COMMERCIAL LAW

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The 1970 decisions in commercial law cover a reasonably wide variety of legal questions, ranging from agency to usury. There is one decision on corporation law involving the right of a Philippine corporation to change or alter its corporate name under its general power to amend its articles which is of doubtful correctness in the light of the special provisions of our Corporation Law regarding change of corporate name.

AGENCY

On the subject of agency, one of the incidental questions decided by the Court in the case of *Commissioner of Public Highways v. San Diego*[1] was the validity of the right of a third person to question the authority or power of an agent to act in behalf of the principal.

From the rather hazy and incoherent statement of facts of the case, it appeared that the Government filed a complaint for eminent domain to expropriate the Hashim estate. After some controversy regarding the value of the land to be paid by the Government, the value of the land was fixed by a compromise agreement, signed by the attorney of the Hashim estate and by the Solicitor General in representation of the Government. Later, the Government questioned the validity of the said agreement, alleging that it was signed only by an attorney of the estate, without a showing that he had been especially authorized to bind the estate. For purposes of the application of the law of agency, the Hashim estate was deemed the principal, the lawyer was the agent, and the State was considered by the Court to be a third person who questioned the authority of the agent.

If the State under the facts of this case could be considered as a third party, as the holding of the Supreme Court implied, then a third person may not question the lack of authority of an agent; it is only the principal who can raise the question, citing Article 1901 of the Civil Code.

ARRASTRE SERVICE

From agency, we pass to arrastre service which although (like the law of agency) *not* clearly belonging to the field of commercial law, nevertheless, is more commercial than anything else.

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[1] G.R. No. 30098, February 18, 1970, 31 SCRA 616 (1970).

In the case of *Insurance Company of North America v. Manila Port Service* [2] a vessel "SS Bayerstein" took on board at Hamburg, Germany, for shipment to Manila, eight cases of auto parts consigned to Leelin & Co., Manila. The ship arrived in Manila on June 23, 1960 and on the same date completely discharged said cargo into the custody of the Manila Port Service, agent of the Manila Railroad Company, the arrastre operator. Of the eight cases, the Manila Port Service delivered to the consignee's broker five cases on August 17, 1960 and two cases on August 22, 1960, or a total of only seven cases.

On October 19, 1960, the consignee sent a formal claim to the Manila Port Service for the value of the undelivered cases. Similar notices of claim were sent to the agent of the carrier (C. F. Sharp & Co.), and to the insurer's agent of the cargo (Ed. A. Keller & Co., Ltd.). In said formal claim, the consignee called attention to the fact that a provisional claim had previously been given as early as *July 22, 1960*. In view of the refusal of the Manila Port Service to pay the value of the undelivered cargo, the insurer of the cargo (Insurance Company of North America) paid the consignee the sum of ₱774.08. Hence, a suit by the insurer (as consignee's subrogee) was filed against the Manila Port Service.

One of the defenses of the Manila Port Service was that plaintiff's action *was* already barred, since no claim for the value of the missing goods had been filed within the period fixed in Paragraph 15 of the Management Contract, which provided:

> "x x x; in any event, the Contractor shall be relieved of any and all responsibility or liability for loss, damage, misdelivery, and/or non-delivery of goods, unless suit is brought within a period of one (1) year from the date of the discharge of the goods, or from the date when the claim for the value of such goods have been rejected or denied by the Contractor; *PROVIDED, That such claim shall have been filed with the Contractor within fifteen (15) days from the date of the discharge of the last package from the carrying vessel.* x x x"

The Supreme Court held that the notice of claim given on July 22, 1960, having been given even before the last delivery, was premature and void. The notice of claim was deemed to have been given on October 19, 1960. But the consignee, from the facts of the case, had knowledge of the short delivery on August 22, 1960, the date when the two cases were delivered. Therefore, the claim was filed out of time; hence, the Manila Port Service was discharged from any liability. The Court further held that "even under the ruling of this Court in several cases [3] namely, that the 15-day period

[2] G.R. No. 26268, March 25, 1970, 32 SCRA 39 (1970).

[3] New Zealand Co., Ltd. v. Manila Port Service, G.R. No. 17027, November 29, 1965; GSIS v. Manila Railroad Company, G.R. No. 20342, November 29, 1965, 15 SCRA 383 (1965).

may be counted not from the discharge of the last package from the carrying vessel but from the date consignee learned or could have learned of the loss, damage, misdelivery and/or non-delivery, the *provisional claim* cannot be considered as filed on time."

It is important for litigants to know definitely the meaning of "15 days from the date of the discharge of the last package", as provided for in all Management Contracts involving arrastre service. What is meant by "last discharge", and when is this date, as determined in this case?

Although the Supreme Court did not categorically state which was the date, we could reasonably infer from the decision that the "date of last discharge" is not necessarily the date of actual discharge from the carrying vessel, but the date when the consignee learned, actually or impliedly, of the date of the short delivery, which is equivalent to the date when the *last cargo* was delivered to him.[4]

In other words, the general rule is, that the claim of the consignee or its subrogee for loss, damage, misdelivery, and/or non-delivery of the goods must be presented to the arrastre contractor within fifteen days from the date of discharge of the last package from the carrying vessel, where the consignee has knowledge of the loss, damage, misdelivery and/or non-delivery before the expiration of the said 15 days period. But where the consignee learns of the loss, damage, misdelivery, and/or non-delivery only after the 15-day period, the period of fifteen days within which a claim should be filed should commence, not from the date of discharge of the goods from the carrying vessel but from the date the consignee learns or should have learned of the loss, damage, misdelivery, and/or non-delivery of the goods for which the claim is made.[5]

Viewed from the prior decisions of the Supreme Court, the date when the consignee learned of the short-delivery in the case at bar was August 22, 1960. The notice of claim was given on October 19, 1960. Therefore, the claim was definitely filed out of time.

A similar question arose in the case of *Universal Insurance & Indemnity Co. v. Manila Railroad Co.* [6] In this case, the "SS Fern State" arrived in Manila on August 30, 1960 carrying a shipment of 21 bales of cotton piece-goods consigned to Cinderella Dresses of Caloocan, Rizal. The shipment was completely discharged on September 2, 1960 in good order by the

[4] But suppose the consignee proved that he did not believe that the delivery on August 22, 1969 was the *last*, and that he was still awaiting the delivery of the remaining package?

[5] See New Zealand Insurance Co., Ltd. v. Manila Port Service, G.R. No. 22500, April 24, 1967, 19 SCRA 801 (1967); Yu Kimteng v. Manila Railroad Company, G.R. No. 17027, November 29, 1967, 15 SCRA 292 (1965); GSIS v. Manila Railroad Company, G.R. No. 20342, November 29, 1965, 15 SCRA 383 (1965).

[6] G.R. No. 24600, April 27, 1970, 32 SCRA 364 (1970).

carrying vessel into the custody of the Manila Port Service (arrastre operator), acting as subsidiary of the Manila Railroad Company. When the consignee's broker withdrew the shipment on September 8, 1960, eight bales were found to be in bad order and contents short of 832 lbs. October 31, 1960, the consignee filed with the Manila Port Service a formal claim for the value of the shortage. Said formal claim was preceded by a provisional claim dated August 26, 1960, received by the arrastre operator on September 1, 1960, *a day prior to the discharge* of the shipment.

The plaintiff insurer, upon demand made by the consignee, paid the value of the shortage in the amount of ₱3,935.00, and was thereby subrogated to the consignee's rights. Having been refused payment on its claim, the insurer filed suit against the Manila Railroad Company on August 30, 1961, or within one year from date of delivery on September 2, 1960.

The Supreme Court held: Considering that the provisional claim was filed one day before the discharge of the shipment; and considering further that there was no showing that at the time of the filing of said claim the consignee or its broker had *knowledge* of any shortage in the shipment, as in fact there was none because the shipment was admittedly received in "good order" on the following day, the principal claim of consignee was premature and of no effect.

However, the consignee contended that even granting that it failed to file a claim within the 15-day period prescribed in the Management Contract, it was not barred from filing the claim in court since the same was commenced within one year from date of discharge of the cargo.

The Supreme Court citing *Insurance Company of North America v. Manila Port Service,*[7] and *Consunji v. Manila Port Service,*[8] held that the fact that the suit was filed within one year from the date of the arrival of the shipment would discharge the Manila Port Service just the same, in view of the failure of consignee to file a claim within the 15-day period prescribed by the Management Contract.

This is so because the suit was against the Manila Port Service. Had the suit been filed against the carrying vessel (which could not possibly succeed inasmuch as the carrier was not negligent or remiss in the delivery of the cargo, as said cargo had been completely discharged "in good order"), the provisions of the Carriage of Goods by Sea Act would properly apply, and the filing of the suit within one year from date of delivery would entitle the consignee to a recovery.[9]

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[7] G.R. No. 17331, November 29, 1961, 3 SCRA 576 (1961).

[8] G.R. No. 15551, November 29, 1960, 61 O.G. 256 (Jan., 1965).

[9] See Section 3(b) of Carriage of Goods by Sea Act (Com. Act No. 65), which provides: "x x x 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 (or consignee) to bring suit within one year after delivery of the goods or the date when the goods should have been delivered."

COMMON CARRIERS

The case of *Landiñgin v. Pangasinan Transportation Co.*[10] is a reiteration of the principle governing the liability of a common carrier in the transportation of its passengers.

It appeared that the bus of defendant company, operated by defendant driver, while going uphill on the road to Baguio, slid down the mountainside uncontrolled, due to the snapping of its cross-joint. Two passengers, daughters of plaintiffs, panicked, jumped off the bus, and died.

The lower court absolved the defendants, holding that the "accident" was caused by a fortuitous event or an act of God brought about by some extraordinary circumstances independent of the will of the bus driver and the bus company; nevertheless, the lower court ordered the defendant bus company to pay the plaintiffs the sum of ₱6,500 for one of the daughters and another sum of ₱3,000 for the other daughter, "not in payment of liability because of any negligence on the part of the defendants but as an expression of sympathy and good will."

On appeal, the Supreme Court correctly held that an "accident" caused by mechanical defects in the vehicle is not *caso fortuito*.[11] The Supreme Court also held that the awards granted by the lower court should be considered in the concept of damages in breach of contract of carriage.

Instead of merely changing the concept of the payments from sympathy to damages, the Supreme Court should have gone further by increasing the amounts awarded. The sums of ₱6,500 and ₱3,500 could hardly be considered as sufficient compensation for the death of the two girls, one of whom was a third year commerce student at the Far Eastern University and the other, a fourth year high school student at Dagupan Colleges. Courts should give greater value to human life especially from the time of the institution of the "floating rate" of the peso. The fact that it was the defendant company which appealed, not the plaintiffs, should not prevent the appellate Court from re-examining the amount of the damages caused, because our courts are courts not only of law but also of equity.

CORPORATIONS

At least four cases involving the provisions of the Corporation Law were decided by the Supreme Court for the year 1970.

The first case is *Espe v. Central Cooperative Exchange, Inc.*,[12] concerning the validity of transfers of common stock of a cooperative marketing corporation organized under the Cooperative Marketing Law, Act No. 3425.

[10] G.R. Nos. 28014-15, May 29, 1970, 33 SCRA 284 (1970).
[11] Lasam v. Smith, 45 Phil. 660 (1924); Necesito v. Paras, 104 Phil. 75 (1958).
[12] G.R. No. 29116, May 29, 1970, 33 SCRA 218 (1970).

The facts of the case show that certain shares of stock of the Central Cooperative Exchange (CCE), owned by the Bacnotan Facoma (La Union) were sold at an execution sale in favor of Juan R. Espe, who was not an agricultural producer. Section 31 of Act 3425 forbids the transfer of the common stock of the Central Cooperative Exchange to anyone who is not an agricultural producer. The request for transfer by the transferee in this case was, therefore, properly and legally denied by defendant corporation.

Cooperative marketing associations are governed primarily by the law creating them. The provisions of the Corporation Law (which recognizes free transferability of corporate shares of stock) will not apply if there are special provisions on the matter in the Cooperative Marketing Law to the contrary.

The second case on Corporation Law is *Central Cooperative Exchange, Inc. v. Tibe,*[13] concerning the right of members of boards of directors of corporations, including marketing associations, to receive compensation for services as directors. As member of the board of directors of plaintiff corporation, Mr. Tibe, Sr. collected cash advances amounting to ₱5,668.00 of which ₱2,133.45 remained unliquidated as of January 31, 1963. He also had drawn several sums amounting to ₱14,436.95 in the concept of per diems for attending board meetings and for transportation expenses.

The main issue is whether the board of directors of the Central Cooperative Exchange had the power and authority to approve resolutions appropriating the corporate funds for the above expenses for the members of the board.

Section 8 of the By-Laws of the Central Cooperative Exchange corporation provides that the compensation, if any, and the per diems for attendance at board meetings of the board members shall be determined by the stockholders at their annual or special meetings. It appears that in the annual meeting on January 31, 1956, it was resolved that members of the board of directors shall be entitled to actual transportation expenses plus ₱30.00 per diem and actual expenses while waiting. The board of directors of the Central Cooperative Exchange approved various resolutions authorizing payment not in accord with the said stockholders' resolution. HELD: Any additional compensation granted by the board of directors is contrary to the By-Laws, and must be deemed void.[14]

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[13] G.R. No. 27972, June 30, 1970, 33 SCRA 593 (1970).

[14] The correct principle on this matter is stated briefly thus:

> "Directors are prohibited from fixing, increasing, or voting compensation to themselves, for either past or future services rendered by them as directors or officers, UNLESS they are expressly authorized to do so by the charter, by the stockholders, or by the by-laws validly adopted." (GUEVARA, THE PHILIPPINE CORPORATION LAW 145 (1967 ed.).

The power of the board of directors to manage the corporation does not include the power to fix their own compensation, unless done pursuant to the authority conferred on them by the charter or by the by-laws. Stated otherwise, it is the stockholders, not the directors, who may fix the compensation of directors.

The third case relating to corporation law is *Philippine First Insurance Co., Inc. v. Hartigan.*[15] This involves the right of an existing corporation to change or alter its corporate name under its general power to amend its articles of incorporation.

The plaintiff corporation, Philippine First Insurance Co., Inc. was originally organized as an insurance corporation under the name of Yek Tong Lin Fire & Marine Insurance Co., Ltd. While yet doing business under the name of Yek Tong Lin, the plaintiff signed as co-maker with defendant Hartigan a promissory note for ₱5,000 in favor of the China Banking Corporation. Hartigan received the ₱5,000 from the China Banking Corporation which Hartigan failed to pay on due date. Hence, suit was brought against defendant Hartigan and three other defendants who signed an "indemnity agreement in favor of the plaintiff, undertaking jointly and severally, to pay the plaintiff damages, losses, or expenses of whatever kind or nature x x x x which the plaintiff may sustain as a result of the execution by the plaintiff as co-maker" with Hartigan.

It was admitted that the change of name was done by filing the amendment to the articles with the Securities and Exchange Commission, which approved it.

Defendant alleged that the above agreement was signed by the signers in favor of Yek Tong Lin but not in favor of plaintiff; in other words, the plaintiff cannot validly sue on the indemnity agreement because having changed its corporate name without authority of law it is deemed dissolved and had no power to sign said note.

The Court of First Instance dismissed the complaint. On appeal involving only questions of law, the Supreme Court reversed the decision of the Court of First Instance, holding that a corporation may validly change its corporate name under its general power to amend its articles of incorporation.

The Supreme Court stated that there is no prohibition against the change of name of a corporation. It said: "The inference is clear that such a change is allowed, for if the legislature had intended to enjoin corporations from changing names, it would have expressly stated so in this section (Section 18 of the Corporation Law), or in any other provision of the law."

[15] G.R. No. 26370, July 31, 1970, 34 SCRA 252 (1970).

The Court further stated that "Since an individual has the right to change his name under certain conditions, there is no compelling reason why a corporation may not enjoy the same right." It also quoted some American decisions sustaining the right of corporations to change their corporate name under the general power to amend their charter, adding that "there is nothing sacrosanct in a name when it comes to artificial beings."

This reviewer, in this important legal question, prefers to side with the Court of First Instance, and take the position that an existing corporation has no right to change its corporate name under its mere general power to amend articles of incorporation. Until our present Corporation Law is amended or revised, private corporations have no unlimited power to do acts not expressly prohibited by the law. Even if not expressly prohibited by the law but it is not also expressly granted nor essential to the accomplishment of its purpose of incorporation, the act must be deemed *ultra vires* just the same. Unlike most American state corporation laws, our law does not expressly grant a private corporation to amend its corporation name. Section 14 of our Corporation Law provides: "No corporation created under this Act shall possess any corporate powers EXCEPT those conferred by this Act and EXCEPT such as are necessary to the exercise of the powers so conferred."

It is, therefore, not correct to say that a Philippine corporation can exercise any act so long as it is not expressly prohibited by law. Even if not expressly prohibited, but the contemplated act is not essential to its corporate existence, the same may be deemed *ultra vires* nonetheless. Neither is it correct to say, as the High Court said, that "since an individual has the right to change his name under certain conditions, there is no compelling reason why a corporation may not enjoy the same right." The analogy is wrong. There is an essential difference between a *natural* person and *artificial* person; the first is not created by law, the latter is merely created by law and derives his powers only from the law. And to rely on American decisions authorizing change of corporate name is also not correct, because, as already stated, American statutes expressly authorize corporations to change their corporate name under the general power of amendment. Besides, under American corporation laws, juridical personality of the corporation is *not* dependent upon the issuance of the certificate of incorporation but upon the filing of the articles in the proper government office. Section 11 of our Corporation Law expressly provides: "x x x the persons signing the articles of incorporation and their associates and successors *shall constitute a body politic and corporate under the name stated in the certificate x x x x;*" and this certificate means the certificate of incorporation originally issued by the Securities and Exchange Commission. Once a certificate of incorporation has been issued to the incorporators, our law does not authorize the issuance

of another certificate. Any change in the corporate name without authority of law constitutes an abandonment of its juridical personality under the name stated in the certificate.

Unless the law provides a special procedure for changing a corporate name and reissuing an amended certificate of incorporation, it could be implied that such a change is not contemplated. A certificate of incorporation is issued only upon incorporation and not during its existence. And if we take into account that Section 13 also provides that a corporation has only the "power of succession" by its incorporated name, such that, if this name is changed without reissuing an amended certificate of incorporation or without express authority of law, then it cannot be the same corporation, because under our law, "the name of a corporation is *essential* to its existence", as held by the Supreme Court in the case of *Red Line Transportation Co. v. Rural Transit Co., Ltd.* [16]

The fact that the Securities and Exchange Commission approved the amendment does not change the illegality of the act of the corporation to change its name, because it is the law that confers legality to corporate acts, not the sanction of the Securities and Exchange Commission. Moreover, it does not appear that the Securities and Exchange Commission had issued another certificate of incorporation with an amended corporate name.

Properly understood, our Corporation Law (Sections 11 and 13) grants Philippine corporations the power of succession "by its corporate name" as originally stated in its certificate of incorporation.

This reviewer, therefore, agrees with the decision of the Court of First Instance when it said:

> "To rule that Section 18 of our Corporation Law authorizes the change of name of a corporation by amendment of its articles of incorporation is to indulge in *judicial legislation.* We have examined the cases cited in Volume 13 of American Jurisprudence in support of the proposition that the general power to alter or amend the charter of a corporation necessarily includes the power to alter the name of a corporation, and find no justification for said conclusion arrived at by the editors of American Jurisprudence. x x x The correct rule in harmony with the provisions of our Corporation Law is well expressed in an English case as follows:
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> > 'After a company has been completely registered without defect or omission, so as to be incorporated by the name set forth in the deed of settlement (articles of incorporation or certificate of incorporation), the incorporated company has not the power to change its name. x x x Although the King by his prerogative might incorporate by a new name, and the newly named corporation might retain the former rights, and

[16] 60 Phil. 549, 555 (1924).

> sometimes its former name also, x x x it never appears to be such an act as the corporation could do by itself, but required the same power as created the corporation.' "[17]

To hold thus, as above held, will not result in a "technicality" in the disposition of the case at bar (as the Supreme Court insinuated). Because, even if the Supreme Court had ruled that Yek Tong Lin could not lawfully alter its corporate name but it did so, yet it could not, nevertheless, be relieved from liability as held by the lower court. The plaintiff could still go against those who signed as co-maker based on other principles, like "estoppel", "implied ratification", or "subrogation", or on ground of equity and natural justice, without need of working havoc on the symmetry and harmony of our existing law on corporations. In other words, the Supreme Court could have sustained the doctrine of lack of power by a corporation to alter or change its corporate name by the ordinary amendment of its articles of incorporation, and at the same time hold that the lower court erred in dismissing plaintiff's complaint. It is not necessary to indulge in *judicial legislation* in order to justly and equitably decide a case.

The fourth case involving Corporation Law is *Villa Santa v. Bautista.*[18] This case collaterally raises the right of American citizens to own and manage 75% of the capital stock of a corporation organized for logging or the exploitation of our forestry resources, and their right to exercise their powers as General Manager, and Executive Vice-President and Production Manager.

The petitioners, including the American stockholders, averred in their verified petition that respondents forcibly entered the corporation's logging area, and through force and intimidation stopped the corporation from proceeding with its logging operations. They therefore asked for a writ of preliminary injunction to restrain respondents from interfering with the exercise of the petitioners' right as officers of the corporation and the latter's right to cut and remove timber from its concession under its timber license. Respondents averred in their answer, supported by affidavit, that they entered the logging area to "request" petitioners "to desist managing the logging operations of the corporation in accordance with the letter-policy of the Bureau of Forestry", which letter-policy, among others, stated that "the proposed inclusion of an American in the corporation as a majority stockholder, and the purchase by an American citizen in your corporation cannot be allowed."

The Supreme Court refused to decide the legal question raised by respondents on the ground that "what clearly emerges from the foregoing is that the conflicting contentions and arguments of the parties as to the alleged irregularity and illegality of the election of the individual petitioners as officers of the corporation and their disqualification to be elected as such

[17] Reg. v. Registrar of Joint Stocks Cos., 10 Q.B. 839, 59 E.C.L. 839 (1847).
[18] G.R. No. 30874, November 26, 1970, 36 SCRA 160 (1970).

and to manage the corporation's logging operations raised collateral issues which may not be properly ventilated in the present action for mandamus with injunction," because they involve questions of fact and law which have to be duly tried and heard on notice to all parties affected.

Consequently, the Supreme Court, at the sacrifice of preventing multiplicity of suits, refused to decide the legal question collaterally raised whether a corporation engaged in logging operations the capital stock of which came to be subsequently owned and controlled by American citizens, may legally continue as such.

The Supreme Court, while directing the filing of an independent suit to determine the true facts, should have proceeded to decide the legal question raised, assuming the alleged facts to be true, in which case, the Supreme Court should have applied Article XIII of the Constitution in relation to the Parity Amendment.

INSURANCE

The case of *C.C.C. Insurance Corporation v. Court of Appeals* [19] involves the right of the insured to recover on the policy.

An insurance was taken on a Dodge car against loss or damage for ₱8,000 on March 1, 1961. On June 28, 1961, or during the effectivity of the policy, the car while driven by insured's driver, collided with another car. The insured car was damaged and repaired at ₱5,300. The insurer refused to pay the cost of repair. Insurer was sued for said damage plus actual and moral damages and attorney's fees. The insurer's defense: The one driving the car was not an "authorized driver", as expressly provided in the policy. The judgment of the lower court was in favor of insured for the cost of the repairs, plus actual damage and attorney's fees. The Court of Appeals affirmed the said judgment, but eliminated actual damages of ₱2,000.

The policy provided that only a licensed driver shall drive the insured car. It appeared that the driver in the case at bar obtained his driver's license allegedly without passing an examination for the purpose. But it also appeared that the said driver had been issued a driver's license by the proper office. HELD: The license issued to the driver, in the absence of evidence to the contrary that it was not genuine, is presumed to have been issued and signed by the duly constituted officials of the Land Transportation Commission. Hence, insurer was held liable. This decision of the Supreme Court is in accordance with the principles governing insurance, that insurance policies must be liberally construed in favor of the insured and against the insurer.

[19] G.R. No. 25920, January 30, 1970, 31 SCRA 264 (1970).

The case of *Picar v. G.S.I.S.*[20] involves the right of a designated beneficiary in the policy to the proceeds of the insurance issued by the G.S.I.S.

The policy at bar was issued in favor of Napoleon F. Picar, payable in case of his death to designated beneficiaries named in the policy. Picar died on September 13, 1961. The G.S.I.S. refused to pay the insurance proceeds to the designated beneficiary unless the insured was issued a clearance. The Supreme Court agreed that "it is true that under general principles in the law of insurance, if a policy provides that the proceeds shall be payable to the assured if he lives to a certain date, and, in case of his death before that date, then they shall be payable to the *beneficiary designated,* the benefit of the policy will inure to such beneficiary in case the insured dies before the end of the period designated in the policy, and, generally, that the proceeds of a life insurance in which a third person is named beneficiary belong exclusively to such beneficiary as an individual, they are not the property of the heirs of the insured, are not subject to administration, and cannot be properly be claimed or received by the administrator or other legal representative of the insured as assets of his estate. x x x x However, such general principles are not applicable to the life insurance herein involved which is governed by specific law."

Section 26 of Commonwealth Act No. 186 (GSIS Law) provides that no policy of life insurance issued by the GSIS or the proceeds thereof, when paid to any member thereunder, shall be liable to attachment, garnishment, or taken or applied to pay any debt or liability of such member, or his beneficiary, except when indebtedness to the System exists.

The refusal, therefore, of the GSIS to pay the proceeds of the policy to the designated beneficiary, unless a clearance in favor of the deceased insured can be produced, is correct, notwithstanding the general rule in insurance that the designated beneficiary is the exclusive owner of the proceeds of the insurance upon the death of the insured. Consequently, the plaintiffs-appellants have no cause of action against the GSIS to compel the latter to pay the beneficiaries the proceeds of the policy until such clearance is issued to the deceased. The Government having filed a claim in the estate of the deceased for ₱9,746.07 on the proceeds as the deceased's unliquidated accountability, the Government is legally entitled to have a lien on the proceeds of the policy in question. In other words, the doctrine properly deducible from the case at bar is: That proceeds of insurance policy issued by the GSIS are not subject to levy, garnishment, or attachment, to pay any debt or liability of the insured member, except when there exists money or property accountability of the said member in favor of the Government employer.

[20] G.R. No. 25803, May 29, 1970, 33 SCRA 324 (1970).

NEGOTIABLE INSTRUMENTS LAW

The case of *Hongkong & Shanghai Banking Corporation v. People's Bank & Trust Co.*[21] refers to the liability of the paying bank which made payment to a forger.

A check was drawn by the P.L.D.T. against the drawee bank, the Hongkong & Shanghai Banking Corporation, and which was fraudulently cashed by a forger from defendant bank, the People's Bank & Trust Co. The People's Bank indorsed the check for clearance to the drawee bank but the latter failed to clear it within the "24-hour" rule of the Central Bank to which all banks are subject. The Hongkong & Shanghai Bank advised the People's Bank of the forgery only 27 days after clearing. The Supreme Court held the Hongkong & Shanghai Bank (drawee) liable in this case, on the ground of violation by the drawee bank of the 24-hour clearance rule.

The principle that should have been applied in cases like the one at bar is: "Where a loss which must be borne by one of two parties alike innocent of forgery (or alteration), can be traced to the negligence or fault of either, it is reasonable that it should be borne by him even if innocent of any intentional fraud, *through whose means it has succeeded.*" [22]

Judged by the sound doctrine above-quoted, the decision of the Supreme Court in the case at bar is not entirely satisfactory. The Court relied solely on the failure of the drawee bank to comply with the 24-hour rule regarding clearing checks. But, did the paying bank, the People's Bank (which was not the drawee bank) make payment immediately to the forger or alterer (or credited him at once with the amount of the check) *even before the expiration of the 24-hour period*. If it did, then the People's Bank *preceded the drawee bank in negligence,* and it could be said that it was through the People's Bank's negligence that the fraud first succeeded. The drawee bank had until 3:30 p.m. the next day (March 17) to clear the check; the paying bank (People's Bank) allowed withdrawal before the lapse of banking hours of said March 17. Inasmuch as the paying bank gave credit to the deposited check even before the expiration of the period within which the drawee bank could give the clearance, it was therefore through the act of People's Bank that the fraud succeeded.

The *pro forma* or stamped indorsement made by the People's Bank in forwarding the check for clearance, with the words "All prior indorsements guaranteed" did not make the paying bank a true indorser within the meaning of Section 66 of the Negotiable Instruments Law inasmuch as it was presented to it only for collection. Said stamped indorsement should not be

[21] G.R. No. 28226, September 30, 1970, 35 SCRA 140 (1970).

[22] Blondeau v. Nano, 61 Phil. 625 (1935); Philippine National Bank v. The National City Bank of New York, 63 Phil. 711 (1936); Great Eastern Life Insurance v. Hongkong & Shanghai Bank, 43 Phil. 678 (1922).

the determining factor in deciding the liabilities of the parties at bar, but as already stated, the question should have been: At whose act had the fraud succeeded?

In other words, while it is correct to take into account the strict "24-hour rule" regarding clearance (which had been accepted by all banks), the Supreme Court should have determined clearly if the drawee bank (the Hongkong & Shanghai Bank) really failed to comply with its duty within 24-hours from date of receipt of the altered check when the People's Bank made payment to the forger or alterer. On this point, the Supreme Court oversimplified the facts by assuming such failure to comply with the 24-hour clearance rule.[23]

Are U.S. dollar bills, checks and other negotiable instruments "merchandise" (which were intended to be smuggled out of the country in violation of law on illegal exportation of "merchandise"), confiscable under Sections 1383 and 1419 of the Revised Administrative Code, and also under Central Bank regulations prohibiting exportation of foreign exchange, which authorized said confiscation?

The Supreme Court held that as regards dollar bills, they definitely fall within the meaning of the term "merchandise", citing the case of *Commissioner of Customs v. Capistrano*,[24] as used in the Revised Administrative Code.

As regards the checks, money order, and travellers checks, the Court also held that as bills of exchange, they are negotiable instruments, and as such, they are "more like money than a contract right or chose in action." They may be the subject of conversion or sale, like any other goods.

It was also held that these instruments involve foreign exchange payable in US dollars and may not be exercised without prior license of the Central Bank (Central Bank circulars Nos. 20 and 42). The fact that these circulars had been subsequently repealed would not affect the right of the Commissioner of Customs to forfeit the same, inasmuch as the penalty of forfeiture is not criminal in nature, but civil, directed primarily against the merchandise rather than at the offender.[25]

PARTNERSHIP

The case of *BIR Commissioner v. Ledesma*,[26] while it involves a partnership contract is, nevertheless, principally a case of taxation, governed by the provisions of the Internal Revenue Code.

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[23] The 24-hour rule on clearing checks was subsequently amended by Central Bank Circular No. 317, s. 1970, 23 C.B. News Digest 10 (Jan., 1971).

[24] 108 Phil. 694 (1960).

[25] Bastida v. Acting Commissioner of Customs, G.R. No. 24011, October 24, 1970, 35 SCRA 448 (1970).

[26] G.R. No. 17509, January 30, 1970, 31 SCRA 95 (1970).

The issue is whether the partnership "Hacienda Fortuna", registered as a partnership (general) only on July 14, 1949, should pay corporate income tax as unregistered partnership on its net income during the period from January 1, 1949 to July 13, 1949, it appearing in the articles of partnership that "the partnership agreement should retroact as of January 1, 1949."

The Supreme Court applied the Income Tax Law, holding that the income of the partnership, upon registration, is exempt as such for the *entire taxable year* although the partners are taxable in their individual capacity.[27] In other words, a partnership registered only on July 14, 1949 may be treated as registered for the entire taxable year as such, notwithstanding the fact that it was unregistered during a part of the year.

This holding may be true for income tax purposes, but for other legal purposes, especially for the purpose of determining when it became a juridical person, it may be stated that the juridical personality of a partnership (in cases where registration is required), commences only from the date of its registration as regards third persons or the public, and would not retroact to the day of its organization.

TRADE-MARKS

The case of *American Wire & Cable Co. v. Director of Patents*,[28] relates to registration of a trademark.

The American Wire & Cable Co. was the owner of a registered trademark *Duraflex* for electric wires. Central Banahaw Company sought to register *Dynaflex* also for electric wires. The Patent Office approved the latter's registration on the ground that the names are not similar.

The Supreme Court reversed this decision, holding that the determinative factor in a contest involving registration of a trademark is not whether the challenged trademark would *actually cause* confusion or deception to the purchasers, but whether the mark would *likely cause* confusion or mistake on the part of the buying public. The test is the *similarity in sound* or *dominant features* of the two marks. This holding is in harmony with previous decisions in *Co Tiong v. Director of Patents*,[29] where the test of dominancy was emphasized in which two competing marks contain the dominant features of each other; *Marvel Commercial Co. v. Haw Pia*,[30] where the two marks have *idem sonans*, like *Lionpas* and *Salonpas*.

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[27] TAX CODE, sec. 24.

[28] G.R. No. 26557, February 18, 1970, 31 SCRA 544 (1970).

[29] 95 Phil. 1 (1954).

[30] G.R. No. 19297, December 22, 1966, 18 SCRA 1178 (1966). See also Operators, Inc. v. Director of Patents, G.R. No. 17901, October 29, 1965, 15 SCRA 147 (1965); Lim Hoa v. Director of Patents, 100 Phil. 214 (1956).

In the case of *De la Rama SS Co. v. National Development Co.,*[31] one of the issues involved is the right of de la Rama Steamship to the exclusive use of the names *"Doña Nati", "Doña Alicia",* and *Doña Aurora"* on three of its vessels, which are the names of the wife of the late Don Esteban de la Rama, of former President Quirino, and of President Quezon, respectively. The National Development Co. contended that the De la Rama Steamship Co. could not exclusively appropriate said names because they are the names of wives of former presidents of the Philippines and which, it is claimed, cannot be exclusively appropriated under the Trademarks Law.

The National Development Co. failed to read and understand correctly the law governing the use of tradenames. As correctly held by the Supreme Court: "Under Section 4(c) of Republic Act No. 166 as amended, x x x what is prohibited from being appropriated and registered are tradenames consisting of, or comprising, a name identifying a particular individual, or the *names of a deceased President of the Philippines.* The names of deceased *wives* of Presidents are not included in the prohibition."

Moreover, it was proven that De la Rama Steamship Co. had been using the names of "Doña" on its vessels continuously for more than five years, and the Supreme Court also correctly held that pursuant to *Ang v. Teodoro,*[32] "even a name or phrase not capable of appropriation as a tradename may, by long and exclusive use by a bcsiness with reference thereto or to its products, acquire a proprietary connotation, such that, to the purchasing public, the name or phrase becomes associated with the service or the products of the business, and so it is entitled to protection against unfair competition.[33]

USURY

The case of *Equitable Banking Corporation v. Liwanag,*[34] raises the question of whether the practice of money lenders charging various fees or charges and an additional percentage of the amount of the loan for non-payment on due date as *penalty,* would amount or not to a violation of the Usury Law where the total amounts collected would exceed the maximum rates of interest allowed by said law.

Defendant obtained a loan of ₱80,000 from plaintiff bank at 9% per annum, payable within 120 days; in case of non-payment at maturity, an additional 5% per annum on the total amount is payable, compounded monthly, and together with the principal, shall bear interest at 12% per

[31] G.R. No. 26966, October 30, 1970, 35 SCRA 567 (1970).
[32] 74 Phil. 50 (1952).
[33] See also De la Rama SS Co. v. National Development Co., G.R. No. 26966, October 30, 1970, which held that tradenames used for a long time may acquire "goodwill", and "goodwill" is a property right entitled to protection by the law.
[34] G.R. No. 28335, March 30, 1970, 32 SCRA 293 (1970).

annum, until fully paid; and in case of referral to a lawyer for collection, another 10% of the amount is collectible as attorney's fees. The borrower claimed that the contract in question is usurious.

The Supreme Court held that the transaction is not usurious. The rate of interest stipulated was 9%, subject to additional rate of 5% in case of default. This additional rate, it was held, partakes of the nature of a *penalty clause*, allegedly sanctioned by Article 1226, Civil Code, although the "penalty may also be reduced by the courts if it is iniquitous or unreasonable." [35]

The above decision is said to be in conformity with prior decisions of the Supreme Court allowing the collection of additional charges, in addition to the maximum rates of interest provided for in the Usury Law.

In view of the difficulty of proving usury due to the many ways practised by money-lenders in circumventing the law, it is high time that clear and definite rules be declared in order that the so-called "penalty clause" provided for in contracts of loan of money may be deemed valid.

This writer had already expressed his view on this matter in his Civil Code, Annotated,[36] wherein he stated that Article 1226 of the Civil Code allowing substitution of stipulated penalty for payment of interest in "obligations with a penalty clause" seems to refer only to cases of *obligations other than simple loans;* that in case of simple loans, for payment of money, the Usury Law should strictly apply.

The following provisions of the Civil Code shall govern obligations to pay money:

> "Art. 1175. Usurious transactions shall be governed by special laws."
>
> "Art. 1957. Contracts and other stipulations under any cloak or device whatever, intended to circumvent the laws against usury shall be void. *The borrower may recover in accordance with the laws on usury.*"

And the Usury Law expressly prohibits the taking of interest, *directly or indirectly,* "a higher rate of interest *including commissions, premiums, fines, and penalties*" for the loan of money, goods, credits, than the maximum rates allowed by the Usury Law. So that, if all the interests collected or collectible by a creditor in a contract of loan of money, *"directly or indirectly"* would exceed the maximum rates of interest of 12% and 14%, as the case may be, the same shall be usurious "under any cloak or device whatever."

In other words, the provisions of the Civil Code on "obligations with a penal clause" should be construed to refer only to obligations *other than*

[35] CIVIL CODE, art. 1229.
[36] 1960 Edition, p. 227.

obligations to pay money, in which case, Article 1226 of the Civil Code shall apply; but where the obligation consists of payment of money or one arising out of a contract of simple loan, it shall be governed by the provisions of the Civil Code on simple loan [37] supplemented by the Usury Law. This should be the rule in order to avoid an apparent conflict between the provisions of the Civil Code on obligations with a "penal clause" and the provisions of the Usury Law prohibiting the collection of the maximum rates of interest allowed by the Usury Law, *including fines and penalties.*

However, until the Supreme Court reverses its prior decisions on the matter, the above observations are given only for purposes of giving this legal question a second look.

[37] CIVIL CODE, arts. 1957 & 1175.