the extreme penalty of dissolution, holding that in cases where the violations are not wilful or fraudulent or do not affect the public seriously and adversely, the Court may in its discretion, merely enjoin the further commission of the wrongful act or acts.[25] And even in one case where the violation was clearly wilful and proved to be injurious to the public, the Court instead of dissolving the corporation outright, ordered the dissolution only conditionally — i.e., unless within a period of six months after the decision, the corporation failed to liquidate that part of its business which had been conducted contrary to law.[26]

In *Republic of the Philippines v. Security Credit and Acceptance Corporation*,[27] the Supreme Court for the first time ordered the immediate dissolution of a corporation by appointing a receiver and, directing him to wind up the affairs of the corporation. In this case, the corporation was found to have solicited and accepted a total of 59,463 savings account deposits from the public through its 74 branches all over the country, without the authorization of the Monetary Board as required by the General Banking Act.[28] These amounts were later lent out to such persons as the corporation deemed suitable. These were held by the Court to be banking functions and therefore illegally performed by the defendant. The Court pointed out that these illegal transactions warranted its dissolution because this misuser of the corporate funds and franchise affected the essence of its business, that it was wilful and repeated 59,463

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[23] See Corp. Law, Sec. 62, for extra-judicial dissolution and Rule 104, Rules of Court, for judicial dissolution.

[24] See Rule 66, Secs. 2 & 12, Rules of Court, for other grounds.

[25] See Gov't. v. El Hogar, 50 Phil. 399 (1927); Lopez v. El Hogar Filipino, 47 Phil. 249 (1925); Gov't. v. El Alhorro Insular, 59 Phil. 199 (1933).

[26] See Gov't. v. Phil. Sugar Estates, 38 Phil. 15 (1918).

[27] G.R. No. 20583, Jan. 23, 1967.

[28] See Rep. Act No. 337 (General Banking Act), sec. 2.

times, and that its continuance inflicted injury upon the public, owing to the number of persons affected thereby.

From the nature of the corporation and the violation it had committed, there was no penalty which the Court could have imposed other than dissolution. Unlike in past cases where the Court refused to impose the capital punishment of dissolution and merely enjoined further violations, the corporation in this case was from the start functioning illegally since it had not obtained the required permit to operate as a banking institution. It had no function other than banking which it could have continued to perform lawfully and if a mere injunction against future violations had been granted, the corporation would have had no reason to exist.

Winding up corporate affairs

Upon dissolution, a corporation continues as a body corporate for a period of three more years, not for the purpose of continuing its business, but merely for winding up its affairs.[29] It is well-accepted in this jurisdiction, that there are three ways by which a corporation may wind up its business. The first is when the corporation carries out the liquidation of its assets through its own Board of Directors and its officers, who may continue or defend the actions brought by or against it. In this case its existence terminates at the end of three years from its dissolution.[30] All actions in the name of the corporation pending at the expiration of the three-year period abate.[31] The second is when a receiver or assignee is appointed by the court in judicial dissolution,[32] in which case, the three-year period is not applicable since the corporation ceases to exist as such and is substituted by the receiver. The latter may therefore institute all actions leading to the liquidation of the assets of the corporation even after the expiration of the three years.[33] The third is that prescribed by Section 78 of the Corporation Law under which the corporation, within the three-year period, may convey all of its property to a trustee for the benefit of its

[29] See Corp. Law, sec. 77.
[30] See Sumera v. Valencia, 67 Phil. 721 (1939).
[31] National Abaca & Other Fibers Corp. v. Pore, G.R. No. 16779, Aug. 16, 1961.
[32] See sec. 3, Rule 104 for voluntary dissolution and Rule 66, sec. 1 for involuntary dissolution.
[33] Sumera v. Valencia, *supra.*, see note 30.

stockholders, creditors and other persons interested. As in the second method, the corporation ceases to be such, and unless the trusteeship is limited in its duration, there is no time limit within which such trustee should complete the liquidation, and actions may be brought by or against it even beyond the three year period, as long as they are not barred by the statute of limitations.[34]

The case of *Board of Liquidators v. Heirs of Maximo Kalaw*[35] involved, among others, the question of whether the action begun by the NACOCO in February, 1949 could be continued by the Board of Liquidators beyond the three-year period after its dissolution. The NACOCO had been abolished by Executive Order 372 dated November 24, 1950, which designated the Board of Liquidators to take charge of closing its affairs. No time limit was provided for the existence of said Board. The Court held that this designation was an express trust by virtue of which the Board of Liquidators was made trustee for the sole stockholder, the Government. It therefore applied section 78 of the Corporation Law, and allowed the action to continue in the name of the Board of Liquidators even beyond the three year period.

Recent legislation

A significant amendment to section 13(5) of the Corporation Law was made effective when Republic Act 5167 was approved on August 4, 1967. Under this law, the prohibitions and limitations imposed by said section on both agricultural and mining corporations, are now applicable only to agricultural corporations.[36] The prohibitions and limitations on mining corporations are now covered entirely by a new provision inserted by said Republic Act 5167 as subsection (5a) of section 13 of the Corporation Law. This new provision reads as follows:

> "(5-A) Any domestic or foreign corporation, and its stockholders organized for the purpose of engaging in mining may acquire and hold not more than forty *per centum* of the capital stock then outstanding and entitled to vote of only one other corporation organized for the purpose of engaging in mining in the Philippines: *Provided,* That it shall likewise be unlawful for said latter corporation to be in any wise interested in any other corporation organized for the purpose of engaging in

[34] See National Abaca v. Pore, *supra.*, see note 31; Sumera v. Valencia, *supra.*, see note 30.
[35] *Supra.*
[36] See Rep. Act No. 5167, Sec. 1.

mining: *Provided, further,* That the acquisition of up to forty *per centum* of the outstanding capital stock in a mining corporation already in commercial production shall be as follows: not more than fifteen *per centum* of the outstanding capital stock and twenty-five *per centum* through subscription to unissued shares.

"Any domestic or foreign corporation organized for any purpose other than mining may acquire and hold not more than thirty *per centum* of the capital stock then outstanding and entitled to vote of each of not more than three corporations organized for the purpose of engaging in mining in the Philippines: *Provided,* That it shall be unlawful for any stockholder of such corporation organized for any purpose other mining to be a stockholder of any of the said three corporations organized for the purpose of engaging in mining. It shall be unlawful for any person owning a stock in more than one corporation organized for the purpose of engaging in mining to own more than fifteen *per centum,* of the capital stock then outstanding and entitled to vote of each corporation. Any stockholder of more than one corporation organized for the purpose of engaging in mining may hold his stock in such corporation solely for investment and not for the purpose of bringing about or attempting to bring about a combination to exercise control of such corporation, or to directly or indirectly violate any of the provisions of the mining and public land laws. Any corporation holding stock in any corporation organized for the purpose of engaging in mining may hold such stock solely for investment, and not for the purposes of bringing about or attempting to bring about a combination to exercise control of such corporation, or directly or indirectly violate any of the provisions of the mining and public land laws. Any corporation not engaged in mining, who before the approval of this amendatory Act had investments of not more than fifteen *per centum* in each of more than three mining corporations shall be allowed to keep such holding."

A comparison between the old and the new provision shows clearly a relaxation of the prohibitions and limitations imposed on mining corporations and on ownership of stock therein. Perhaps this change of legislative policy was found necessary in order to enable new mining ventures to take advantage of the capital and know-how of the more established mining concerns, to the end that the country's vast mineral resources may be explored, exploited and developed to the fullest extent and at a faster pace.

It was formerly unlawful for a mining corporation to be in *anywise* interested in another mining corporation. Under the amendment, a mining corporation, whether domestic or foreign, may now own as much as 40% of the outstanding capital stock entitled to vote of not more than one other mining corporation. Where the latter is already in commercial production, then only 15% of the outstanding capital stock may be acquired by the first mining corporation, the remaining 25% to be applied to still unissued shares. Apparently, the presumption is that when the mining corporation has been able to enter the stage of commercial production without the previous help of another mining corporation, its need for assistance from such source would not be as great as one who is merely exploring or in the initial stages of exploitation. But even then, should such mining corporation already in commercial production need more capital in the future for further exploration, improvement or expansion, the law allows it to receive an additional 25% capital assistance from the first mining corporation.

It is to be noted that the above limitation is, with respect to foreign corporations, in consonance with the constitutional requirement that at least 60% of the capital stock of corporations. Since the amendment applies to both domestic and foreign resources should be owned by Filipino citizens.[37] Also, this limitation may perhaps have rendered moot the question which was left unresolved by the case of *Palting v. San Jose Petroleum*[38] — i.e., whether an American mining corporation, under the Parity Amendment, is subject to the same prohibitions and limitations imposed by the Corporation Law on domestic mining corporations. Since the amendment applies to both domestic and foreign corporations, the answer under the new law would have to be in the affirmative.

Under the law before the amendment, a non-mining corporation was limited to 15% ownership of voting stock in a mining corporation. The amendment has increased this to 30%, subject to the condition that said non-mining corporation can own said 30% voting stock in each of not more than three mining corporations,[39] which condition was not present under the previous

[37] Constitution of the Phil., Article XIII, section 1.

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

[39] A saving clause however protects the investment of a non-mining corporation which had owned stock in more than three mining corporations previous to the amendment. In this connection, See also the Investment Incentives Act (RA 5186) approved on Sept. 16, 1967, which is aimed at encouraging Filipino and foreign investments in agricultural, mining and manufacturing industries. The incentives are mainly in the form of allowable tax deductions and tax exemptions. This Act is published in full in 42 Phil. L.J., pp. 669-694, (1967).

provision. Furthermore, the amendment prohibits any stockholder of the said non-mining corporation to own any shares in any of the three mining corporations in which the former has invested.

The remaining limitations imposed by the amendment are substantially similar to those provided in the amended section.

Republic Act No. 5050 approved on June 17, 1967, grants additional powers to the Securities and Exchange Commission in order that it may exercise more efficiently its supervisory functions over corporations and registered partnerships. Heretofore, the Solicitor General was the only government official who could ask the courts, through *quo warranto* proceedings, to dissolve a corporation on any of the grounds specified by law.[40] The new law empowers the Commission to petition the Court of First Instance for the revocation of the registration of any corporation within its jurisdiction upon any of the grounds now provided by law or for any of the following causes:

> "1. Fraud in procuring its certificate of incorporation such as, making it appear that it has cash paid up capital when actually it has none, the money being in fact merely borrowed and returned to the lender after incorporation.
> 2. Serious misrepresentations as to what the corporation can do or is doing to the great prejudice of, or damage to, the general public;
> 3. Refusal or defiance of a lawful order of the Commission to comply with the corporate charter or to confine its operations within the terms thereof amounting to a grave violation of its franchise;
> 4. Continuous in activity for a period of at least five (5) years; and
> 5. Failure to file by-laws within the required period."[41]

The Commission is also granted the power to issue rulings and opinions as to the proper interpretation and application of the laws entrusted to it for administration,[42] and may require corporations and registered partnerships to submit financial and other reports as it may deem necessary in the public interest or for the proper discharge of its duties.[43]

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[40] See Rules of Court, Rule 66, Secs. 2 and 3.
[41] Rep. Act No. 5050, Sec. 1, par. A.
[42] Rep. Act No. 5050, Sec. 1, par. B.
[43] Rep. Act No. 5050, Sec. 1, par. C.

BANKING

When a corporation deemed to be a banking institution

Section 2 of the General Banking Act[44] provides that only duly authorized persons and entities may engage in lending of funds obtained from the public through the receipt of deposits or the sale of securities, and that all entities regularly conducting such operations are considered as banking institutions. Section 6 of the same law prohibits any person or corporation from conducting the banking business without having complied with the provisions of the law — i.e., it must obtain a certificate of authority from the Monetary Board. Under these provisions, a corporation who solicits and accepts savings deposits from the public and lends out such funds received, is engaged in the banking business. Therefore, if it has functioned without prior authority from the Monetary Board, it is guilty of a violation of the General Banking Act and may be dissolved by the Court on *quo warranto* proceedings filed by the Solicitor General.[45]

Central Bank of the Philippines v. Morfe et al[46] involved the First Mutual Savings and Loan Organization Inc. whose articles of incorporation showed as its main purpose, "to encourage . . . and implement savings and thrift among its members, and to extend financial assistance in the form of loans" to them from funds deposited by them. The corporation had not secured any permit or authority from the Monetary Board. An investigation was conducted by the Central Bank and in pursuance thereof, a search warrant was issued against the corporation with respect to practically all its books and papers, which the issuing municipal judge believed to be the subject of violation of the Central Banking Act. The corporation succeeded in obtaining a writ of preliminary injunction from the respondent judge of the Court of First Instance, restraining the search and seizure of said papers and documents on the ground that the warrant had authorized a fishing expedition. The Central Bank instituted an action for certiorari against the respondent judge. Among other things, the corporation claimed that its transactions did not amount to "banking" since it received deposits from and lent funds only to its members. The documents and papers

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[44] Rep. Act No. 337.

[45] Republic v. Security Credit & Acceptance Corp. et. al., *supra.* see note 27.

[46] G.R. No. 20119, June 30, 1967.

showed that although loans were granted only to member-depositors, anybody could be a depositor, and that said depositors (designated as "members") had no right to vote or be voted for and had no voice at all in the approval of loans, the exclusive authority to do so being vested in the "founder members." The Court believed that this situation was fraught with the very dangers which the General Banking Act seeks to forestall by requiring authority from the Monetary Board before such transactions could be undertaken. There was no doubt that the corporation was a banking institution within the meaning of said Act.[47]

As to the argument of the respondent judge that the search warrant should have been granted only against the specific papers and books which were connected with specific banking transaction with specific persons, the Court stated:

"The line of reasoning of respondent Judge might perhaps be justified if the acts imputed to the Organization consisted of isolated transactions, distinct and different from the type of business in which it is generally engaged. In such case, it may be necessary to specify or identify the parties involved in said isolated transactions, so that the search and seizure be limited to the records pertinent thereto. Such, however, is not the situation confronting us. The records suggest clearly that the transactions objected to by the Bank constitute the general pattern of the business of the Organization. Indeed, the main purpose thereof, according to its By-laws, is 'to extend financial assistance, in the form of loans, to its members,' with funds deposited by them."

Central Bank has no power to prosecute violators

In *Perez et al v. Monetary Board,*[48] a writ of mandamus was prayed for to compel the Central Bank to prosecute officials of a certain bank for violations of the General Banking Act and the Central Bank Act. In denying the writ, the Supreme Court held that although the Central Bank may have the power to cause the prosecution of alleged violators, nothing in either law imposes a clear, specific duty to do the actual prosecution. The

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47 Subsequent to the filing of the case and probably as a result of the investigation of the Central Bank and of the Securities and Exchange Commission into the activities of all savings and loans associations, Congress passed the Savings and Loans Association Act (Rep. Act No. 3779), which was approved and made effective on June 22, 1963. This law requires all such associations to secure from the Monetary Board a license before it can transact business as such. See section 11, Rep. Act No. 3779.

48 G.R. No. 23307, June 30, 1967.

evidence showed that the Central Bank officials had already referred the case to the special prosecutors of the Department of Justice. They had therefore done everything within the limits of their power. The Court concluded that the granting of the writ would in effect be compelling the Central Bank to do an *ultra vires* act.

Recent legislation

Republic Act 4879 which was approved on June 17, 1967, amends section 53 of the General Banking Act defining the power of a building and loan association to own real estate. The amendment permits such an association to acquire real estate for subdivision into residential lots, on which it may construct residential houses for disposition or lease to its members exclusively, if 2/3 of the members of its Board of Directors so approve. The law however limits this investment to not more than 25% of the association's paid-in capital and surplus. Moreover, each member is allowed to acquire or lease only one lot.

Republic Act No. 4910 amends section 27 of the General Banking Act by providing that all banks can transact business for only eight hours a day, the times to be selected by the bank concerned between eight in the morning to eight in the evening. This law was approved on June 17, 1967.

INSURANCE

Life policy — vested right of irrevocably designated beneficiary

It is well-settled that when the insured in a life policy has not reserved the right to change his designated beneficiary, the latter has a vested right to the proceeds thereof which cannot be reduced or revoked by the insured without his consent. Thus, our Supreme Court has held that under such a policy, a husband-insured cannot substitute his second wife for his first wife as a beneficiary, even after he had been granted an absolute divorce from the latter.[49] Neither can a new beneficiary be added to the irrevocably designated beneficiary, for this would in effect reduce the latter's vested rights.[50]

In the case of *Nario et al v. Philippine American Life Insurance Co.,*[51] the insured took out a ₱5000 endowment policy

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[49] See Gercio v. Sun Life Ass. Co. of Canada, 48 Phil. 53 (1925).
[50] Go v. Redfern, 72 Phil. 71 (1941).
[51] G.R. No. 22796, June 26, 1967.

naming her husband and her minor son as her irrevocable beneficiaries. The policy contained an express provision that since the designation of the beneficiaries was without reservation of the right to designate a new one, the insured may not assign, or surrender the policy nor exercise any rights under the policy without the consent of the beneficiaries. Four years after the issuance of the policy, the plaintiff applied for a policy loan to which she was entitled under the provisions of the policy, to pay for the school expenses of her minor son. The loan application was signed and consented to by the husband in his personal capacity as beneficiary and as the father-guardian of the minor son. The insurance company denied the application claiming that as to the minor son, the father needed court authority in guardianship proceedings. After the loan was denied, the plaintiff offered to surrender her policy and demanded its cash value which amounted to ₱520. This demand was also denied on the same ground as the denial of the loan application. The Supreme Court upheld the trial court's dismissal of the case and held that since the amount of the minor son's interest was more than ₱2000 (1/2 of ₱5000, the face amount of the policy), the father should have authority from a competent court to act as a guardian for his minor son.[52] The Court stated that the vested right of interest of the beneficiary in the policy should be measured by its full face value and not by its cash surrender value, for in case of death of the insured, said beneficiary is paid on the basis of its face value. And in case the insured should discontinue paying premiums, the beneficiary may continue paying it and would be entitled to the automatic extended term or paid-up insurance options. Said vested right, according to the Court, cannot be divisible at any given time. Furthermore, the Court believed that both the policy loan and the surrender of the policy constitute acts of disposition or alienation of property rights and not merely acts of administration, since they involve the incurring or termination of contractual obligations. Court authority to perform such acts for his minor son was therefore needed by the father.

The ruling of the Court in the above case regarding the nature of the interest of an irrevocably designated beneficiary is in consonance with the prevailing view in the United States

[52] See Civil Code, Arts. 320, 326, Rules of Court, Rule 93, sec. 9.

from which jurisdiction our Insurance Act was adapted. And under this view, the rule applies even in the absence of any provision similar to the one found in the Nario case, as long as the right to change the beneficiary has not been expressly reserved.[53]

Should this rule apply equally to an ordinary life policy and to an endowment policy? The prevailing view in the United States is that it applies even to endowment policies.[54] Obviously, in the ordinary life policy[55] with an irrevocably designated beneficiary, the insured can be said to have given all the interest in said policy to his beneficiary, since he can expect no personal benefits therefrom. In the endowment policy,[56] however, the insured retains an interest in the policy contingent only on his surviving the period agreed upon. If he still has this interest, then why should he not be able to borrow on the policy without the consent of the beneficiary? The fact that he chose an endowment and not an ordinary life policy shows that his purpose was not merely to secure his beneficiaries from financial difficulties upon his death, but also to invest his money or to save some amount which may be available to him in the future. The Nario ruling was based primarily on the express provision of the policy requiring the consent of the beneficiary before the insured could evercise any rights under the policy. If there had been no such provision, considering that the policy was one of endowment, would the Supreme Court have decided otherwise?

Property insurance — contract effective only between parties

It has previously been held by our Supreme Court that an insurance policy is a contract between the insured and the insurer and in the absence of any provision in the policy, a third person has no right to the proceeds thereof.[57] This rule was reiterated by the Court in *Bonifacio Bros. v. Mora.*[58] Mora had taken out a policy on his car "loss, if any, payable to H. S. Reyes Inc.", the mortgagee of the car. The car met an accident and Mora,

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[53] See Connecticut Mutual Life Ins. Co. v. Baldwin, 15 R.I. 106, 23 Atl. 105 (1885); Ford v. Mutual Life Ins. Co. of NY, 283 Ill. App. 325,

[54] See VANCE, LAW ON INSURANCE, 664, 3rd ed.

[55] This has no definite period since it can mature only upon the death of the insured, whenever this may occur.

[56] This has a definite period — say, 20 years. Should the insured survive the 20 years, he gets the proceeds at the end of the period. Should he die before the 20-year period expires, his beneficiary gets the proceeds.

[57] See Lampano v. Jose, 30 Phil. 537 (1915).

[58] G.R. No. 20853, May 29, 1967.

without the knowledge of H. S. Reyes Inc., authorized the plaintiff to make the repairs and furnish all materials necessary therefor. In accordance with the policy, the insurance company drew a check to cover the value of the repairs, but it was made payable to H. S. Reyes Inc. or Mora, and not to the plaintiff. On the theory that the proceeds should be paid directly to it, the plaintiff brought this action against both Mora and the insurance company. The Supreme Court ruled out plaintiff's theory since the policy did not contain any provision which disclosed an intent to benefit the repairman in case of repair of the car. On the other hand, the loss was payable to H. S. Reyes Inc. indicating, the Court stated, that it was only the latter which the parties intended to benefit. And to the plaintiff's contention that the right of Reyes Inc. would arise only if *loss* and not merely *damage* occurs, the Court answered that any attempt to draw a distinction between "loss" and "damage" was uncalled for, because the word "loss" in insurance law embraces injury or damage.

Liability insurance — right of injured party to sue insurer; effect of "no action" clause

In a policy of liability insurance, the contract is to indemnify the insured against liability to the injured party, the intention being to benefit not only the insured but also the third person injured. The latter can therefore sue the insurer directly without the necessity of obtaining first a judgment against the insured.[59] However, where the policy is one of indemnity merely against actual loss or payment, and not against liability, the contract is one "merely to reimburse the insured for liability actually discharged by him through payment to third persons, said third persons' recourse being thus limited to the insured alone," and no action can be brought by such third person directly against the insurer.[60] To determine therefore, whether the injured party can sue the insurer directly, an examination of the provisions of the policy should be made to discover the intention of the parties. In *Guingon v. del Monte*,[61] the third party liability policy contained the following provision:

[59] See Landaker v. Anderson, 145 Wash. 660, 261 Pac. 338 (1927).
[60] Guingon v. Del Monte, G.R. No. 22042, Aug. 17, 1967. See also Frye v. Bath Gas and Electric Co., 97 Maine 214, 54 Atl. 395 (1903).
[61] *supra.*

"The Company will, subject to the limits of liability, indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle or in connection with the loading or unloading of the Motor Vehicle, against all sums including claimant's costs and expenses which the Insured *shall become legally liable to pay in respect of*:

"a. death of or bodily injury to any person

"b. damage to property

.... (Italics supplied)

In an action brought against both the insured and the insurer by the injured party, the insurer claimed that the plaintiff had no cause of action against it since there was no privity between them. The Court however held for the plaintiff on the ground that under the abovequoted provision, the policy was clearly one for indemnity against liability. Hence, the injured party could sue the insurer.

The policy also contained the so-called "no-action" clause, as follows:

"*Action against company*

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by the Policy. Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder."

On the question whether under the above provision of the policy the plaintiffs could sue the insurer *jointly* with the insured, the Court held that they could. The "no action" clause, according to the Court, cannot prevail over the Rules of Court which authorizes the joining of parties plaintiffs or defendants as a measure to prevent multiplicity of suits.[62]

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[62] The Court cited American Automobile Ins. Co. v. Struwe, 218 S.W. 534 (1920).

The Insurer's right of subrogation

Under Article 2207 of the Civil Code, where the insured has received indemnity from the insurer for a loss arising out of a breach of contract, the insurer is subrogated to the insured's right against the person who violated the contract. However, the cause of the loss must be a risk covered by the policy. Thus, in *Sveriges Anfartygs Assurance Forening v. Qua Chee Gan,*[63] the action by the insurer as subrogee of the insured consignee against the shipper for alleged shortshipment, the Court upheld the lower court's dismissal of the complaint because the plaintiff failed to present the insurance policy as evidence. As it was the best evidence of the contract, it could not be conclusively determined whether "liability for shortshipment" was a covered risk. The Court stated that an insurer who pays the insured for loss or liability not covered by the policy cannot be subrogated to the latter.[64] And since the payment was made by the insurer without the consent of the defendant carrier, there could be no recovery even under the rule which allows a third person who pays on behalf of another to recover from the latter.[65]

NEGOTIABLE INSTRUMENTS

Relationship between co-accommodation makers

An accommodation maker of a promissory note is one who signs it without receiving any value therefor, but merely for the purpose of lending his name to another.[66] He may however be held liable to a subsequent holder of the note who took it for value.[67] In *Sadaya v. Sevilla,*[68] Sevilla, Varona and Sadaya signed, jointly and severally, a promissory note for ₱15,000 in favor of a bank. The entire amount was received by Varona alone, Sevilla and Sadaya having signed as co-makers only as a favor to Varona. When the latter was unable to pay all the amount, the bank collected the balance from Sadaya, who, despite repeated demands, was not reimbursed by Varona. When Sevilla died, Sadaya filed a claim against his estate for one half of the amount he paid

[63] G.R. No. 22146, Sept. 5, 1967.
[64] The Court cited 1, COUCH, CYCLOPEDIA ON INSURANCE LAW, 2d, 269-272 (1959).
[65] See Civil Code, Article 1236.
[66] See Neg. Inst. Law (Act 2031), sec. 29.
[67] *Ibid.*
[68] G.R. No. 17345, April 27, 1967.

to the bank on the note. When the Court of Appeals reversed the trial court's order to pay the claim, Sadaya brought the matter before the Supreme Court by way of certiorari.

The Court dwelt first on the liability of the two accommodation makers to the bank and stated that as such, the individual obligation of each of them to the bank was no different from, and no greater and no less than that contracted by Varona. The Bank could have pursued its right to collect the unpaid balance against either Sevilla or Sadaya, since they were jointly and severally liable to it. Sadaya, after payment, could have sought reimbursement of the total amount from Varona, the principal debtor. On the other hand, Sadaya had a right of contribution against his co-accommodation maker, Sevilla, in the absence of an agreement to the contrary, and subject to the conditions imposed by law. They stood as joint guarantors insofar as payment made by one may create a liability on the other. The Court believed that by jointly lending their names to Varona, they had impliedly promised each other to share equally the burdens which may ensue from their having signed the promissory note.

The Court however observed that there are certain requisites which must be present before one accommodation maker can seek reimbursement from a co-accommodation maker. It believed that since the Negotiable Instruments Law has no provision on the matter, the Civil Code should govern.[69] And under Article 2073 thereof, when one of two or more guarantors pays, he may demand reimbursement from the other, provided that payment was made in virtue of a judicial demand or that the principal debtor is insolvent. Since neither condition was present, Sadaya had no right to recover from Sevilla's estate.

When instrument has no maturity date

Under the Negotiable Instruments Law, a negotiable promissory note which expresses no date for payment is payable on demand,[70] and should be presented for payment within a reasonable time after its issue.[71] What constitutes a "reasonable time" will depend mostly on the facts of the particular case.[72]

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[69] Under Civil Code, Art. 18, in matters not governed by special laws, the Civil Code should govern.
[70] Neg. Inst. Law, Sec. 7.
[71] Neg. Inst. Law, Sec. 71.
[72] See Neg. Inst. Law, sec. 198.

In *Gaston v. Republic*[73] the issue raised was whether the action to demand payment of the notes involved had already prescribed. The notes bore no fixed date of maturity and the defendant debtor claimed that the action had prescribed because more than ten years had elapsed from the making of the notes. The plaintiff creditor however contended that the prescriptive period did not begin to run until the expiration of the agricultural year 1943-44. The notes were secured by a chattel mortgage contract which provided that the money represented by them was to be used during the said agricultural year. The Court upheld the plaintiff's contention because, as the above provision of the chattel mortgage contract showed, the intention of the parties was that the loans would not be repaid until after the agricultural year was over. Since, after deducting the period covered by the Moratorium Law, only 9 years and 4 months had passed from the end of said agricultural year till the filing of the complaint, the Court concluded that the action had not yet prescribed.

Recent Legislation

Under section 12 of the Negotiable Instruments Law, postdating of a check does not affect the validity of the instrument, unless it is done for an illegal or fraudulent purpose, such as when the drawer misrepresents himself to have sufficient funds in the bank to cover the check when in fact he has none. When such fraudulent intent is proven, the act may constitute estafa.[74] Under Republic Act 4885,[75] approved on June 17, 1967, failure of a drawer of a check, postdated or otherwise, to deposit the amount necessary to cover said check within three days from receipt of notice from the bank or the holder thereof that it has been dishonored for lack or insufficiency of funds, constitutes *prima facie* evidence of deceit, and unless this presumption is rebutted, the drawer may be convicted of *estafa*. Under this law therefore, conviction for estafa for issuing a rubber check will be more easily obtained — a boon to the honest businessman.

ADMIRALTY

Jurisdiction of CFI

It is quite well-settled that when a shipowner or shipagent is sued on a contract of marine transportation of goods, the case

[73] G.R. No. 20320, March 30, 1967.
[74] See Revised Penal Code, section 315, 4th par. 1(d).
[75] Amends Revised Penal Code, section 315, 4th par. 1(d).

falls within the admiralty jurisdiction of the Court of First Instance, regardless of the amount involved, and although the complaint may state an alternative cause of action against the arrastre operator, whose contract is admittedly not one in admiralty.[76] This rule was applied again last year by the Supreme Court in four cases.[77] In each of these, the amount involved was less than ₱5000 and the plaintiff was not certain in whose custody the goods in question were damaged or lost. The rule, according to the Court in one of the cases, avoids "unnecessary multiplicity of suits and, without sacrificing any substantial rights of the parties, removes the undue disadvantage in which plaintiff would be placed by having to prove the case in different courts, by means of evidence that is within the exclusive knowledge of the alternative defendants.[78]

Carriage of Goods By Sea Act — its applicability

The COGSA applies to all contracts for the carriage of goods by sea to or from Philippine ports in foreign trade.[79] In *American Insurance Co. v. Cia. Maritima,*[80] cargo was shipped in New York consigned to Cebu City. Since the vessel's final port of call was Manila, the goods were transhipped on a Maritima vessel from Manila to Cebu, where the consignee filed a claim for shortshipment. The insurer of the goods paid to the consignee the value of the missing cargo and thereafter brought an action against the Cia. Maritima. The latter's answer alleged that it had not received the missing part of the cargo from the first vessel in Manila. The plaintiff therefore moved to amend the complaint to include Macondray and Co., the ship agent of the vessel which carried the goods from New York to Manila. Macondray moved to dismiss the amended complaint against it on the ground that at the time of the amendment, the action had already prescribed, since under the COGSA, the carrier is "discharged from all liability in respect to loss or damage unless suit

[76] See cases cited in the 1966 Survey of Commercial Law, 42 PHIL. L.J. 109-110 (1967). See also Rules of Court, Rule 2, sec. 5.

[77] Hanover Ins. Co. v. Manila Port Service, G.R. No. 20976, Jan. 23, 1967; United Insurance Co. Inc. v. Royal Interocean Lines, G.R. No. 22688, April 27, 1967; The American Insurance Co. v. Macondray & Co., Inc., G.R. No. 24031, Aug. 19, 1967; and Fulton Insurance Co. v. Manila Railroad Co., G.R. No. 24263, Nov. 18, 1967.

[78] Hanover Insurance Co. v. Manila Port Service, *supra.*, see note 77.

[79] Sec. 13, Carriage of Goods by Sea Act (Public Act No. 521, 74th US Congress, as made applicable to the Philippines by Com. Act 65 approved on Oct. 22, 1936).

[80] G.R. No. 24515, Nov. 18, 1967.

is brought within one year after the delivery of the goods or the date when the goods should have been delivered."[81] Affirming the trial court's dismissal of the complaint against Macondray, the Supreme Court held that since the action was based on the contract of carriage up to the final port of destination, which was Cebu City, the COGSA was applicable. The transhipment of the cargo from Manila to Cebu was, according to the Court, not a separate transaction from that originally entered into by Macondray and was part of the latter's contractual obligation, since the correspondent freight had been prepaid in New York. The fact that the transhipment was made on an inter-island vessel did not operate to remove the contract from the operation of the COGSA.[82] It was and remained a contract of carriage of goods by sea from a foreign port to the Philippines.

On the other hand, the Court did not apply the COGSA in the case of *Ang v. American Steamship Agencies.*[83] This involved goods shipped from Hongkong to Manila, where the goods were delivered, not to the holder of the negotiable bill of lading covering said goods, but to one who had obtained a delivery permit from the shipagent. When the holder of the bill of lading brought the action more than two years from the delivery of the goods, the shipagent filed an action to dismiss on the ground that the action had already prescribed under the aforecited provision of the COGSA. Since it was admitted by both parties that there was no damage to the goods, the only issue left was whether there was a "loss" within the meaning of the said provision. Stating that "loss" contemplates a situation where no delivery at all is made because the same had perished, gone out of commerce, or disappeared, the Court declared the case to be a "misdelivery" and not a "nondelivery."[84] Since the cited provision of the COGSA speaks of "loss or damage," it is not applicable to the present case and the prescriptive period would be ten years.[85] The Court reasoned that the one-year limitation in the COGSA is designed "to meet the exigencies of maritime hazards. In a case where the goods were neither lost nor damaged in transit but were delivered in port to someone who claimed

[81] Com. Act No. 521 (1936), Sec. 3(6), par. 4.
[82] Court cited Go Chang & Co. v. Aboitiz & Co., 98 Phil. 179 (1955).
[83] G.R. No. 22491, Jan. 27, 1967.
[84] Court cited Tan Pho v. Dalamal, 67 Phil. 555 (1939).
[85] Since the action was based on a written contract. See Civil Code, Art. 1144(1).

to be entitled thereto, the situation is different, and the special need for the short period of limitation in cases of loss or damage caused by maritime perils does not obtain."

Arrastre operator — its management contract

An arrastre operator is one who takes delivery of the goods alongside the ship and carries the same to the customs warehouse for proper clearance by the customs authorities, after which he makes delivery to the consignee. Though his contract is not one in admiralty, it is one so closely related to the carriage of goods by sea, that a discussion of the latter would not be entirely complete without some mention of the former.

In *Insurance Company of North America v. Manila Port Service,*[86] the stipulation of facts showed that 351 cartons of medicine were shipped on board the SS JAPAN BEAR, in four cargo vans owned by the carrier. The shipment which was insured by the plaintiff, arrived in good order in Manila and was discharged in said condition unto the custody of the defendant arrastre operator on June 22, 1961. The keys to the vans remained with the vessel operator. On July 19, 1961, the consignee requested the shipagent to open the cargo yans, and found that part of the shipment was wet and therefore rendered useless. A formal claim for damage was filed by the consignee against the defendant arrastre operator on July 31, 1961, although a provisional claim had been filed on June 27, 1961, one day before the shipment was discharged from the vessel. The defendant raised several contentions. Firstly, they claimed that the mere receipt by the arrastre contractor of the shipment did not make it responsible for the damages thereto since it does not warrant, insure or guarantee the contents of packages, cases or boxes of cargo received by it from the vessel. In brushing aside this contention, the Court stated that since the arrastre operator had taken custody of the cargo vans from the time of their discharge from the carrier until their delivery to the consignee, in order to disclaim liability for the damage, it had to prove either of two things: that the shipment was already damaged when unloaded from the vessel[87] or that the damage was not in any way imputable to it.[88] Since neither was proved, the Court concluded

[86] G.R. No. 23124, Oct. 11, 1967.

[87] Evidence as found by the trial court proved otherwise.

[88] The Court cited Bernabe & Co. Inc. v. Delgado Bros. Inc., G.R. No. 12058, April 17, 1960.

that the damage must have been due to a cause for which the arrastre operator was liable.[89]

Secondly, the defendant contended that since the vessel owner had the keys to the cargo vans, it should be held liable for the damage. It was not claimed nor proved that the cause of the damage was the non-delivery of the keys or that the damage could have been avoided if they had been entrusted to the arrastre operator. The Court therefore ruled that the determining factor of responsibility could not be the possession of the key but the custody of the goods at the time the damage was incurred.

Thirdly, the defendant alleged that the claim for the value of the damaged goods was not filed within fifteen days from the discharge of the shipment from the vessel as required by its management contract. Although the Court reiterated the rule that the provisional claim filed by the consignee prior to the discharge of the vans from the vessel was not effective because it was premature and speculative,[90] it held that the formal claim filed more than 15 days after such discharge was sufficient and effective against the defendant. According to the Court, the 15-day period provided by the contract can apply only if the consignee had knowledge of the loss or damage before the expiration of said period. Where, as in this case, the consignee learns of said damage only after the 15 days have elapsed, the period within which to file the claim should commence, according to the Court, not from the date of discharge of the goods but from the date when the consignee learns of the damage or from the date on which, with the exercise of reasonable diligence, such information could have been secured. The burden of proving that the consignee had such knowledge prior to the day the vans were opened on July 19 was on the defendant and this it was not able to do.[91]

Similarly, where the evidence shows that the loss occurred after the lapse of 15 days from the date of discharge from the

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[89] This ruling is similar to the presumption of negligence on the part of the common carrier when goods are delivered in a damaged condition to the consignee. See Civil Code, Art. 1735.

[90] The Court cited Shell Co. of the Phil., Ltd. v. Cia. General de Tabacos De Filipinas, G.R. No. 20230, July 30, 1965; Firemen's Fund Ins. Co. v. Manila Port Service, G.R. No. 20938, Aug. 9, 1966; Rizal Surety & Ins. Co. Inc. v. Manila Railroad Co., G.R. No. 22409, April 27, 1967; and Philippine Education Co. Inc. v. Manila Port Service, Sept. 20, 1967.

[91] See also New Zealand Ins. Co. Ltd. v. Manila Port Service, G.R. No. 22500 April 24, 1967.

vessel, the claim cannot possibly be filed within the 15 days period as prescribed by the contract, and if filed within 15 days from the loss or knowledge thereof, the claim is effective.[92]

If a provisional claim for loss or damage is filed within the stipulated period, the fact that it does not contain a statement of the value of the goods lost or the damage suffered, will not prevent its effectivity, as long as it describes the shipment concerned sufficiently to allow the arrastre operator to make a reasonable verification of the claim.[93] In *State Bonding Ins. Co. Inc. v. Manila Port Service,*[94] the provisional claim filed by the consignee specified the number of the bill of lading, the name of the consignee, the marks and numbers appearing on the goods involved, the name of the carrying vessel, and the date of arrival thereof. The Court held that the claim satisfied the requirements of the rule.[95]

Where the claim for loss is filed within the period stipulated but refers to goods "shortlanded and/or loaded in bad order *ex abovementioned vessel,*" the claim cannot be effective against the arrastre operator because it indicates that the loss took place on the vessel. The claim in such a case is more properly one against the shipowner and not against the arrastre operator. To rule otherwise would deprive the latter of a reasonable opportunity to ascertain the truth of the consignee's claim, insofar as relevant to its liability.[96]

Under the usual terms of the management contract, the action for loss or damage to the goods should be brought within one year from the date of discharge of said goods from the vessel or from the date when the claim for the value of such goods has been rejected or denied by the arrastre contractor, provided such claim has been filed within fifteen days from the date of discharge of the goods from the vessel. In *Genato Commercial Company v. Manila Port Service,*[97] the goods were discharged on August 15, 1962, but the action was not brought until October

[92] See Yu Kimteng Construction Corp. v. Manila Railroad Co., G.R. No. 17027, March 3, 1967.

[93] State Bonding Ins. Co. Inc. v. Manila Port Service, G.R. No. 21833, Feb. 28, 1966; Atlantic Mutual Ins. Co. v. United Philippine Lines, Inc., G.R. No. 21546, March 31, 1966.

[94] G.R. No. 23715, Oct. 30, 1967.

[95] To the same effect, see Liverpool and London Globe Ins. Co. Ltd. v. Manila Port Service, GR. No. 23338, Nov. 18, 1967.

[96] Philippine Education Co. v. Manila Port Service, G.R. Nos. 23716 & 24091, Sept. 20, 1967.

[97] G.R. No. 24092, Sept. 13, 1967.

13, 1963. The plaintiff claimed the benefit of the second alternative — i.e., one year from the date the claim for loss is rejected by the arrastre operator. The defendant operator however argued that this alternative was unavailable because it had never rejected the plaintiff's claim. The Court held that the arrastre operator could not, by inaction, deprive the consignee of its right to the said alternative and reiterated the rule that when the arrastre operator fails to deny or reject the consignee's claim, the period for bringing the action should begin to run upon the expiration of one year from the date of discharge of the last package upon the custody of said operator. Applying the rule to the case, the Court concluded that since the date of discharge was August 15, 1962, the period of one year began to run only on August 15, 1963, which was only a little over two months before the action was brought on October 21, 1963. The action therefore could prosper.[98]

Recent legislation

Under Republic Act 5173 approved on August 4, 1967, many of the functions formerly assigned to the Bureau of Customs regarding vessels have been transferred to a newly created unit in the Philippine Navy, the Philippine Coastguard. Among its objectives are to enforce or assist in the enforcement of all applicable laws upon the high seas and waters subject to Philippine jurisdiction, and to enforce all laws and promulgate rules and regulations for the promotion of safety of life and property within the maritime jurisdiction of the Philippines.[99] In the implementation of these objectives, the Philippine Coastguard has the power, among others, to register all types of motorized watercraft plying in Philippine waters; issue certificates of Philippine registry of vessels; issue certificates of inspection of vessels for operation;[100] issue licenses and certificates to officers, pilots, patrols and seamen, as well as suspend and revoke said certificates;[101] and to prevent and suppress illegal entry and smuggling that may be committed in Philippine waters.[102] This

[98] To the same effect, see Yek Tong Lin Fire and Marine Ins. Co. Ltd. v. Manila Port Service, G.R. No. 24836, Sept. 13, 1967; and Philippine Education Co. v. Manila Port Service, G.R. No. 24091, Sept. 20, 1967.

[99] Rep. Act 5173, Secs. 1(a) and (b).

[100] Rep. Act 5173, Sec. 3(d).

[101] Rep. Act 5173, Sec. 3(e).

[102] Rep. Act 5173, Sec. 3(a).

latter function was probably the main factor which triggered its creation, in consonance with the anti-smuggling campaign of the government.

COMMON CARRIERS

Liability for acts of employees

The New Civil Code makes the common carrier liable for wilful acts or negligence of its employees even if the latter have acted beyond the scope of their authority or in violation of the orders of the carrier.[103] This provision was applied by the Court in *Maranan v. Perez*[104] which involved a passenger who was fatally stabbed by the driver of the taxi he was riding in. When suit was brought by the deceased's parents against the owner of the taxi, he claimed that he could not be held liable for a fortuitous event, and, citing the case of *Gillaco v. Manila Railroad*,[105] claimed that a carrier is under no absolute liability for assaults of its employees upon passengers. Distinguishing the case from the *Gillaco* case, the Court pointed out that while in the latter the employee was not in the discharge of his duties but was off-duty at the time of the crime, in this case the killing took place in the course of duty of the guilty employee and when he was acting within the scope of his duties. Furthermore, the Court noted that the *Gillaco* case was decided under the old Civil Code which did not contain any provision similar to the one quoted above. The Court believed that under this provision, the carrier's liability is absolute in the sense that it practically secures the passengers from assaults committed by its own employees. The Court cited the three reasons underlying the rule:

> ". . . . As explained in *Texas Midland P.R. v. Monroe*, 110 Tex. 97, 216 SW 388,389-390, and *Haver v. Central Railroad Co.* 43 IRA 84,85: (1) the special undertaking of the carrier requires that it furnish its passenger that full measure of protection afforded by the exercise of the high degree of care prescribed by law, *inter alia* from violence and insults at the hands of strangers and other passengers, but above all, from the acts of the carrier's own servants charged with the passenger's safety; (2) said liability of the carrier for the servant's violation of duty to passengers, is the result of the former's confiding in the servant's hands, the performance of his contract

[103] Civil Code, Art. 1759.
[104] G.R. No. 22272, June 26, 1967.
[105] 97 Phil. 884 (1955).

to safely transport the passenger, delegating therewith the duty of protecting the passenger with the utmost care prescribed by law; and (3) as between the carrier and the passenger, the former must bear the risk of wrongful acts or negligence of the carrier's employees against passengers, since it, and not the passengers, has power to select and remove them.

"Accordingly, it is the carrier's strict obligation to select its drivers and similar employees with due regard not only to their technical competence and physical ability, but also, no less important, to their total personality, including their patterns of behavior, moral fibers and social attitude."

The Court therefore upheld the lower court's decision making the defendant liable, but added moral damages for the mental anguish suffered by the parents of the deceased passenger.

PUBLIC UTILITIES

When franchise not necessary for issuance of certificate

Before any person or corporation may obtain a certificate of public convenience and necessity from the Public Service Commission to operate an electric plant, a franchise, either municipal or legislative, must first be obtained.[106] In *Teresa Electric Light and Power Co., Inc. v. Public Service Commission*,[107] the Filipinas Cement Corporation applied for a certificate of public convenience and necessity to install and operate an electric plant for the purpose of supplying power and light to its cement factory and to its employees living within its compound. The Teresa Electrical Light and Power Co., who was already a grantee of a certificate to furnish electric power in the town of Teresa where the cement factory was located, opposed the application on the ground, among others, that the applicant had not secured a franchise in accordance with Act No. 667. When the Commission granted the application of the cement corporation, the oppositor appealed. The Supreme Court observed that from the provision of said Act,[108] it was clear that the law was intended to apply exclusively to a person or corporation who desires to operate an electric plant for business purposes, and it therefore should not be made to apply to a corporation who wants a certificate to operate electric plant exclusively for its own use and for the

[106] See Act No. 667 as amended, sec. 1.
[107] G.R. No. 21804, Sept. 25, 1967.
[108] The Court cited the provision which compels the payment of ½% of the *gross earnings* of the operator to the provincial treasurer, Act 667, Sec. 2, second par.

use of its employees, to whom service would be rendered free of charge. Hence, the Court concluded that under the circumstances, a municipal or legislative franchise was not necessary before the applicant could secure a certificate of public convenience and necessity.

Old operator rule; rule of Benitez v. Santos modified

It is quite well-settled that an old operator should be protected in his investment and that so long as he performs the conditions of his certificate, complies with the rules and regulations of the Public Service Commission, and meets the reasonable demands of the public, he has a preferential right over a new applicant in the same territory.[109] This rule has however been worn thin by exceptions and modifications, more specially by the rule laid down in *Benitez v. Santos*,[110] where the Supreme Court refused to increase the taxicabs of an old operator who had all the experience and know-how of the trade and had apparently complied with all his obligations under the law and to the public. It instead granted a certificate of public convenience for a new and inexperienced operator, believing that a contrary decision would tend to create a monopoly which would only serve to prejudice the public interest. In the case of *Papa v. Santiago*,[111] the Court however refused to apply the Benitez rule to an application to operate a telephone system in Pasig, Rizal. This application was filed by Papa. Subsequently, Santiago, who was already operating a telephone system in other neighboring municipalities of Rizal, also filed a similar application. The Public Service Commission granted Santiago's application and denied Papa's. Although the Supreme Court originally reversed the Commission's order and granted Papa's application, on reconsideration, it set aside its first order and granted the application of Santiago, the old operator. The Court ignored the fact of priority of Papa's application because new evidence had shown that he did not have the financial capacity to operate the telephone system. In refusing to apply the *Benitez* rule in favor of Papa, the Court stated:

> "Reflection upon recent experience, of which this Court may well take notice, shows that however valid the doctrine in

[109] This rule was first laid down in Batangas Trans. Co. v. Orlanes, 52 Phil. 455 (1928).
[110] G.R. No. 12911, Feb. 29, 1960.
[111] G.R. Nos. 16204 & 16256, April 24, 1967.

Benitez v. Santos case should be in connection with the fields of transportation and merchandising, it is less valid in the sphere of telephone communication. Here, the desirability of the service rendered lies in the ability of every subscriber to obtain fast and reliable connection with every other subscriber at any given time and place; and experience has shown that the main obstacle to such efficiency is the existence and multiplicity of independent systems. Intercommunication between them is difficult, laborious and time consuming . . . The difficulties described would be greatly compounded were the certificate granted to Ernesto Papa, in view of the existing grant of a legislative franchise to the Republic Telephone Company (controlled by Santiago) for the same municipality of Pasig. It is difficult to discern what reasons of public convenience (as distinguished from the interest of the operators) would justify the splitting of a small community between two separate telephone systems, each understandably intent in satisfying its own subscribers and reluctant to favor those of its rival. The unfortunate experience of the independent systems operating in Manila would then be merely repeated."

Sale of property and franchises of public service

The sale of property, franchises, or certificates of any public service requires the approval of the Public Service Commission.[112] However, a sale without such approval does not render it absolutely void. It is only necessary to protect public interest and is not a condition precedent to the validity of the contract.[113] As between the parties, the contract is valid and binding, even without such approval.

Since the power to approve such sale is vested by law in the Public Service Commission, the Court of First Instance has no jurisdiction to enjoin a sale of a certificate of public convenience.[114] And pending determination of the legality of the sale, the Commission has the power to approve provisionally such sale and to grant provisional authority to the vendee to operate.[115]

PSC findings will usually not be disturbed

It is firmly settled in this jurisdiction that findings of the Public Service Commission will not be disturbed by the Supreme Court unless they are not supported by the evidence. Thus, where the Commission makes a finding that public interest would

[112] Public Service Act, Sec. 20(g).
[113] Darang v. Belizar et. al., G.R. No. 19487, Jan. 31, 1967.
[114] Serrano et. al. v. Muñoz (HI) Motors Inc. et. al., G.R. No. 25547, Nov. 27, 1967.
[115] *Ibid.*

be served by the approval of a new application,[116] or that the applicant has or has no financial capacity to meet the requirements of the service,[117] the Court will not reverse the order where there is evidence to sustain such finding.

Finality of PSC order

Under the law, the Public Service Commission has authority to amend, modify, or revoke any certificate it has issued, whenever the facts and circumstances on the strength of which it was issued have materially changed.[118] Does this power of the Commission imply that its decisions and orders cannot become final? In *Philippine Long Distance Co. v. Medina,*[119] the Supreme Court answered this question in the negative. The Philippine Long Distance Co. (PLDT) applied for an increase of its rates and after about two years of public hearings, the Commission approved such increase. More than a year after such approval, Araneta University, who was not a party to any of the previous proceedings, filed in the *same case* a petition for reexamination of the amount of the increase, claiming that the PLDT could carry out its expansion program at a lesser burden to subscribers. The PLDT opposed the petition claiming that the decision had already become final and executory and asked that the Commission dismiss it. This motion to dismiss was denied, thus PLDT appealed to the Supreme Court. After stating that Araneta had no standing to move for a reconsideration since he was not a party to the previous proceedings, the Court held that the judgment had already become final. It said:

> ". . . it may be well to take a look at the historical background of the present statute. The old Public Service Law, Public Act 3108, provides in Section 28 thereof, that the Public Service Commission 'at any time, may order a rehearing to extend, revoke or modify any order made by it.' An examination of jurisprudence under the legal provision just cited is quite revealing. This Court has held that 'finality must be written on Public Service Commission cases just as public policy demands that it be written on judicial controversies.' . . .
>
> ". . . . serious consequences that might ensue from a contrary rule are not difficult to perceive. The flow of operations may be disturbed. The program of expansion may suffer from

[116] Red Line Trans. Co. Inc. et. al. v. Santo Tomas, G.R. No. 18472, Jan. 30, 1967.

[117] *Ibid.*, Also Papa v. Santiago, *supra.*

[118] Com. Act No. 146 (Public Service Act), Sec. 16 m.

[119] G.R. Nos. 24340 — 24344, July 18, 1967.

a bottleneck. Inefficiency or inadequacy of service may result. Oppositors to a given final decision, may yet constitute a wrecking crew of a public utility company. They may even bring about its financial ruin. In the end, the consumers are prejudiced."

The Court furthermore believed that, since the rates were fixed after the Commission had considered all the factors in rate-making and only after a protracted hearing, these rates must have been meant to be in force not only for a day or a week but for as long as conditions do not warrant a change. The Court therefore concluded that since the judgment increasing the rates had already became final, Araneta's petition for new rates should be instituted as a *new proceeding*[120] — i.e., a new case must be filed under a separate docket in the Commission. The Court emphasized that in this new proceeding, there must again be notice by publication and by such other means as the Commission may deem necessary, to the end that all interested parties receive reasonable notice thereof to enable them to prepare and present their respective sides to the controversy.

Civil Aeronautics Board has power to grant provisional authority

The Civil Aeronautics Board is granted by law the power to issue a certificate of public convenience and necessity for the operation of airplanes in commerce.[121] It may also grant a temporary permit for such operation,[122] subject of course to the condition that the grant be in accordance with the procedure laid down by law. In *Philippine Airlines Inc. v. Civil Aeronautics Board,*[123] the Board approved the application of one Lim for a provisional permit to operate DC-3 aircrafts. The PAL asked the Supreme Court to set aside this resolution on the ground, among others, that the Board failed to hear the evidence which PAL could offer, and that there was no reason for said grant since there was no finding of public need for it. It was shown, however, that the Board had conducted several hearings on the application, giving notice to existing airlines, including the PAL, who did not send any representative. The Board had examined the feasibility of Lim's operation on a scheduled basis as well as his financial capacity, and found in his favor. The Board's

120 Under sec. 16 m, apparently.
121 See Rep. Act 776, sec. 11.
122 See sec. 10(C) (1).
123 G.R. No. 24321, July 21. 1967.

action therefore did not offend against procedural process and since the PAL had failed to prove any unfairness in the Board's action, the Court denied the certiorari prayed for by PAL.

TRADEMARKS

In *The Clorox Co. v. Director of Patents,*[124] a petition was filed with the Patent Office for the registration of the trademark "OLDROX". This was opposed by the Clorox Co., whose verified opposition, filed within the prescribed period, was accompanied by a covering letter erroneously identifying the number of the case. The clerk of the Patent Office, without examining the petition for opposition and relying only on the covering letter, misfiled the opposition with the records of another case. The opposition was considered by the Director of Patents as not having been filed at all, and approved the registration of the trademark applied for. When the case was brought before the Supreme Court for review, the Director argued that the petitioner was not totally deprived of his right to question the registration of the trademark because he could still file a cancellation proceeding under sections 17 and 19 of Republic Act 166. After holding that the petitioner had substantially complied with the requirements of law and that his opposition should have been given due course, the Court stated that such opposition to the registration and petition for cancellation are alternative proceedings which a party may avail of according to his purposes and predicaments,[125] and that the petitioner had the right to choose which remedy it deemed best for the protection of its rights.

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[124] G.R. No. 19531, Aug. 10, 1967.

[125] Court cited Anchor Trading Co. v. Dir. of Patents, G.R. No. 8004, May 30, 1956.