COMMERCIAL LAW

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A review of the decisions of the Supreme Court during the year 1968 in the field of Commercial Law reveals that old legal doctrines were merely re-affirmed and applied to new but similar fact situations, while some new legal doctrines were promulgated and applied to old and familiar facts. This review is not merely a re-statement of these decisions, but a re-statement and at the same time an inquiry into their respective legal acceptability, in the light of recognized legal principles.

CORPORATION LAW

Lifting the corporate veil

The doctrine that "a corporation is a legal entity, distinct and separate from the members and stockholders who compose it is recognized and respected in all cases which are within reason and the law. When the fiction is urged as a means of perpetrating a fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetration of knavery or crime"[1] the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals.

This disregard of corporate fiction was applied in the case of *Villa Rey Transit, Inc. v. Ferrer.*[2] In this case, Jose M. Villarama, an operator of a bus transportation, sold to Pantranco his certificates of public convenience for ₱350,000 with the condition, among others, that the seller (Villarama) "shall not for a period of 10 years from the date of this sale, apply for any TPU service identical or competing with the buyer." Barely three months thereafter, a corporation called Villa Rey Transit, Inc. was organized, wherein his wife, Natividad R. Villarama was one of the incorporators, and the two others were his

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[1] Citing Koppel Phil. v. Yatco, 77 Phil. 496 (1946); Liddel & Co. v. Collector, G.R. No. 9787, June 30, 1961; Commissioner v. Norton & Harrison, G.R. No. 17618, August 31, 1964; See also GUEVARA, THE PHILIPPINE CORPPORATION LAW 6-8 (1967 ed.).

[2] G.R. No. 23893, October 29, 1968.

brother and sister. The evidence further showed that the initial capitalization of the corporation of ₱105,000 was mostly financed by Villarama, ₱85,000 thereof being covered by Villarama's personal check. Further, the evidence showed that when the corporation was in its initial months of operation, Villarama purchased and paid with his personal checks Ford trucks for the corporation. Villarama himself admitted that he mingled the corporate funds with his own money. He also admitted that gasoline purchases of the corporation were made in his own name because "he had existing account with Stanvac which was properly secured and he wanted the corporation to benefit from the rebates that he received." According to the Court, Villarama had been "too much involved in the affairs of the corporation to altogether negative the claim that he was only a part-time manager. They show beyond doubt that the corporation is his *alter ego*." Consequently, in a suit filed by Pantranco against the corporation, notwithstanding the fact that Villarama was not even a stockholder or incorporator of the corporation, the restriction imposed on Villarama that he "shall not, for a period of ten (10) years from the date of this sale apply for any TPU service identical or competing with the buyer," was also deemed applicable to the corporation which was considered his *alter ego*. Hence, the doctrine first quoted at the beginning of this case was applied, lifting the corporate veil that covers and isolates the corporaton from the members or stockholders who compose it.

The case of *Philippine National Bank v. Bitulok Sawmill*,[3] involves the issue of whether subscribers may be relieved from the payment of the balance of their subscriptions.

The incorporators and subscribers in the case at bar, organized in 1947 the Philippine Lumber Distributing Agency, Inc., upon the initiative and insistence of the late President Manuel A. Roxas in order to insure a steady supply of lumber, which could be sold at reasonable prices to enable the war sufferers to rehabilitate their devastated homes. The lower court found that, "at the beginning, the lumber producers were reluctant to organize a cooperative agency as they believed that it would not be easy to eliminate from the retail trade the alien middleman who had been in this business from time immemorial, but because the late President Roxas made it clear that such a cooperative agency would not be successful without a substantial working capital which the lumber producers could not entirely shoulder, and as an inducement he promised and agreed to finance the agency by making the Government invest ₱9.00 by way of counterpart for every peso that the members would invest therein."

[3] G.R. Nos. 24177-85, June 29, 1968.

The lumber producers subscribed to the capital stock of the lumber agency, but the Government did not put up any counterpart fund. However, upon instruction of the late President Roxas, the P.N.B. granted loans to the agency, instead of the financial aid promised. The Philippine Government did not invest the ₱9.00 for every peso coming from the defendant lumber producers. The loan extended to the corporation was not paid. Hence, these suits filed by the P.N.B. against the subscribers for the payment of their unpaid subscriptions to the corporation now under receivership. The lower court found for the lumber producers-subscribers holding that it is grossly unfair and unjust for the P.N.B. now to compel the lumber producers to pay the balance of their unpaid subscriptions. But the Supreme Court, on appeal, held otherwise, citing the well-known doctrines regarding the illegality of releasing subscribers from the payment of their subscriptions without valuable consideration for the release.[4]

But the reasoning of the Supreme Court was this: "It would be unwarranted to ascribe to the late President Roxas the view that the payment of the stock subscriptions, as thus *required by law*, could be condoned in the event that the counterpart fund to be invested by the Government would not be available. *Even if such were the case,* however, *and such promise were in fact made,* to further the laudable purpose to which the proposed corporation would be devoted and the possibility that the lumber producers would lose money in the progress, *still the plain and specific wording of the applicable legal provision* as interpreted by this Court must be controlling. *It is a well-settled principle that with all the vast powers lodged in the Executive, he is still devoid of the prerogative of suspending the operation of any statute or any of its terms.*"

The Supreme Court gave too much emphasis to justify its decision, *on the lack of power on the part of the Chief Executive to suspend the operation of a statute* in deciding this case. It seems that this case does not involve the suspension of the operation of any statute;[4a] but the validity or invalidity, or the enforceability or unenforceability of an ordinary contract of subscription. Subscriptions to the capital stock of a corporation are contracts in a true sense, and are governed primarily by the law of contracts. Thus, in the case

[4] Citing Phil. Trust Co. v. Rivera, 44 Phil. 469 (1923); Velasco v. Poizat, 37 Phil. 802 (1918); National Exchange Co. v. Dexter, 51 Phil. 601 (1928); Miranda v. Tarlac Rice Mill Co., Inc., 57 Phil. 619 (1932); Lumanlan v. Cura, 59 Phil. 746 (1934); Garcia v. Suarez, 67 Phil. 441 (1939); Baluyot v. Bank of P.I., 72 Phil. 17 (1941); Lingayen Electric Power v. Baltazar, 93 Phil. 404 (1953).

[4a] The Corporation Law does not provide that subscribers may never be released from the payment of their subscriptions.

of *National Exchange Co. v. Ramos*,[5] it was held that a subscription contract for a certain number of shares in a corporation signed by the subscriber in the belief that the capital stock is what appeared in said contract when as a matter of fact it had been previously increased without his knowledge prior to his subscription, is null, since he had not consented to enter into such a contract in a corporation with a capital stock different from what he was made to believe at the time of subscription.

The dissertation on constitutional law by the Supreme Court in denying relief from subscription by the subscribers in the case at bar is unnecessary, because this case could have been decided on the well-known theories of the nature of capital stock subscriptions. What we mean may be seen from the following discourse by the Supreme Court on constitutional law on the issue whether a subscriber may or may not be relieved from his subscription contract. We quote:

> "The emphatic and categorical language of an American decision cited by the late Justice Laurel, in People v. Vera (65 Phil. 56, 121 [1937]), citing Holden v. James, Mass. 396 (1814), comes to mind: 'By the twentieth article of the declaration of rights in the constitution of this commonwealth, it is declared that the power of suspending the laws or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.' Nor could it be otherwise considering that the Constitution specifically enjoins the President to see to it that all laws be faithfully executed. (Art. VII, sec. 10, par. 1, Constitution of the Philippines.) There may be a discretion as to what a particular legal provision requires; there can be none whatsoever as to the enforcement and application thereof once its meaning has been ascertained. What it decrees must be followed; what it commands must be obeyed. It must be respected, the wishes of the President, to the contrary notwithstanding, even if impelled by the most worthy of motives and the most persuasive equitable consideration. To repeat, such is not the case here. For at no time did President Roxas ever give defendant lumber producers to understand that the failure of the Government for any reason to put up the counterpart could terminate their statutory liability."

The same conclusion would have been attained, that is, the subscribers in the case at bar could not be released from their contracts of subscriptions because, "It is an established doctrine that subscriptions to the capital stock of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and the assignee in insolvency can maintain an action upon any unpaid stock subscriptions in order to realize assets for the payment of its debts. After having bound himself to contribute, he cannot be discharged

[5] 51 Phil. 310 (1927).

from the obligation he has assumed until the contribution has actually been made, *or the obligation in some lawful way extinguished.*"[6]

Extending the corporate term

In the case of *Alhambra Cigar v. Securities and Exchange Commission*[7] the issue is: May a corporation extend its life by amendment of its articles of incorporation effected during the three-year statutory period for liquidation, when its original term of existence had already expired?

The Alhambra Cigar & Cigarette Manufacturing Co. was incorporated on Jan. 15, 1912 for a term of 50 years. Its term expired on January 15, 1962. During its period of liquidation, on June 20, 1963 (supposedly pursuant to Republic Act No. 3531 which empowered private corporations to extend their corporate life beyond the period fixed by the articles of incorporation for a term not to exceed 50 years in any one instance), it amended its articles of incorporation to extend its corporate life for an additional 50 years, or a total of 100 years from its original date of incorporation. On August 26, 1963, Alhambra's stockholders, representing more than 2/3 of the subscribed capital stock, approved the resolution extending the term. On October 28, 1963, the articles of incorporation as amended were filed with the Securities & Exchange Commission, but the latter returned the said articles, with the ruling that Republic Act No. 3531 "which took effect only on June 20, 1963, cannot be availed of by the said corporation, for the reason that its term of existence had already expired when the said law took effect; in short, said law has no retroactive effect."

The Supreme Court affirmed the ruling of the Securities & Exchange Commission, holding that a corporation, upon expiration of its term, may only continue for purposes of liquidation and not for the purpose of doing business; in other words, upon expiration of its term, it is dissolved such that its corporate existence or juridical personality may no longer be extended.

Technically, the decision is correct and is in accord with the recognized doctrine on the effect of corporate dissolution; one that is "dead" can no longer be "ressurrected," or, in the language of the Supreme Court, "the moment a corporation's right to exist as an artificial person ceases, its corporate powers are terminated just as the powers of a natural person to take part in mundane affairs cease to exist upon his death."[8] To validly extend corporate life by amendment of the articles under Republic Act No. 3531, the amendment must be effected *before* expiration of the corporate term.

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[6] GUEVARA, THE PHILIPPINE CORPORATIOH LAW 116, 176 (1967 ed.).
[7] G.R. No. 23606, July 29, 1968.
[8] Citing 19 C.J.S. *Corporations* § 1727 (1940) which in turn cited Sharp v. Eagle Lake Lumber Co., 212 P. 933, 60 Cal. App. 386 (1923).

But the Supreme Court, quoting from Fletcher, further makes a distinction between the extension of a charter and the grant of a new one or renewal. "To renew a charter is to revive a charter which has expired, or, in other words, 'to give a new existence to one which has been forfeited, or which has lost its vitality by lapse of time.' To extend a charter is to increase the time for the existence of one, which would otherwise reach its limit at an earlier period."[9]

This distinction is correct, but it is error for the Court to believe that "Nowhere in our statute, sec. 18, Corporation Law, as amended by Republic Act No. 3531 — do we find the word "renew" in reference to the authority given to corporations to protect their lives." It is not found in sec. 18 of the Corporation, but the law itself impliedly grants incorporators the right to renew or reincorporate any corporation whose term has already expired. What the law does not authorize is the extension of life after such life has already expired (prohibited before Republic Act No. 3531 took effect), but not the right to reincorporate which is merely the grant of a new life or charter. While it is true that "extension may be made only before the term provided in the corporate charter expires", renewal or reincorporation may be done even after expiration of term, *by complying with the requisites for incorporation* under section 6 of the Corporation Law, plus the requisite, in case the corporate name and assets are to be used, that *all* the stockholders of the expired corporation agree to reincorporate; any stockholder who did not consent to the reincorporation is entitled to have a liquidation of his interests as of the date of the dissolution.

In other words, contrary to what the Supreme Court said, our law does not prohibit renewal or reincorporation after expiration of term. Had the Alhambra Cigar & Cigarette Manufacturing Co., in the case at bar, filed new articles of incorporation, instead of an amendment for extension of term, the act would have prospered. But what it did was to ask for extension of term; hence, the decision is correct. But to state further that renewal is not allowed by our Corporation Law is unjustified.

Foreign corporations

In *Swedish East Asia Co., Ltd. v. Manila Port Service,*[10] goods shipped by plaintiff intended for Hongkong were erroneously discharged in Manila. The error was later discovered, and the Manila Port Service returned some of the goods, but not all, because the rest of the goods could no longer be found. Consequently, the Manila Port Service was

[9] 8 FLETCHER CYCLOPEDIA ON THE LAW OF PRIVATE CORPORATIONS, 535 (1931).
[10] G.R. No. 26332, October 26, 1968.

sued for the return of the goods erroneously received and not returned, but the defendant put up the defense that plaintiff had no capacity to sue in Philippine courts under section 69 of the Corporation Law.

The Supreme Court correctly held, in conformity with previous decisions, that this section of the Corporation Law is not applicable to foreign corporations performing single acts or isolated transactions. In the case at bar, there was no single act or isolated business transaction. Perhaps, it would have been better had the Supreme Court said that the prohibition does not apply to a suit *based on an act entirely independent of, and not arising out of a business transaction in the Philippines.* In other words, section 69 of the Corporation Law does not apply to foreign corporations performing single acts or isolated business transactions, nor to acts entirely independent of, or not a result of, any business transaction in the Philippines. The Supreme Court said this, too, although not too clearly. It said:

> "The respondents challenge the petitioner's capacity to sue, it being admittedly a foreign corporation without license to engage in business in the Philippines, citing Section 69 of the Corporation Law. It must be stated however that this section is not applicable to a foreign corporation performing single acts or isolated transactions. (Marshall Wells Co. v. Elser, 46 Phil. 70; Central Republic Bank, et al v. Bustamante, 71 Phil. 359.) There is nothing in the record to show that the petitioner has been in the Philippines engaged in continuing business or enterprises for which it was organized, when the sixteen bundles were erroneously discharged in Manila, for it to be considered as transacting business in the Philippines. The fact is that the bundles the value of which is sought to be recovered, were landed not as a result of a business transaction, "isolated" or otherwise, but to a mistaken belief that they were part of the shipment of forty similar bundles consigned to persons or entities in the Philippines. There is no justification, therefore, for invoking the provisions of Section 69 of the Corporation Law."

Stock dividends to be distributed only among stockholders

In the case of *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*,[11] after having settled the preliminary issue whether the management contract between Nielson and Lepanto is one of agency or one of lease of services (having held that it was a lease of services after enumerating the distinctions or differences between the two), then proceeded to resolve the question of whether stock dividends could be distributed to one who is not a stockholder of the corporation. It appeared that the Supreme Court, having resolved that Nielson's agreement with Lepanto was one of lease of services, ordered Nielson in its original decision, to be paid 10% of the stock dividends declared by Lepanto, pursuant to the agreement regarding payment of manage-

[11] G.R. No. 21601, December 28, 1968.

ment fees. Lepanto assailed the legality of such order of the Supreme Court in its petition for reconsideration.

On reconsideration, the Supreme Court saw merit in this contention of Lepanto, because stock dividends are payable only to stockholders and not to strangers or non-stockholders. While shares of stock may be issued to a third person for services rendered (because services is equivalent to property), yet those shares should be part of the original capital stock of the corporation upon its organization, or part of the stock issued when the increase of the capitalization of a corporation is properly authorized. In other words, it is the shares of stock that are originally issued by the corporation and forming part of the capital that can be exchanged for cash or services rendered, or property; that is, if the corporation has original shares of stock unsold or unsubscribed, either coming from the original capitalization or from the increased capitalization.

The decision on reconsideration is correct. It is clear from section 16 of the Corporation Law that "No corporation shall issue stock... except in exchange for... profits earned by it but not distributed *among its stockholders or members....*" The Supreme Court correctly held: "Thus, it is apparent that stock dividends are issued only to stockholders. This is so because only shareholders are entitled to dividend."

And so, in the case at bar, Nielson, not being stockholder of Lepanto, (and even admitting that his contract with Lepanto was one of lease of service and not on agency) cannot be paid in shares of stock which form part of the stock dividends of Lepanto for services it rendered under the management contract.

Removal of director

In the case of *Detective & Protective Bureau, Inc. v. Cloribel*[12] it was held:

> "A director who has been removed by the stockholders and elected another person in his place cannot be compelled to vacate his office, if it is shown that the successor is not an owner of any share of stock in the corporation, and because under the by-laws of said corporation, 'directors shall serve until the election and qualification of their duly qualified successor.' "

This holding, if correct, means that the removal of a director effected by the stockholders by the required 2/3 vote is ineffective until a qualified successor has been duly elected.

[12] G.R. No. 23428, November 29, 1968.

It is submitted that a director of a corporation may lawfully be removed by 2/3 vote and his office declared vacant, although his successor may not qualify. The right of an incumbent director to continue in his office until his successor has been duly elected and qualified applies to cases where no removal has been duly made. Once a director has been removed pursuant to law, he is deemed removed although his successor, for some legal reasons, may not qualify. It does not necessarily follow that if the successor does not qualify, the incumbent director may never be removed from his office. Otherwise, a director removed for cause and pursuant to law may continue to hold office to the detriment of the interests of the corporation. Such holding also renders ineffective the provisions of section 34 of the Corporation Law. A by-law which provides that "Directors shall serve until the election and qualification of their duly qualified successor," or a similar provision in section 29 of the Corporation Law which states that directors shall be elected to hold their offices for one year "and until their successors are elected and qualified," refer to situations where there was no actual removal made in a meeting duly called for the purpose; or to situations where the term of office of the director has expired without his successor having been elected or having elected one who is disqualified under the law or the by-laws. But where, as in the case at bar, a director had been duly removed pursuant to section 34 of the Corporation Law, the fact that the person elected to succeed him does not own any stock or is otherwise disqualified will not prevent the existence of a vacancy. Hence, the director removed pursuant to law is deemed removed, notwithstanding the ineligibility of his successor. We, therefore, disagree with the holding of the Supreme Court in the above case that the incumbent director may not be compelled to vacate his office until a qualified director has been duly elected. The *disqualification* of an incumbent director does not depend upon the *qualification* of a successor. In other words, insofar as the decision disqualifies the successor because he does not own any share of stock in the corporation at the time of his election, we agree; but insofar as it holds that the director *duly removed* by the stockholders cannot be compelled to vacate his office until his successor has been duly elected and qualified, we disagree.

PARTNERSHIP

Validity of; when real property is contributed

According to article 1773 of the Civil Code, "A contract of partnership is void, whenever immovable property is contributed thereto, if an inventory of said property is not made, signed by the parties and attached to the public instrument."

In the case of *Agad v. Mabato & Agad Co.*[13] a partnership had been formed for the operation of a fishpond. The argument that the partnership is void because no inventory of the immovable property (the fishpond) was made was held as untenable by the Court, because the fishpond itself had not been contributed by any one of the partners. The allegation that "it is really inconceivable how a partnership engaged in the fishpond business could exist without said fishpond," was also rejected by the Court. The partnership contract in question stated that the partners have established a partnership "to *operate* a fishpond," not to "engage in a fishpond business," wherein each contributed ₱1,000.00 each. And even if the contract stated that they have established a partnership to "engage in a fishpond business," said that Court, it must clearly and positively appear in the articles of partnership, in order that article 1773 of the Civil Code may apply, that real property had been contributed.

In other words, it is not sufficient that the partnership has in its possession real property in order that article 1773 of the Civil Code may be applied; it is also necessary that the articles of partnership must state that one of the partners had *contributed* real property to the partnership. It is possible that a partnership may possess and even own real property without the same having been *contributed by any one of the partners.*

NEGOTIABLE INSTRUMENTS LAW[14]

Indorsement by an intermediate or collecting bank; payment by drawee, effect of

The case of *Philippine National Bank v. Court of Appeals*[15] involves the liability of an intermediate or collecting bank which accepted a check for deposit and then forwarded it to the drawee bank, stamped: "All prior indorsements guaranteed." The facts of the case showed that one, Augusto Lim deposited in his current account with the Philippine Commercial and Industrial Bank (PCIB) branch at Padre Faura, Manila, a Government Service Insurance System (G.S.I.S.) check in the sum of ₱57,415.00 payable to someone and drawn against the Philippine National Bank (P.N.B.). Following an established banking practice in the Philippines, the check was, on the same date, forwarded, for clearing, through the Central Bank, to the P.N.B. which paid its amount and retained it, debiting it against the account of the GSIS in the P.N.B.; that subsequently, upon demand from the GSIS, said sum of ₱57,415.00

[13] G.R. No. 24193, June 28, 1968.
[14] Hereinafter cited as Negotiable Instruments Law.
[15] G.R. No. 26001, October 29, 1968.

was re-credited to the latter's account, for the reason that the signatures of its officers were forged. Thereupon, the P.N.B. demanded from the PCIB (the intermediate bank) the refund of said sum, which the PCIB refused to do. Hence, this action against the PCIB.

The P.N.B. contended that the P.C.I.B. is liable on its warranty stamped on the back of the check. But it should be noted, said the court, that the PCIB guaranteed only "all prior indorsements," not the authenticity of the signature of the officers of the GSIS as *drawer*, not as *indorser*. This could have been availed of by a subsequent indorsee or a holder in due course subsequent to the PCIB, but, the P.N.B. is neither, said the Court.

The P.N.B. also contended that the PCIB is guilty of negligence in not discovering that the check was forged. But the Court pointed out that the P.N.B. was guilty of greater negligence by paying it, that by paying its amount to the PCIB, the P.N.B. induced the latter, not only to believe that the check was genuine and good in every respect, but also, to pay its amount to Augusto Lim. Hence, the well-settled maxim of law and equity was applied that "when one of the two innocent persons must suffer by the wrongful act of a third person, the loss must be borne by the one whose negligence was the proximate cause of the loss or who put it into the power of the third person to perpetrate the wrong."

The above principle is not exactly applicable to the facts of the case at bar. Nevertheless, the decision is correct, and could have rested mainly on the ground that the PCIB did not indorse the check as a general indorser but merely as an intermediate bank, guaranteeing only "prior indorsements," not the genuineness of the check itself.

There seems to be no justification for the Court to cite section 62 of the Negotiable Instruments Law which speaks of the liability of an acceptor. Payment is not acceptance, between the two. And yet, after quoting the warranties of an acceptor, it concluded by saying: "The prevailing view is that the same rule applies in the case of a drawee who pays a bill without having previously accepted it."

The essential distinction between *payment* and *acceptance* must be maintained, otherwise a drawee bank may even be precluded from recovering from the forger himself, on the ground of estoppel or legal admission of the genuineness of the instrument itself.

On this question, the following quotation is pertinent: "Acceptance (which under the N. I. L. must be in *writing*) is not payment, and payment is not acceptance. Acceptance and certification of a check are radically different transactions. It has been held, however, in the case of *First National Bank v. Bank of Cottage Grove*, 59 Ore. 388, 117 Pac. 293 that: 'The payment of a bill or check by the drawee amounts to more than acceptance. The rule, holding that such a payment has all the efficacy of an acceptance, is founded upon the principle that the greater includes the less.' But on this point, Grosby, J. (*South Boston Trust Co. v. Levin*, 143 N.E. 816 [1924]) said: 'We are unable to agree with this statement as there is no similarity between acceptance and payment; payment discharges the instrument, and no one else is expected to advance anything on the faith of it; acceptance contemplates further circulation, induced by the fact of acceptance. The rule that the acceptor makes certain admissions which will inure to the benefit of subsequent holders, has no applicability to payment of the instrument where subsequent holders can never exist.' "[16]

Liability of accommodation party

And now comes a decision on the liability of an accommodation party. In the case *Ang Tiong v. Ting*,[17] Ting issued a check for ₱4,000 payable to "cash or bearer." With Felipe Ang's signature (indorsement in blank), Ang Tiong presented it to the drawee bank for payment, but the bank dishonored it. Tiong then made written demand on both Ting and Ang but the demand was unheeded. Hence, this suit by Tiong against Ting and Ang. It was not clear whether Ang signed as accommodation indorser or as a general indorser. But the Supreme Court applied section 63 of the Negotiable Instrument Law which provides that: "A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an *indorser*, unless he clearly indicates by appropriate words his intention to be bound in some other capacity." Ang, not having indicated in the instrument that he signed it as accommodation indorser, he shall be deemed a general indorser, and therefore liable to all subsequent holders in due course.

However, the Supreme Court said that, "Even on the assumption that the appellant is a mere accommodation party, as he professess to be, he is nevertheless, or by the clear mandate of section 29 of the Negotiable Instrument Law, yet "liable on the instrument to a *holder for value*, notwithstanding that such holder at the time of taking the instrument knew him to be only an accommodation party."

But the following statement of the Supreme Court: "The liability of the appellant remains *primary and unconditional*," is subject to question. Is the liability of an indorser (whether general or for accom-

[16] GUEVARA, PHILIPPINE COMMERCIAL LAWS & CODE OF COMMERCE, COORDINATED, INTEGRATED, AND ANNOTATED 479-480 (12th ed., 1969).
[17] G.R. No. 26767, February 22, 1968.

modation) primary and unconditional? The liability of an indorser is clearly stated in section 66 of the Negotiable Instrument Law, as follows: "And, in addition, he engages that *on due presentment,* it shall be accepted or paid, as the case may be, according to its tenor and that *if it be dishonored, and the necessary proceedings on dishonor be duly taken,* he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it."

In other words, before an indorser may be held liable, the holder must first comply with the above conditions precedent. Therefore, the liability of an indorser is subsidiary and conditional, not primary and unconditional. Under the Negotiable Instrument Law, the only parties primarily liable on the instrument are the maker and the acceptor. Had Ang signed the instrument in question as accommodation *maker,* he will be deemed a surety and therefore *primarily* liable. But the facts of the case showed, and the Supreme Court held, that *Ang was an indorser,* not having clearly indicated in the instrument his intention to be bound in some other capacity. Therefore, the statement of the Supreme Court, to wit: "The liability of the appellant (Ang) remains primary and unconditional," is, to say the least, carelessly made and is likely to mislead students of law who regard statements of the Supreme Court with blind faith and obedience.

INSURANCE

Insurance against liability

On December 1, 1961, Fieldmen's Ins. Co., Inc. issued in favor of the Manila Taxicab Co., Inc. a common carrier, an accident policy, covering the period from December 1, 1961 to December 1, 1962, wherein the following was stipulated:

> "The Company (insurer) will, subject to the Limits of Liability and under the term of this Policy, indemnify the Insured in the event of accident caused by or arising out of the use of Motor Vehicle against all sums which the Insured will become liable to pay in respect of: Death or bodily injury to any fare-paying passenger including the Driver, Conductor, and/or Inspector who is riding in the Motor Vehicle insured at the time of accident or injury."

While the policy was in force, or on February 10, 1962, a taxicab of the Insured, driven by Carlito Coquia, met a vehicular accident at Mangaldan, Pangasinan, in consequence of which Carlito died. The Insured filed a claim for ₱5,000 to which the Company replied with an offer of ₱2,000, by way of compromise. The Insured rejected the same and made a counter-offer for ₱4,000, but the Company did not accept it. Hence, on September 18, 1962, the Insured and Carlito's parents filed a complaint against the Insurance Company to collect the proceeds of the policy. The Insurer pleaded lack of cause of action on the part of the plaintiffs. The trial court rendered judgment in favor of the plaintiffs and against the defendant for ₱4,000 and the costs. The Insurer appealed, contending, among others, that plaintiffs (Coquia's heirs) have no contractual relation with the Insurance Company.

The Supreme Court held, that although, in general, only parties to a contract may bring an action thereon, this rule is subject to exceptions, one of which is found in article 1311 of the Civil Code, concerning contracts *pour autrui,* the enforcement of which may be demanded by a third party for whose benefit it was made. Said article provides as follows:

> "If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligator before its revocation. . ."

The Court held that the policy in question belongs to such class of contracts *pour autrui.*

However, perhaps, this case could have been decided solely by the provisions of Insurance Law and principles of Insurance, instead of by the provisions of the Civil Code. Anyway, the Civil Code expressly provides that: "The contract of insurance is governed by special laws.[18] Matters not expressly provided for in such special laws shall be regulated by this Code."[19]

The policy in question is an insurance against liability, which is expressly sanctioned by the Insurance Law when it says in its section 2 the following: "Insurance is a contract whereby one undertakes for a consideration to indemnify another against loss, damage, or *liability* arising from an unknown or contingent event."

And, under the express provisions of the policy issued to the Insured, the Insurer expressly agreed to indemnify "any authorized Driver who is driving the Motor Vehicle," and, in the event of death of said driver, the Insurer shall, likewise, "indemnify his personal representatives," and added that it is the "true intention of this Policy to protect, to the extent herein specified and subject always to the Terms of this Policy, the *liabilities of the Insured towards the passengers of the Motor Vehicle and the Public.*"

So, whether the Insurance Law or the Civil Code on *pour autrui* is applied, the right of the driver or his heirs to sue on the policy

[18] Insurance Law, Act No. 2427 (1915) as amended.
[19] CIVIL CODE, Art. 2011.

should be recognized. The only trouble in applying article 1311 of the Civil Code (on *pour autrui*) is that the conditions for suing on the contract must clearly appear: *acceptance* by the third person of the stipulation in his favor, which acceptance must be *communicated* to the Insurer before such stipulation had been revoked. These points were not raised nor discussed in the decision.[20]

Stipulation exempting insurer from liability if insured had been indemnified under any other policy; is payment of workmen's compensation "indemnity?"

In the case of *Taurus Taxi Co., Inc. v. Capital Insurance & Surety Co.*[21] the issue was whether a taxicab driver covered by an insurance policy issued by the defendant insurance company is entitled to indemnity, after having recovered compensation under the Workmen's Compensation Law, because the policy in question contained a stipulation that *"the Company will indemnify any authorized driver provided that such authorized driver is not entitled to indemnity under any other policy."*

It was admitted that the deceased driver was paid compensation under the Workmen's Compensation Law by Ed. A. Keller Co., Ltd. Appellant Capital Insurance & Surety Co., therefore, seeks to escape liability on the plea that the workmen's compensation to which the deceased driver was rightfully entitled was settled by the employer through a policy issued by another insurance firm.

The Supreme Court allowed recovery in this case, notwithstanding the above stipulation in the issued policy, on the ground that what was paid to the deceased driver's heirs under the Workmen's Compensation Law was not "indemnity" but "compensation." "Since," said the High Court, "what is prohibited by the insurance policy in question is that any authorized driver of plaintiff Taurus Taxi Co., Inc. should not be entitled to any indemnity under any other policy, it would appear indisputable that the obligation of defendant-appellant under the policy had not in any wise been extinguished." In other words, the Supreme Court, in order to allow recovery, in this case, held that "compensation" under the W. C. L. is not *"indemnity."*

Instead of making a fine distinction between "compensation" and "indemnity" (viewed from a broad angle, compensation given under the Workmen's Compensation Law for death or injury suffered while arising out of and in the course of employment is, in a sense, indemnity

[20] Coquia v. Fieldmen's Insurance Co., Inc., G.R. No. 23276, November 29, 1968.
[21] G.R. No. 23491, July 31, 1968.

to the employee or his heirs,) the Supreme Court, perhaps, could have marshalled its judicial statesmanship by holding that such a stipulation practically amounts to depriving the employee of recovery under the Workmen's Compensation Law and should be declared void as against public policy. Public policy demands that recovery under the Workmen's Compensation Law or under any law granting benefits should not be limited or annulled by private agreement, as such laws are intended to serve the ends of social justice. Hence, any stipulation which deprives a person of benefits granted by the law should be held null and void as against public policy. The Supreme Court did not say this, but it could have said so, in deciding the case at bar, *without the need* of compelling the Bar to believe that compensation under the Workmen's Compensation Law which, in the case at bar was secured by a policy of insurance (issued by Ed. A. Keller Co. Ltd., an insurer) is not "indemnity" under any other policy.

Right of insurer to be subrogated to the rights of insured against wrongdoer

The case of *Rizal Surety & Insurance Co. v. Manila Railroad Co.*[22] presents another legal question insurance.

On or about January 16, 1961, Vessel SS Flying Trader arrived at the Port of Manila with six cases of OMH Special Single Color Offset Press Machine, consigned to Suter, Inc. The goods were discharged complete and in good order into the custody of Manila Port Service as arrastre operator of the Bureau of Customs. In the course of the handling, one of the six cases, identified as Case No. 2143 containing the OMH Special Single Color Offset Press was dropped by the crane, while it was being lifted and loaded into the consignee's truck. As a consequence, the machine was heavily damaged for which plaintiff (Rizal Surety & Ins. Co.) as insurer paid the consignee, Suter, Inc., the sum of ₱16,500 representing damages by way of costs of replacement of parts and repairs to put the machine in working condition, plus the sum of ₱180.70 which plaintiff paid to the International Adjustment Bureau as adjuster's fee for the survey conducted on the damaged cargo, or a total of ₱16,680.70 representing insurer's liability under the insurance contract. The insurer now seeks to recover the amount paid from the Manila Port Service and the Manila Railroad Co.

Clause 15 of the Management Contract (between the Bureau of Customs and the arrastre operator) which, as admitted by the plaintiff appeared at the dorsal part of the Delivery Permit, provided that such permit "is presented subject to all the terms and conditions of the

[22] G.R. No. 24043, April 25, 1968.

Management Contract between the Bureau of Customs and the Manila Port Service, particularly but not limited to Par. 15 thereof limiting the Company (arrastre) liability to ₱500 per package, unless the value of the goods is otherwise specified, declared or manifested and the corresponding arrastre charges have been paid."

The lower court, relying on *Jose Bernabe & Co. v. Delgado Bros.*[23] rendered judgment ordering defendants, jointly and severally, to pay plaintiff (insurer) the amount of ₱500, with legal interest from the filing of the complaint, with costs. The insurer appealed, relying on article 2207 of the Civil Code, which provides that "In the event that the property has been insured and the insurance company has paid the indemnity for the injury or loss sustained, it *"shall be subrogated to the rights of the insured against the wrong-doer* or the person who has violated the contract," which, according to his interpretation, is the full amount paid.

But the Supreme Court, relying also on the same case of *Bernabe & Co. v. Delgado,* above-quoted, and re-affirmed in subsequent cases[24] held that the right of the insured is limited to ₱500 by way of subrogation. The consignee, having taken delivery of the shipment by virtue of Delivery Receipt, incorporating thereto, by reference, the provisions of said Management Contract, particularly Par. 15 thereof, became bound by said provisions,[25] and because it would have avoided the application of said maximum limit of ₱500 per package by stating the true value thereof in its claim for delivery of the goods in question, which the assignee failed to do." The insurer having been subrogated to the rights of the consignee, its recovery necessarily should be limited to what was recoverable by the insured.

This holding is sound and just if there is clear evidence that the consignee, expressly or impliedly, had consented to the condition printed at the back of the Delivery Permit. The *mere stamping* of such a condition at the back of a document does not necessarily mean that the holder thereof has seen it or knew of it. Implied consent should not be based on implied knowledge. To charge someone of implied consent to a condition, there must be at least proof of *actual* (not presumed) *knowledge* of the condition without making any objection to it. Thus, in one case[26] it was held that the condition printed at

[23] G.R. No. 12058, April 27, 1960, 58 O.G. 1104 (February, 1962).

[24] Atlantic Mutual Ins. Co. v. Manila Port Service, G.R. No. 16271, October 31, 1961; Insurance Service Co. of North America v. Manila Port Service, G.R. No. 17331, November 29, 1961; Insurance Co. of North America v. U.S. Lines Co., G.R. No. 17032, March 31, 1964.

[25] See also Ang Ching Gi v. Delgado Bros., Inc., G.R. No. 22138, February 17, 1968.

[26] Dychangco v. Philippine Air Lines, CA-G.R. No. 11306-R, November 28, 1955, 52 O.G. 2023 (April 1956).

the back of a passenger ticket limiting the liability of a common carrier to a certain sum is not binding on the passenger whose attention had not been called to it, expressly or impliedly,[27] this is apparently a limitation of liability arising out of one's own *negligence,* and it is a settled rule of jurisprudence that one cannot limit his liability for loss or damage or injury caused by his own negligence.[28]

LAW ON TRANSPORTATION

Liability of carrier; bills of lading, validity of stipulations

The case of *Phoenix Assur. Co. v. United States Lines,*[29] involves the liability of a common carrier on a bill of lading. The crates in question were loaded aboard the U. S. Lines, shipped by General Motors and consigned to Davao Parts and Services Inc. at Davao City. The Bill of Lading issued by the carrier indicated Manila as the port of discharge and Davao City as the place where the goods were to be transhipped, and expressly incorporated the following stipulations:

> "The carrier shall not be liable in any capacity whatsoever for any loss or damage to the goods while the goods are not in its actual custody."
>
> . . .
>
> "The carrier or master in making arrangement with any person for or in connection with all transhipping or forwarding of the goods or the use of any means of transportation not used or operated by the carrier, shall be considered solely the agent of the shipper and consignee and without any other responsibility whatsoever or for the cost thereof. . . ."
>
> "All responsibility of the carrier in any capacity shall altogether cease and the goods shall be deemed delivered by it and this contract of carriage shall be deemed fully performed on actual or constructive delivery of the goods to itself as such agent of the shipper and consignee or to any such person or on-carrier at port of discharge from ship or elsewhere in case of an earlier transhipment. . . ."

The cargo, with the exception of two crates which were lost in the custody of the Manila Port Service, then arrastre operator at the Port of Manila, after being discharged at Manila, was transshipped by United States Lines to Davao through a vessel of its Davao agent Columbian Rope Co., and duly received in good order by the Davao Parts and Services, Inc. The two crates lost in Manila were the subject of the suit filed by the plaintiff as insurer against the U.S. Lines. The defendant set up in defense the above quoted provisions in the bill of lading.

[27] Citing the cases of Ysmael v. Barretto, 51 Phil. 90 (1927); Mirasol v. Dollar Co., 53 Phil. 124 (1929).
[28] 10 C.J. *Carriers* § 195 (1917) cited in Ysmael v. Barretto, 51 Phil. 90 (1927).
[29] G.R. No. 24033, February 22, 1968.

The Supreme Court in finding for the defendant said in substance the following: A bill of lading operates both as receipt and contract of transportation which contains the rights and obligations of the parties. Inasmuch as it is admitted by both parties that the crates subject matter of the action were lost while in the possession and custody of the Manila Port Service, the carrier should not be liable, on the ground that it is hardly fair to make the carrier accountable for a loss not due to its acts or omissions or over which it had no control. By receiving the bill of lading, Davao Parts and Services, Inc. assented to the terms of the consignment contained therein, and became bound thereby, so far as the conditions named are reasonable in the eyes of the law. Since neither appellant nor appellee alleges that any provision therein is *contrary to law*, morals, good customs, public policy, or public order, — and *indeed we found none*[30] the validity of the Bill of Lading must be sustained and the provisions therein properly applied to resolve the conflict between the parties.

Carriage of Goods by Sea Act

The U.S. Carriage of Goods by Sea Act, incorporated into Philippine law as Com. Act No. 65, provides in its section 3, the following:

> "In any event, the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this Section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after delivery of the goods or the date when the goods should have been delivered. . . ."

[30] What about Art. 373 of the Code of Commerce, which provides as follows:

"A carrier who delivers merchandise to a consignee by virtue of agreements or combined services with other carriers shall assume the obligations of the carriers who preceded him, reserving his right to proceed against the latter if he should not be directly responsible for the faults which gave rise to the claim of the shipper or of the consignee.

"The carrier making the delivery shall also acquire all the actions and rights of those who may be preceded him in the transportation.

"The shipper and the consignee shall have an immediate right of action against the carrier who executed the transportation contract, or against the other carriers who received the goods transported without reserve. . . ."

The above legal provision gives the consignee an option to proceed against the carrier who executed the transportation contract, even if the latter is not responsible for the loss, without prejudice on the part of the latter to recover from the culpable party. But, perhaps, no liability shall attach if expressly stipulated for acts not arising from its own negligence. Nonetheless, it seems that the above decision is sound because, although the carrier who executed the transportation contract is generally responsible for the safe arrival of goods at their final destination, yet this is true only *unless otherwise limited by agreement*, and the limitation in the case at bar is reasonable. See Illinois Central R.R. Co. v. Frankenburg, 5 Am. Rep. 92 (1870).

The only issue in the case of *Rizal Surety & Ins. Co. v. Macondray & Co., Inc.*[31] is whether the period of prescription as provided for in the above law is applicable where the *goods had not been delivered.*

Plaintiff seeks to recover from defendant Macondray & Co., Inc., as authorized agent, in Manila, of Barber SS Lines ,Inc. which operates vessel "SS Tai Ping" the sum of ₱2,020.00 representing the maximum value recoverable — under the corresponding bill of lading — of some machinery parts shipped on board said vessel at New York and consigned to Edwardson Mfg. Corporation in Manila, but not discharged by the vessel in Manila. In view of this, the plaintiff had to pay, pursuant to its contract of insurance with the consignee, the value of said effects to the latter.

Defendant set up the defense of prescription. Plaintiff maintained that the above prescription period does not apply when the shipment in question had not been discharged from the carrying vessel, as in the case at bar. In such event, it claimed, the general statute of limitations of action should apply.

HELD: The aforementioned provision contemplates not only the case of *damage,* but also, that of *loss.* It goes without saying that there could be no possible discharge of goods lost during the voyage and before reaching the destination. Then, again, said provision, likewise, anticipates two other possibilities, viz.: (1) that delivery had been made, in which case, the action should be brought "within one year *after delivery* of the goods:" or (2) that no delivery has taken place, in which event, said period should be computed from "the date when the goods *should have been delivered.*"

The Court held that inasmuch as the "SS Tai Ping" arrived at the port of Manila on November 2, 1962 and left it on November 4, 1962, it was on the latter date that the carrier had the last opportunity to deliver the goods; that the period of one year within which the carrier could be sued commenced to run, therefore, from Nov. 5, 1962 and expired on Nov. 4, 1963; and that period had expired before this action was commenced on February 10, 1964.

The Court also held that the general statute of limitations is not applicable because the corresponding bill of lading — which is the contract and hence, the law between the parties — *expressly stipulates* that it is "subject to the provisions of the Carriage of Goods by Sea Act of the U.S.A., approved April 16, 1936, which shall be deemed to be incorporated" therein.

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[31] G.R. No. 24064, February 29, 1968.

It may be stated in connection with the last statement of the Court, that even in the absence of such express stipulation, the Carriage of Goods by Sea Act automatically applies to the case at bar, it being a *transportation of goods in foreign trade.*

The decision in the case at bar must be distinguished from the decision in the case of *Roldan v. Lim Ponzo & Co.*[32] which involved the application of article 366 of the Code of Cmmerce, which provides:

> "Within the 24 hours following the *receipt* of the merchandise, a claim may be made against the carrier for damage or average found therein on opening the packages, provided that the indications of the damage or average giving rise to the claim cannot be ascertained from the exterior of said packages; otherwise, said claim would only be admitted at the time of the receipt of the packages. . . ."

In the Roldan case, the Supreme Court held that this condition precedent (making claim) is applicable only where the goods have actually been *received or delivered,* so that where the goods have never been delivered, as where they were lost in transit, said claims are not necessary in order that the right of action may be exercised. However, article 366 of the Code of Commerce unlike the Carriage of Goods by Sea Act, does not contain an alternative, "or the date when the goods should have been delivered." Consequently, one of the differences between the Code of Commerce and the Carriage of Goods on maritime transportation is that, in case of sea transportation governed by the Code of Commerce (not involving foreign trade), in case of non-delivery, the claim is excused, whereas in case of sea transportation governed by the CGSA, the claim and/or suit should be filed within one year the goods "should have been delivered."

FOREIGN EXCHANGE

Margin fee

A margin fee of 25% is imposed on all sales of foreign exchange by the Central Bank or its authorized agents, pursuant to Republic Act No. 2609.

This margin levy is not permanent and will eventually be done away with as soon as the fundamental disequilibrium in the monetary position of the country is corrected. At the time of this writing, it has been done away with.

But the question of *on what amount* this levy should be imposed has given rise to controversies.

[32] 37 Phil. 285 (1917).

Thus, in *Caltex (Phil.) Inc. v. Commissioner of Customs*[33] the issue is, whether or not the Bureau of Customs correctly added the margin fee of 25% to the peso value of the importation for purposes of determining the customs duty and special import tax due thereon. Caltex contended that the 25% margin should not be considered in converting the value of the importation from dollars to pesos for the purpose of imposing customs duty and special import tax due thereon, on the ground that the margin fee is not a part of the conversion rate of our currency.

Held: The margin fee is part of the rate of exchange control. It is a form of exchange control or restriction designed to discourage imports and encourage exports and ultimately "curtail any excessive demand upon the international reserve, "in order to stabilize the currency."[34] As to the contention that the margin levy is a tax on the purchase of foregin exchange and hence should not form part of the exchange rate, the Supreme Court said "suffice it to state that we have already held the contrary for the reason that a tax is levied to provide revenue for government operations, while the proceeds of the margin fee are applied to strengthen our country's international reserves."[35]

However, where an "Impala" car was brought in by an incoming resident, bought by him in the U.S. from his own earnings and salary as a physican working in a hospital therein, and that no agent bank of the Central Bank of the Philippines had made any sale of foreign exchange in connection therewith, it was *held*: That inasmuch as the margin fee applies only to sales of foreign exchange by banks duly authorized to sell the same as agent of the Central Bank of the Philippines, and there had been neither such "sale of foreign exchange" nor the intervention of any agent bank of the Central Bank, it is proper to eliminate the 25% margin fee from the tax base of the special import and compensating taxes.[36]

Rate of exchange

Another important point as to *when* the rate of exchange should be applied arose in the case of *Republic v. Laureano Bros., Inc.*[37] On April 21, 1959, appellee Laureano Bros., Inc. agreed to supply the Government with plumbing materials for the use of the NAWASA worth U.S. $635,901, financed by the U.S. Government through the ICA, but payable by plaintiff Laureano Bros., in pesos. In view of the condition contained in the agreement between ICA of the U.S. Government and

[33] G.R. No. 24619, February 26, 1968.
[34] Rep. Act No. 2609 (1959), sec. 1.
[35] Chamber of Agriculture & Natural Resources v. Central Bank, G.R. No. 23244, June 30, 1965.
[36] Commissioner of Customs v. Celdran, G.R. No. 23425, February 26, 1968.
[37] G.R. No. 25055, April 25, 1968.

the N.E.C. of the Philippine Government with respect to the particular U.S. aid program that the dollars made available by the U.S. Government shall automatically be refundable upon failure of the Philippine Government to implement the project for which said dollars were released, the U.S. Government demanded upon the Republic of the Philippines to refund the sum of $357,843.58.

On its part, the Philippine Government demanded of Laureano Bros., Inc. the refund of $357,758.86 as over payment for the plumbing materials. Laureano Bros. made no payment despite repeated demands, consequently the Republic of the Philippines filed a suit for recovery against Laureano Bros., Inc. and its sureties.

On March 12, 1965, after defendant filed his answer, the parties entered *into a compromise agreement whereby defendant agreed to pay to the Republic of the Philippine as refund the sum of* $358,885.02. The parties further agreed to submit to the court's resolution the question on the rate of exchange to be used in converting the above amount of dollars to pesos. On June 17, 1965, the lower court rendered judgment based on the case of *Arrieta v. National Rice & Corn Corp.*[38] fixing the rate of conversion at ₱2.00 to $1.00, the same being the rate at the time the principal obligation was contracted. The Republic of the Philippines questioned said ruling and appealed to the Supreme Court.

Appellee contended that the conversion rate should be that prevailing in 1959 when Laureano Bros., Inc. entered into the contract with the Republic of the Philippines to supply the latter with plumbing materials. On the other hand, the appellant, Republic of the Philippines, maintains that the rate of exchange should be that prevailing when the parties entered into a compromise agreement on March 12, 1965, that is, at ₱3.91 to $1.00.

The Supreme Court held that in the light of the Arrieta case, the rate of exchange applicable should be that prevailing when the parties entered into the compromise agreement in 1965, or ₱3.91 to $1.00. For it is from that moment when Laureano Bros., Inc. bound itself to pay the Republic of the Philippines the sum of $358,885.02 as damages under the contract. Inasmuch as the amount of $358,885.02 object of the present suit which supplanted or took the place of the sum of $357,758.86 originally prayed for in the complaint came to exist on March 12, 1965, the conversion rate from dollars to pesos should be that current as of the date the obligation was contracted, or ₱3.91 to $1.00.

Parenthetically, the same principle should apply also to sales of reparation goods by the Reparation Commission payable in dollars. And the rate

[38] G.R. No. 15645, January 31, 1964.

of exchange should be that prevailing when the sale contract was perfected, and not that prevailing at the time the installments are due or demandable or when the goods are to be delivered. So that, if the rate of exchange at the time the sale was perfected was ₱2.00 to $1.00, but at the time the installments are due the rate of exchange was ₱3.91 to $1.00, the rate of exchange prevailing at the time the sale was perfected should the applicable rate.

USURY LAW

Usurious interest is void; the principal loan, valid

The Supreme Court reiterated that a loan with usurious interest is not totally void but void only as to the interest. The agreement of the debtor to pay the principal debt is not illegal. The illegality lies only as to the prestation to pay the usurious interest; hence, being separable[39] the latter should be deemed void, since it is the only one that is illegal. As a consequence, the debtor may recover the "interest paid in excess of the interest allowed by the usury laws" which means the "*whole usurious interest*," with interest thereon from the date of payment.[40] This decision puts an end to the contention of some law professors and authors that it is only the *excess* over the usurious rate that is void and what may be recovered, and not the whole usurious interest. This pronouncement confirms once more what the writer had long concluded in his work[41] on this point, contrary to the prevailing view among classroom professors.

The foregoing interpretation is reached with the philosophy of usury legislation in mind; to discourage stipulations on usurious interest, said stipulations are treated as wholly void, so that the loan becomes one without stipulation as to payment of interest. It should not, however, be interpreted to mean forfeiture even of the principal, for this would unjustly enrich the borrower at the expense of the lender.

The principal debt, remaining without stipulation for payment of interest, can thus be recovered by judicial action. And in case of demand, and the debtor incurs delay, the debt earns interest from the date of the demand (in this case from the filing of the complaint.) Such interest is due not because of stipulation, for there was none, the same being void. Rather, it is due to the general provision of law that in obligations to pay money, where the debtor incurs delay, he has to pay interest by way of damages.[42]

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[39] CIVIL CODE, Art. 1420.

[40] Angel Jose Warehousing v. Chelda, G.R. No. 25704, April 24, 1968.

[41] GUEVARA, PHILIPPINE COMMERCIAL LAWS & CODE OF COMMERCE, COORDINATED, INTEGRATED, AND ANNOTATED, 67, (1969 ed.).

[42] CIVIL CODE, Art. 2209.

Compounding interest

And the Supreme Court once more condemned the exaction of interest on accrued interest, without express stipulation, or prior to judicial demand. Such practice is unauthorized under the provisions of articles 2212 and 1959 of the Civil Code. In other words, compounding of interest may lawfully be done by the creditor only in two instances: (1) when there is express agreement to that effect; (2) From the time the debt has been judicially demanded.[43]

CHATTEL MORTGAGE LAW

Right of mortgagee to excess

A very significant decision of the Supreme Court was rendered in the case of *Garrido v. Tuason*[44] which settled the present controversy regarding the conflict between the provisions of the new Civil Code and the Chattel Mortgage Law on the right of the mortgagee to recover the excess of the proceeds of the sale in foreclosure proceedings. This decision in a way reversed the former stand of the Court in the cases of *Palileo v Cosio*[45] and *Ablaza v. Ignacio,*[46] and confirms the interpretation of the writer on this conflict when he said:

> "Art. 2115 of the Civil Code denying to the pledgor a right to the excess is in conflict with Sec. 14 of the Chattel Mortgage Law. Consequently, pursuant to Art. 2141, said Art. 2115 is not applicable to chattel mortgage as regards the excess. In other words, while there is no conflict between the Civil Code and the Chattel Mortgage Law as regards *deficiency*, there is a conflict as regards the *excess*. Consequently, the pledgor is not entitled to the excess according to Art. 2115 of the Civil Code, but the mortgagor is so entitled, according to the Chattel Mortgage Law."[47]

In the above-cited Garrido case, the mortgagee foreclosed the chattel mortgage. The mortgaged property (a car) was sold at public auction for ₱550, leaving a balance of ₱1,290.58 for which a motion for the deficiency was filed by the mortgagee but the lower court denied it. Later, the mortgagee filed a suit against the mortgagor for recovery of said balance, but again the lower court dismissed the case on the ground that pursuant to article 2115 of the Civil Code, plaintiff has no cause of action against the defendant.

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[43] Mambulao Lumber Co. v. Philippine National Bank, G.R. No. 22978, January 30, 1968.

[44] G.R. No. 23768, August 23, 1968.

[45] 97 Phil. 919 (1955).

[46] 103 Phil. 1151 (1958).

[47] GUEVARA, PHILIPPINE COMMERCIAL LAWS & CODE OF COMMERCE, COORDINATED, INTEGRATED & ANNOTATED, 190 (1962 ed.); 190 (1969 ed.).

Art 2115 of the Civil Code provides:

"The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. If the price of the sale is more than said amount, the *debtor shall not be entitled to the excess,* unless it is otherwise agreed. If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary."

Article 2141 of the same Code provides that the provisions on pledge shall be applicable to chattel mortgages *"insofar as they are not in conflict with the Chattel Mortgage Law."* But article 2115 is inconsistent with the provisions of the Chattel Mortgage Law insofar as the right to recover the excess is concerned, so that, accordingly, the Chattel Mortgage creditor may maintain an action for the deficiency.

INSOLVENCY LAW

Preference of credits

The case of *Caltex (Phil.) Inc. v. Go,*[48] refers to the question of what are preferred claims in insolvency.

The claimant in this case had an award rendered by the Labor Regional Office for payment of vacation and sick leave, for underpayment of wages and for overtime compensation. The issue is whether these claims are preferred claims in insolvency. The Supreme Court *held:* That they are preferred under section 50(b) of the Insolvency Law or under either paragraph 2 or 14(b) of article 2244 of the New Civil Code.

The Supreme Court seems to convey the idea that section 50 of the Insolvency Law is still in force. The new Civil Code[49] expressly provides that "Insolvency shall be governed by special laws *insofar as they are not inconsistent with this code.*" Consequently, if there is a conflict between the provisions of the Insolvency Law and the new Civil Code on preference of credits, the Civil Code prevails. The Supreme Court should have definitely held that the claim in question is preferred, because it comes under article 2244, par. 14 which says:

"(14) Credits which, without special privilege appear in a public instrument, or (b) in a final judgment, if they have been the subject of litigation. . . ."

A final award made by the commissioners of appraisal is a preferential claim.[50]

[48] G.R. No. 20831, August 31, 1968.
[49] Art. 2237.
[50] Torres v. Llamas, 70 Phil. 59 (1940).

Article 2244, paragraph 2 of the new Civil Code also provides that the following are preferred claims:

> "(2) Credits for services rendered the insolvent for *one year preceding the commencement of proceedings in insolvency*."

Whereas, section 50(b) of the Insolvency Law provides that the following are preferred claims:

> "(b) Debts due for personal services rendered the insolvent by employees, laborers, or domestic servants immediately preceding the commencement of proceedings in insolvency."

The two provisions above quoted are not the same. Said the Supreme Court: "Had the framers of the new Civil Code merely intended to reproduce the provisions of the Insolvency Law, they would have easily said 'for one year *immediately* preceding the commencement of the proceedings in insolvency.' The reason for the omission of the adverb could not be the desire to broaden the meaning of the law by giving preference to credits for services rendered the insolvent by employees during *any year*, provided it was prior to the commencement of the insolvency proceedings."

It is submitted that the effort to make any distinction between section 50(b) of the Insolvency Law and article 2244, paragraph 2 of the Civil Code is immaterial for purposes of determining whether the claim in question is preferred or not, because the same shall be decided by article 2244, paragraph 2 of the Civil Code. Said claims for services rendered the insolvent by an employee cannot be considered preferred unless the same have been rendered *within one year preceding the commencement of insolvency proceedings*. In plain language, payments for services rendered more than one year preceding the commencement of insolvency proceedings are merely ordinary claims; only payments for services rendered *within one year preceding the insolvency proceedings* shall be preferred. That is the meaning of article 2244, paragraph 2 of the new Civil Code as regards credits for services rendered the insolvent by an employee.

In the case at bar, it appears that the employee in question rendered services "*for a number of years* until he resigned on February 5, 1957." On *August* 9, 1958, insolvency proceedings against his employer had been commenced. Under the new Civil Code (which is the law to govern the case at bar), only payments for services rendeied from *August* 9, 1957 *to August* 9, 1958 should be considered preferred, and the rest should be deemed ordinary claims. Insofar as the whole amount of unpaid services was adjudged preferred by the Supreme Court, allegedly under section 50(b) of the Insolvency Law, the same should be considered an error.