COMMERCIAL LAW

GONZALO T. SANTOS, JR.*

Introduction

The trend of judicial decisions in any given country reflects the nature and extent of activity of the various entities and the different persons, whether natural or juridical, existing in that part of the world. This must necessarily be so for the cases that arise in the arena of interaction can only be indicative of the controversies and differences requiring settlement or adjustment through resort to the sound judgment of those who participate in the administration of the judicial system.

It is said that law is designed to regulate human conduct. That being so, its development must perforce depend on no small degree upon the quality of human action and reaction that must be governed by rules intended to insure orderly regulation of the activities concommitant with living.

The economic progress of a nation goes hand in hand with the development of its law. After all, law can not develop faster than the birth of situations it is intended to regulate. When a country succeeds in achieving economic development, that progress is accompanied by the growth and expansion of commercial and financial activities. Hence, the multiplication of the conflicts requiring adjudication can not be avoided.

The Philippines is known to be a developing country. Basically agricultural, it is still in the take-off stage in its struggle towards the attainment of its desired objective of industrial development. As a consequence, commercial transactions have not been as numerous as in a developed economy. This explains the oft-cited phenomenon in the past that the Supreme Court of the Philippines was handing down too few decisions in business law.

The calendar year 1971, however, witnessed the increase in the number of decisions rendered by the Supreme Court in the field of commercial law. All in all, twenty-eight cases were promulgated. Eight of these were in the field of banking; four on corporation law; one on negotiable instruments; one on the law of usury; three on trademarks; five on insurance; and seven on public service law.

* *Professorial Lecturer,* College of Law, University of the Philippines.

BANKING

Significance of increase in number of banking cases

Economic activity is dependent upon the availability of financial resources. This is a truism that can not be denied, whether the problem is raised in economics, banking, fiscal administration or commercial law. After all, the wheels of progress can only turn if powered by the generative energy produced by that phenomenon known as money and its modern progeny, credit.

Corollary to the sound conduct of fiscal administration is the proper enforcement of the laws on taxation and the efficient management of the monetary and banking systems. Coordination of these various systems assures a more successful control of fiscal resources that are indispensable for economic development.

The big number of cases decided by the Supreme Court in the area of banking augurs well for the country, for this indicates that employment of the streams of financial resources in the attainment of the objective of increasing the gross national product had given rise to conflicts necessitating decisions by the highest court of the land.

Power of the Central Bank to supervise rural banks

The economic planners of the nation had in the past devised a system under which all banking institutions in the country shall be under the supervision of a body corporate known as the Central Bank of the Philippines. Under section 2 of its charter, Republic Act No. 265, it is the responsibility of the Central Bank to administer the monetary and banking system of the Philippines, and to use the powers granted to it in order to achieve the objectives: (1) of maintaining monetary stability in the Philippines; (2) of preserving the international value of the peso and the convertibility of the peso into other freely convertible currencies; and, (3) of promoting a rising level of production, employment and real income in the Philippines.

Among the kinds of banking institutions that may be established and operated in the country are the rural banks. Such entities are allowed to be created under Republic Act No. 720, otherwise known as the Rural Banks' Act, and are intended to promote and expand the rural economy in an orderly and effective manner by providing the people of the rural communities with the means of facilitating and improving their productive activities.

To assure the success of the operation of such rural banks, Section 10 of Republic Act No. 720 provides that the power to supervise the operation of any rural bank by the Monetary Board of the Central Bank shall consist: in placing limits to the maximum credit allowed any individual

borrower; in prescribing the interest rate; in determining the loan period and loan procedures; in indicating the manner in which technical assistance shall be extended to rural banks; in imposing a uniform accounting system and manner of keeping the accounts and records of the rural banks; in undertaking regular credit examination of the rural banks; in instituting periodic surveys of loans and lending procedures, audits, testing checks of cash and other transactions of the rural banks; in conducting training courses for personnel of rural banks; and, in general, in supervising the business operation of the rural banks.[1]

The director of the department of the Central Bank designated by the Monetary Board to supervise rural banks has the power to enforce the laws, orders, instructions, rules and regulations promulgated by the Monetary Board applicable to rural banks; to require rural banks, their directors, officers and agents to conduct and manage the affairs of the rural bank in a lawful and orderly manner; and, upon proof that the rural bank or its board of directors or officers are conducting and managing the affairs of the bank in a manner contrary to laws, orders, instructions, rules and regulations promulgated by the Monetary Board or in a manner substantially prejudicial to the interests of the government, depositors or creditors, to take over the management of such bank when specifically authorized to do so by the Monetary Board after due hearing until a new board of directors and officers is elected and qualified without prejudice to the prosecution of the persons responsible for such violations under the provisions of the Central Bank Act.[2]

In the case of *Central Bank of the Philippines v. The Tayug Rural Bank, Inc., et al.*[3] the Central Bank had occasion to invoke the exercise of the foregoing powers. Pursuant to the authority conferred upon it by the provisions of Section 10 of Republic Act No. 720, as amended, the Central Bank of the Philippines, through its Department of Rural Banks, conducted a general examination of the books and records of the respondent rural bank during the period commencing May 19 and ending August 8, 1964.

The examination disclosed "serious irregularities, anomalies and violations", namely: (1) the grant of irregular loans, *viz*, loans which, according to the sworn statements of "borrowers" were not received by them, loans against non-existing collaterals or projects, padded loans, and loans made through commission agents; (2) high percentage (45% of total outstanding loans) of past due items; (3) delinquency in the payment of the rural bank's rediscounted notes to the Central Bank; (4) re-lending collections from its rediscounted promissory notes; (5) excessive or unnecessary expenditures; and (6) accumulation of unliquidated advances made to the rural bank's officials and employees.

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[1] Rep. Act No. 720 (1952), sec. 10, par. 1.
[2] Rep. Act No. 720 (1952), sec. 10, par. 2.
[3] G.R. No. L-23952, February 27, 1971, 37 SCRA 693 (1971).

Upon the recommendation of the Director of the Department of Rural Banks, the Governor of the Central Bank wrote a letter dated October 27, 1964 to the board of directors of the rural bank informing it that the Monetary Board of the Central Bank had decided to assign immediately a team of examiners to supervise the rural bank's operations and enforce the suspension of its lending activities.

On November 24, 1964, a team of Central Bank examiners went to the respondent bank and asked to be allowed to conduct a special examination of its books and records as directed by the Monetary Board. The request of the team was not granted and on December 24, 1964, the Central Bank filed with the Supreme Court an original petition for mandamus and preliminary mandatory injunction. On the same date, the Supreme Court granted the preliminary mandatory injunction prayed for.

The issue raised was whether, under the provisions of the Rural Banks' Act, the respondent rural bank could be compelled by mandamus to allow the examination of its books of accounts and other records.

The Supreme Court noted that the respondents, in their answer, alleged that even without having been served officially with the writ of preliminary mandatory injunction, they had allowed another team of Central Bank examiners to look into the records of the rural bank, and hence the question had become moot and academic. The petitioner had not controverted this claim of the respondents.

The respondents recognize the right of the Central Bank to conduct examinations of the respondent bank's books and affairs pursuant to Republic Act No. 720, and have not since February 1, 1965 up to the present, in any way impeded the exercise by the Central Bank of the said right. Additionally, the Central Bank, since 1965 up to the present, has uninterruptedly been allowed to supervise and examine the operations and corporate records of the respondent bank, and the latter's financial affairs have been and still are in the process of being adjusted on to a firm footing under the aegis of the Central Bank. Consequently, the case is now moot and academic.

Par value of the peso distinguished from the rate of exchange

Life in the modern world requires the production of goods and the performance of services for which payment must be made. The determination of the value of such goods or services is of prime importance because no trade would be possible without a measure of monetary value.

In the Philippines, the unit of monetary value is the "peso" [4] the par value of which is fixed by law.[5] Under section 6 of Commonwealth Act

[4] Rep. Act No. 265 (1948), sec. 47.
[5] Rep. Act No. 265 (1948), sec. 48.

No. 699 [6] when the Philippines is requested by the International Monetary Fund to communicate the par value of the Philippine peso, such par value shall not be communicated as other than one half of a United States dollar or the weight and fineness in effect on July 1, 1944.

Section 49 of the Central Bank Charter requires that the par value of the peso shall not be altered except when such action is made necessary by the following circumstances:

(a) When the existing par value would make impossible the achievement and maintenance of a high level of production, employment and real income without:

(1) The deflation of the international reserve of the Central Bank; or

(2) The chronic use of restrictions on the convertibility of the peso into foreign currencies or on the transferability abroad of funds from the Philippines; or

(3) Undue government intervention in, or restriction of, the international flow of goods and services; or

(b) When the uniform proportionate changes in par values are made by the countries which are members of the International Monetary Fund; or

(c) When the operation of any executive or international agreement to which the Republic of the Philippines is a party requires an alteration in the gold value of the peso.

Any modification in the gold or dollar value of the peso must be in conformity with the provisions of all executive and international agreements subscribed to and ratified by the Republic of the Philippines, and such modification shall be made only by the President of the Republic upon the proposal of the Monetary Board and with the approval of Congress. The proposal of the Monetary Board requires the concurrence of at least five of the members of the Board.[7]

Notwithstanding the requirement with respect to the approval of Congress, if there should be an emergency which, in the opinion of the President, is so grave and so urgent as to require immediate action, the President may modify the par value of the peso without the prior approval of Congress, but he shall report to the Congress on his action at the earliest opportunity.[8]

The Supreme Court, in the case of *Gonzalo L. Manuel & Co., Inc. v. Central Bank of the Philippines, et al.*,[9] was confronted with the problem of changes in par value and rate of exchange. The facts show that on three occasions between October and December, 1961, petitioner, a mercantile

[6] Approved October 15, 1945.
[7] Rep. Act No. 265 (1948), sec. 49, par. 2.
[8] Rep. Act No. 265 (1948), sec. 49, par. 3.
[9] G.R. No. L-21789, April 30, 1971, 38 SCRA 533 (1971).

corporation engaged in the import business, purchased U.S. dollars from respondent Central Bank through its duly authorized agent bank, the Philippine Bank of Communications, at the rate of ₱3.00 to $1.00, plus the margin levy of 15%.

On January 22, 1962, petitioner filed a formal claim with the Central Bank for the refund of ₱20,153, allegedly paid in excess of the amount which the law allowed, based on the statutory par value of ₱2.00 to $1.00. The Central Bank turned down the claim explaining that up to the present time, there had been no devaluation of the Philippine peso. It added that devaluation, which involves a change in the par value of the peso, needs legislation, and should not be confused with the rate of exchange or how much a certain currency may be bought or sold in terms of another currency.

Petitioner afterwards filed a petition for certiorari in the CFI of Manila, praying that Resolutions 641 and 1341 of the Monetary Board, be declared null and void.

The aforementioned Resolutions were intended to implement Central Bank Circulars 105 and 106. Circular 105 limited the sales of exchange by the official rate of ₱2.00 to $1.00 to certain specified transactions; with respect to transactions not enumerated and to transactions in excess of exchange licenses granted by the Central Bank, the sales of foreign exchange were pegged at the free market rate. Circular 106 enunciated the regulations that should govern sales by agent banks of foreign exchange in the free market.

Resolution 641 pegged the buying and selling rate of dollars for all transactions in the free market at ₱3.20 to $1.00, plus 25% margin levy, effective April 25, 1960. Resolution 1341, on the other hand, reduced the free market rate from ₱3.20 to ₱3.00 per $1.00, effective September 12, 1960.

The foregoing Circulars were issued pursuant to Republic Act No. 2609, section 1 of which provides that "in implementing the provisions of this Act, along with other monetary, credit and fiscal measures to stabilize the economy, the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol."

The issue raised was whether or not the questioned resolutions were within the Central Bank's power and authority to pass, and whether or not said resolutions involved a change in the par value of the peso in relation to the U.S. dollar.

The Supreme Court ruled that the par value of the peso is defined by law, to wit:

"Sec. 48. *Par value:* The gold value of the peso is seven and thirteen-twenty first (7-13/21) grains of gold, nine-tenths (0.900) fine, which is

equivalent to the United States dollar parity of the peso as provided in section 6 of Commonwealth Act No. 699."[10]

"When the Commonwealth of the Philippines is requested by the Fund to communicate the par value of the Philippine peso, such par value shall not be communicated as other than one half of a United States dollar of the weight and fineness in effect on July 1, 1944." [11]

Under Section 49 of Republic Act No. 265, any modification in the gold dollar value of the peso shall be made only by the President upon the proposal of the Monetary Board and with the approval of Congress, and the proposal of the Monetary Board shall require the concurrence of at least five of the members. In the light of this provision, it is clear that if the resolutions in question were meant to change, and did change, the par value of the pesos, then they were null and void, not having complied with all the requisites mentioned.

The position of the Central Bank which the Supreme Court upheld is that until now, there has been no change in the par or dollar value of the peso as defined by law. Section 48 of the Central Bank Act has not been amended. The questioned resolution themselves speak not of par value but of "the buying and selling rates of the Central Bank for all transactions in the free market," which rates were first pegged at ₱3.20 to $1.00 and later on at ₱3.00 to $1.00.

"Par value" and "rate of exchange" are not necessarily synonymous. The first, variously termed "legal exchange rate" or "par of exchange" is "the official rate of exchange, established by a government, in contrast to the free market rate." The par of exchange applies only between countries having a fixed metallic content for their currency units. It would be possible to define a currency's par value in terms of another currency such as the dollar or pound sterling, but usage confines the meaning of par to the official value in terms of gold.

The "rate of exchange" or "exchange rate" is "the price, or the indication of the price, at which one can sell or buy with one's own domestic currency a foreign currency unit. Normally, the rate is determined by the law of supply and demand for a particular currency."

There is also the so-called "free market rate" of foreign exchange, which means the "free prevailing rate, in contrast to the official or legal rate." Thus there is a difference between par value and rate of exchange: the first is defined by law, and (as in the case of the peso) is based upon its gold content. The second is conditioned by prevailing economic factors which bear upon the demand for a particular currency and its availability in the market.

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[10] Rep. Act No. 265 (1948).
[11] Com. Act No. 699 (1945).

This duality in the state of the relative values of two currencies for purposes of exchange is a fact which can not be ignored, and which moved the government to adopt a series of measures designed to solve the resulting foreign exchange crisis. The means adopted to carry out that purpose was well within the broad authority granted. That the exchange rates were administratively fixed in Resolutions 641 and 1341 instead of allowing them to seek their own level freely is of no material bearing in this case.

Foreign exchange

International trade among the family of nations can be conducted on the basis of barter or with the use of foreign exchange. Trade on barter basis is cumbersome, whereas transactions with the use of foreign exchange are expeditious and convenient. Hence, resort to barter is made only under special circumstances.

Foreign exchange has been defined as the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another country.[12]

Under existing banking and business practices, a Filipino importer can secure goods from a foreign supplier only with the use of letters of credit, drafts or other bills of exchange, and foreign exchange.

The usual procedure is for the importer to open with his domestic bank a letter of credit in favor of the exporter who will ship his goods only upon receipt thereof. The foreign supplier obtains payment for his exportation by drawing a draft against the letter of credit and negotiating said draft with his bank which, if a correspondent relationship exists, will debit the account of the bank opening the letter of credit, or will transmit the draft to the opening bank for acceptance or payment. Regardless of the mode employed, foreign exchange must pass from the country of importation to the country of exportation.

In order to assure himself that foreign exchange will be available when the exporter draws a draft against the letter of credit opened by him, the importer at the time of the opening of the letter of credit enters into a forward exchange contract with his bank which in turn submits the same to the Central Bank for approval.

A forward exchange contract is essentially an agreement dealing with a future transaction involving money whereby the importer agrees to pay the consideration named in the contract to his bank which guarantee the availability at some future date of an amount certain in the form of foreign exchange at a rate of exchange fixed by the parties.

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[12] Janda v. Lepanto Consolidated Mining Co., 99 Phil. 197 (1956).

In *Pacific Oxygen & Acetylene Company v. Central Bank of the Philippines*[13] the issue was whether the sale of foreign exchange should be considered to have taken place on the dates of execution of the forward exchange contracts or on the dates the drafts drawn against the letters of credit were honored and paid.

The evidence shows that on December 12 and 14, 1961, the plaintiff applied with the Philippine Trust Company for commercial letters of credit in favor of Independent Engineering Company of Illinois, USA covering importation of various industrial machinery parts. Acting favorably on the application, the Philippine Trust Company on the same dates issued the corresponding letters of credit which were addressed to the Continental Illinois National Bank and Trust Company. Plaintiff likewise applied with the Philippine Trust Company for the purchase of forward exchange for the same amounts as the letters of credit. In turn, the Philippine Trust Company applied with the defendant for the purchase of forward exchange to cover its US dollar commitments under the letters of credit at the free market rate. The defendant approved said applications on December 14 and 18, 1961.

On January 21, 1962, the defendant issued Circular No. 133 providing for the suspension of the margin levy.

On February 23, 1962, the Continental Illinois National Bank paid the drafts drawn by the Independent Engineering Company against the letters of credit opened in its favor, and debited the account of Philippine Trust Company which in turn demanded payment from the plaintiff of the amount due, including the 15% margin fee. After paying the amount of the said margin fee under protest, the plaintiff filed in the Court of First Instance of Manila the instant action for refund.

The Supreme Court held that no dispute arises as to the authority of the Central Bank to impose and collect a margin fee on all sales of foreign exchange by the Central Bank itself or by its authorized agent banks. The clear mandate of Section 1 of Republic Act No. 2609 calls for the collection of a margin fee on "all sales of foreign exchange by the Central Bank and its authorized agent banks."

Question arises in the instant case for while the letters of credit opened by the Philippine Trust Company, as well as the forward exchange contracts between the Central Bank and the Philippine Trust Company for the account of the plaintiff, were issued or executed during the period when the margin levy was still imposable, the drafts against the said letters of credit were negotiated, honored and paid by the Continental Illinois National Bank to the Independent Engineering Company during the period when the collection of the margin levy was suspended.

[13] G.R. No. L-23391, February 27, 1971, 37 SCRA 685 (1971).

In the resolution of the case, the determinative dates are the dates of execution of the forward exchange contracts between the defendant and the Philippine Trust Company for the account of the plaintiff. Republic Act No. 2609 authorizing the Central Bank to collect a margin fee "in respect of all sales of foreign exchange by the Central Bank and its authorized agent banks," as well as the Central Bank circulars implementing the said law, makes no distinction between perfected and consummated, or between executory and executed sales. Under our Civil and Commercial Codes, a sale comes into existence upon its perfection by mutual consent, even if the subject matter or the consideration has not been delivered, barring law or stipulation to the contrary. It is well-settled in our law that a contract of sale exists from the moment one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.[13a] There is perfection of such contract at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price, from which moment the parties may reciprocally demand performance, subject to the provisions of law governing the form of contracts.[13b]

In the case at bar, the contracts of sale of foreign exchange existed and were outstanding from December 14 and 18, 1961. Said dates fall within the period of the effectivity of the 15% margin fee. Thus, the defendant contravened no law, and, in fact none of its own rules and regulations, when it collected from the plaintiff the amounts corresponding to the margin fee.

All importations requiring the use of foreign exchange have an adverse effect on the international reserve of the country. This means that unless there are net additions to the reserve coming from exports of goods or of invisibles, the said reserve would get depleted as more and more importations are made. Thus, Section 68 of the Central Bank Act provides that in order to maintain the international stability and convertibility of the Philippine peso, the Central Bank shall maintain an international reserve adequate to meet any foreseeable net demands on the Bank for foreign currencies.

The international reserve of the Central Bank includes: (a) gold, and (b) assets in foreign currencies in the form of: documents and instruments of types customarily employed for the international transfer of funds; demand and time deposits in central banks, treasuries and commercial banks abroad; foreign government securities with maturities not exceeding five years; and foreign notes and coins.[13c]

[13a] CIVIL CODE, Art. 1458.
[13b] CIVIL CODE, Art. 1475.
[13c] Rep. Act No. 265 (1948), sec. 69, par. 1.

In order to maintain the par value of the peso and its convertibility into other freely convertible currencies, the Central Bank is authorized to buy and sell foreign notes and coins, and documents and instruments of types customarily employed in the international transfer of funds. The Central Bank is also empowered to engage in future exchange operations.[14]

The Central Bank, however, may engage in foreign exchange transactions only with the following entities: (a) banking institutions operating in in the Philippines; (b) the Government, its political subdivisions and instrumentalities; (c) foreign or international financial institutions; and, (d) foreign governments and their instrumentalities.[15]

That the Central Bank may engage in foreign exchange transactions is obviously a general rule for observance during normal times, and is subject to the exception provided in section 74 of the Central Bank Act to the effect that during an exchange crisis, the Monetary Board is expressly authorized to subject all transactions in gold and foreign exchange to license by the Central Bank.[16]

Said Section 74 provides that in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis, the Monetary Board, with the concurrence of at least five of its members, and with the approval of the President of the Philippines, may temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license by the Central Bank. The adoption of the emergency measures authorized, however, shall be subject to any executive and international agreements to which the Republic of the Philippines is a party.

The case of *Geotina v. The Court of Tax Appeals and Unitrade, Inc.*,[17] illustrates how the tariff and customs laws can be coordinated with the banking laws, and the Central Bank rules and regulations in the preservation of the international reserve of the country.

Respondent *Unitrade* is a domestic corporation, to which was consigned 37,042 cartons of fresh apples that arrived on December 22, 1970. After payment of the duties covering 10,000 cartons, the necessary transfer permits were issued by the Collector of Customs of Manila. While this portion of the importation was being unloaded from the vessel, the Collector issued warrants of seizure and detention for alleged violation of Central Bank Circulars 289, 294 and 295 in relation to Section 2530(f) of the Tariff and Customs Code. Before the entire shipment could be unloaded, however, the

[14] Rep. Act No. 265 (1948), sec. 73, par. 1.
[15] Rep. Act No. 265 (1948), sec. 73, par. 2.
[16] People v. Tan, 60 O.G. 3420 (1964).
[17] G.R. No. L-33500, August 30, 1971, 40 SCRA 362 (1971).

Collector changed his mind and ordered that the goods be returned to the vessel.

On two occasions, respondent Unitrade asked for the discharge of the articles from the vessel and their delivery to it under bond. In both cases, the Collector denied the request, stating that the importation being in violation of the Central Bank Circulars, the articles are of prohibited importation under Section 102(k) of the Tariff and Customs Code. In his letter denying the second request, the Collector cited Section 1207 of the same Code, to wit: "Where articles are of prohibited importation or subject to importation only upon conditions prescribed by law, it shall be the duty of the Collector to exercise such jurisdiction in respect thereto as will prevent importation or otherwise secure compliance with all legal requirements."

It is apparent from the cited provision that the Collector has two options: (1) to prevent the importation, or (2) to require compliance with all legal requirements. Since the second alternative was not feasible, the Collector opted for the first. The Commissioner of Customs sustained the decision of the Collector.

After filing its appeal with the Tax Court, Unitrade moved for the discharge of the cargo under bond. The Court denied the motion as well as its reconsideration ruling that "since articles of prohibited importation was not subject to the right of redemption by the claimant or owner, it is obvious that the motion ... to have said goods delivered to it pending final determination of its appeal is without merit, for to do so would in effect be a declaration that the goods are not articles of prohibited importation."

On an urgent motion of Unitrade alleging malfunction of the reefer machinery of the carrying vessel, the Tax Court allowed the discharge of the fruits and their deposit in a customs bonded warehouse, to prevent spoilage or deterioration.

Thereafter, the Tax Court rendered decision that the apples "are not absolutely prohibited to be imported... under the ... circulars of the Central Bank, in relation to Section 102 of the Tariff and Customs Code. However, while said goods are not articles of prohibited importation, they may be held liable for forfeiture for failure... to secure a release certificate from the Central Bank, which liability may be determined in an appropriate seizure proceeding to be conducted by the Collector of Customs, pursuant to Section 2301, *et seq.* of the Tariff and Customs Code. x-x x Considering the perishable nature of said goods, (they) should be released under bond to secure payment of the appraised value thereof in case they are finally declared forfeited in favor of the government."

The petitioner filed an action for certiorari in the Supreme Court and obtained an order restraining the enforcement of the decision of the Tax Court.

On May 27, 1971, the parties filed a joint manifestation that some of the apples had been found totally rotten and the rest in various stages of deterioration. In Unitrade's last urgent motion dated July 20, 1971, it prayed for resolution of the case for the reason that "the fresh apples... are already in grave danger of totally deteriorating."

The specific issue before the Court was: Did the Tax Court act within its authority and in accordance with the applicable law and jurisprudence in ordering the release under bond of the questioned shipment, admittedly made on a "no dollar" basis, notwithstanding the lack of the required Central Bank release certificate?

The Supreme Court traced the history of exchange restrictions in the country and held that the shipment is concededly one of fruits classified as nonessential consumer (NEC) goods, the importation of which is barred under Central Bank Circular No. 289 dated February 21, 1970, Section 5 of which provides that "authorized agent banks may sell foreign exchange for imports except those falling under the UC, SUC, and NEC categories, without prior specific approval of the Central Bank."

As for "no dollar" imports, Central Bank Circular No. 247 dated July 21, 1967, after referring to previous circulars which required release certificates from the Central Bank for certain "no dollar" importations, expressly enumerates the items which are exempt from the requirement of such release certificates, *e.g.*, personal effects in reasonable quantities, gifts sent from abroad not exceeding $100 unless there is evidence of abuse in the use of the privilege, etc. Circular No. 295, amending Circular No. 294, reiterates the exemption of the "no dollar" imports covered by Circular 247 from the release certificate requirements, but imposes an express ban on all other "no dollar" imports, as follows: "No-dollar imports not covered by Circular No. 247 shall not be issued any release certificates and shall be referred to the Central Bank for official transmittal to the Bureau of Customs for appropriate seizure proceedings."

The customs authorities clearly acted then within their authority and mandate under Section 1207 of the customs code in "preventing importation" and entry of the shipment by not allowing its discharge from the carrying vessel. The second alternative granted by the cited section to the port collector of "securing compliance with all legal requirements" with respect to "articles subject to importation only upon conditions prescribed by law" was patently not available, for under the categorical terms of Circular 295, no release certificate could be issued for the apples, and the questioned shipment could only be "referred to the Central Bank for official transmittal to the Bureau of Customs for appropriate seizure proceedings."

The applicable provisions of the Tariff and Customs Code quite indubitably prohibit the importation of the apples in question, as follows:

"Sec. 102. *Prohibted Importations.*—The importation into the Philippines of the following articles is prohibited:

x x x x x

x x x x x

"All other articles the importation of which is prohibited by law."

"Sec. 2301. *Warrant for detention of property.*—Bond.—Upon making any seizure, the Collector shall issue a warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector may surrender it upon the filing of a sufficient bond, in an amount to be fixed by him, conditioned for the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: Provided, That articles the importation of which is prohibited by law shall not be released under bond."

"Sec. 2307. *Settlement of Case by Payment of Fine or Redemption of Forfeited Property.*—xxx

x x x x x

"Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the person offering to redeem the same would be contrary to law."

"Sec. 2530. *Property subject to forfeiture under Tariff and Customs Laws.*—Any vessel or aircraft, cargo, articles, and other objects shall, under the following conditions, be subject to forfeiture:

x x x x x

"f. Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

Section 3514 declares that "tariff and customs law includes not only the provisions of this Code and regulations pursuant thereto but all other laws and regulations which are subject to enforcement by the Bureau of Customs or otherwise within its jurisdiction."

Accordingly, Customs Administrative Order No. 19-70 dated October 20, 1970 was issued by the then Commissioner of Customs and approved by the Secretary of Finance, as follows: "Pursuant to section 608 of the Tariff and Customs Code in relation to Section 2307 of the same Code and in order to give force and effect to Central Bank Circular No. 289, all importations seized and forfeited for violation of Central Bank Circulars shall not be allowed to be released under bond, either surety or cash, nor allowed to be redeemed."

In its decision, the Tax Court stated that nothing in Circulars 289, 294 and 295 declares that fresh apples are articles which are prohibited to be imported into the Philippines, and while it is true that the circulars provide that no release certificate may be issued for such goods coming from abroad, yet the Central Bank may issue such release certificate under exceptional circumstances, the prohibition not being absolute.

The Supreme Court ruled that the tax court's pronouncement that the importation of fresh apples was "not absolutely prohibited" under the Central Bank circulars and that, therefore, the apples could not be deemed "articles of prohibited importation" as envisaged by Section 102 of the Tariff and Customs Code had long been rejected by the settled doctrine and jurisprudence of the Court.

The contention that to be deemed articles of prohibited importation, the questioned articles must partake of the same nature as those specifically declared prohibited in said Section 102, such as explosives, obscene and subversive articles, gambling outfits, falsely marked gold and silver articles, etc. was discarded by the Court in the 1959 case of *Tong Tek v. Commissioner of Customs*,[18] in these words: "the term 'merchandise of prohibited exportation' used in the Code is broad enough to embrace not only those already declared prohibited at the time of its adoption, but also goods, commodities or articles that may be the subject of activities undertaken in violation of subsequent laws. Considering that the Central Bank circulars issued for the implementation of the law authorizing their issuance although by themselves are not statutes, have the force and effect of law,[19] the carrying out of transactions or undertakings without complying with the requirements of Circulars 20, 21 and 42 makes these undertakings illegal. And as a natural consequence thereof, the articles involved in such unauthorized ventures become prohibited and, therefore, subject to forfeiture."

In the case of *Pascual v. Commissioner of Customs*,[20] the Court, in upholding the penalty of forfeiture for such importations made without the required Central Bank release certificates, stressed that "since the importations in question were made without the necessary import license issued by the Monetary Board pursuant to Circular No. 45 and the release certificates issued by the Central Bank or its authorized agent bank in the prescribed form pursuant to Circular No. 44, they fall within the class of 'merchandise of prohibited importation' or merchandise 'the importation of which is effected contrary to law' that the Commissioner of Customs may seize and order forfeited. To sustain the appellant's theory of the case would render nugatory the aim and purpose of the law when it authorizes the Central Bank to temporarily suspend or restrict the sale of foreign exchange and subject all transactions in gold and foreign exchange to licensing during an exchange crisis in order to protect the international reserve and to give the Monetary Board and the Government time in which to make constructive measures to combat such a crisis." The Court emphasized therein that "every import of goods or merchandise requires an immediate or future demand for foreign exchange" and that the Central

[18] 105 Phil. 1071 (1959).
[19] People v. Que Po Lay, 94 Phil. 640 (1954).
[20] 105 Phil. 1039 (1959).

Bank circulars in question requiring its permit and release certificates for so-called "no-dollar" imports were "measures taken to check the unregulated flow of foreign exchange from the country and are within the powers of the Monetary Board."

Liability of banking institutions

Banking institutions are persons and entities duly authorized to engage in the lending of funds obtained from the public through the receipt of deposits or the sale of bonds, securities or obligations of any kind.[21]

From the foregoing, it is clear that the business of banking involves two principal operations, namely: (1) the receipt of deposits from the public; and, (2) the lending of funds to borrowers of the bank.

The deposits received from the public by banking institutions may be classified into three kinds, to wit: (1) time deposits; (2) savings deposits; and, (3) current or demand deposits. According to the Civil Code, such deposits of money in banks and similar institutions are governed by the provisions concerning simple loan.[22]

Between the bank and the depositor, there exists the relationship of debtor and creditor. Thus, the payment by a bank of the amount of a depositor's check is not a loss to the latter by the former which may be satisfied by a subsequent deposit, but a payment by the bank as debtor to the depositor as creditor. Such payment is valid and extinguishes so much of the obligation of the bank as is represented by the check paid or honored by the bank out off the latter's deposit.[23]

The case of *Araneta* v. *Bank of America*,[24] demonstrates the liability of a banking institution in favor of its depositor when it fails to comply with some of the prestations incumbent upon it under the contract of deposit.

The petitioner, a local merchant engaged in the import-export business, issued on June 30, 1961 a check for $500 drawn against the San Francisco main office of the Bank of America, where he had been maintaining since 1948 a dollar current account, confirmed by the bank's assistant cashier in a letter to Araneta. When the check was received by the bank, however, it was dishonored and stamped with the notation "account closed."

Upon inquiry, the bank acknowledged the error explaining that the check had been encoded with a wrong account number, and promising that "we shall make every effort to see that this does not reoccur." The bank likewise sent a letter of apology to the payee in Hongkong.

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21 Rep. Act No. 337 (1948), sec. 2.
22 Art. 1980.
23 Hilado v. de la Costa, 83 Phil. 471 (1949).
24 G.R. No. L-25414, July 30, 1971, 40 SCRA 144 (1971).

In May, 1962, Araneta issued a check for $500 and another for $150, both drawn against the Bank of America. The first check came into the hands of a certain Saldana who deposited it to her account with the First National City Bank of New York, which in turn cleared it through the Wells Fargo Bank. Despite the sufficiency of Araneta's deposit to cover both checks, they were again stamped with the notation "account closed," and returned to the respective clearing banks.

In the case of the check for $500, the Bank of America paid it to the National City Bank. Subsequently, however, the Bank of Amercia, claiming that payment had been inadvertently made, returned the check to to the City Bank with the request that the amount thereof be credited back. In turn, the City Bank wrote to the despositor, Saldana, informing her of the return and asking her consent to the deduction of the amount from her deposit. Before her reply could be received, however, the Bank of America recalled the check from the City Bank and honored it.

In December, 1962, Araneta filed a complaint against the Bank of America for the recovery of actual or compensatory damages, moral damages, temperate damages, exemplary damages, and attorney's fees. The trial court awarded all the items prayed for but the Court of Appeals eliminated the award of compensatory and temperate damages, and reduced the moral damages, exemplary damages, and attorney's fees.

The Supreme Court held that the financial credit of a businessman is a prized and valuable asset, it being a significant part of the foundation of his business. Any adverse reflection thereon constitutes some material loss to him. As stated in the case of *Atlanta National Bank v. Davis*,[25] "it can hardly be possible that a customer's check can be wrongfully refused payment without some impeachment of his credit, which must in fact be an actual injury, though he cannot, from the nature of the case, furnish independent, distinct proof thereof."

The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the following comment: "In some States of the American union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer without redress from the defendant's wrongful act."

The petitioner is a merchant of long standing and good reputation in the Philippines. His claim for temperate damages is legally justified. Con-

[25] 96 Ga. 334, 23 SE 190 (1895).

sidering all the circumstances, including the rather small size of petitioner's account with the respondent, the amounts of the checks which were dishonored, and the fact that the respondent tried to rectify the error although the rectification came after the damage had been caused, an award of ₱5,000 by way of temperate damages is sufficient.

Petitioner contends that moral damages should have been granted for the injury to his business standing or commercial credit, separately from his wounded feelings and mental anguish. It is true that under Article 2217 of the Civil Code, "besmirched reputation" is a ground upon which moral damages may be claimed, but the Court of Appeals did take this element into consideration in adjudging the sum of ₱8,000 in his favor.

Considering the nature and extent of the services rendered by petitioner's counsel both in the trial and appellate courts, the amount should be increased. This may ge done *motu propio* by the Court under Article 2208 of the Civil Code which provides that attorney's fees may be recovered in the instances therein enumerated and "in any other case where the Court deems it equitable that attorney's fees should be recovered" provided the amount thereof be reasonable in all cases.

Liability of guarantor

The lending operations of banks constitute one of the principal sources of income for the banking system. Bankers are, therefore, interested in granting as much credit facilities to as many persons, partnerships or corporations as possible. The general idea is to be able to lend out not only the capitalization of the bank contributed by its stockholders but also the deposits received from the public.

Credit facilities in the form of loans granted by banking institutions may be classified into: (1) overdraft lines; (2) discounting lines; and, (3) time or straight loans.

When an overdraft line is approved in favor of a borrower, the bank causes the opening of a current account in the name of such borrower, if he has not previously opened or maintained one. He is then allowed to draw checks against the said current account up to the amount approved by the bank. In turn, the bank requires the borrower to execute real estate mortgages, chattel mortgages, or pledges as circumstances may warrant in order to protect the interests of the bank. In exceptional circumstances, however, the bank allows the borrower to enjoy his credit facilities against personal security, which means that no collaterals are required of the borrower.

In the case of a discounting line, the bank approves in favor of the borrower the grant of credit facilities up to a fixed amount. The borrower is then requested to execute a promissory note for the amount approved.

If that is not convenient, he may execute several or any number of promissory notes provided that the total face value of all the promissory notes shall not exceed the amount approved by the bank. As in the case of the overdraft line, collaterals may be required of the borrower.

A time or straight loan is on which is granted for a determinate period of time for a fixed amount. This credit facility usually involves the execution of only one promissory note in favor of the bank. Upon the maturity of the promissory note, the same may or may not be extended or renewed. To insure the payment of the promissory note, the bank requires the putting up of collaterals by the borrower. At times, the note is payable on demand. In such cases, the credit facility is known as a demand loan.

The case of *People's Bank and Trust Company v. Tambunting*,[26] involves the grant of an overdraft line secured by pledge on shares of stocks.

The evidence presented before the lower court show that on September 9, 1963, plaintiff and defendants executed a contract denominated "overdraft agreement and pledge" whereby the bank granted to the Tambunting spouses an overdraft line for ₱200,000.00 at 9% interest per annum until September 10, 1964. Santana, as guarantor, and the spouses conveyed to the bank shares of the International Sports Development Corporation as collateral security for the overdraft and all extensions, renewals, amendments or applications thereof. On the same day, Santana executed a document denominated as absolute guaranty in which he bound himself to the bank, jointly and severally with the spouses for the full payment of all the indebtedness incurred or to be incurred by the spouses on account of the overdraft line.

Upon request of Jose Tambunting, the bank granted two extensions of the overdraft line to expire March 10, 1965 in the reduced amount of ₱185,000 and at the rate of 10% per annum. The bank also allowed the release of the pledge of 135 shares of the spouses.

The defendants failed to pay on time, and suit was brought. The spouses failed to answer the complaint and were declared in default. Santana does not dispute the indebtedness but contends that he was released from his obligation because the bank extended the time of payment and released to the Tambuntings without his consent the 135 shares of stock that were pledged. It is argued that in accordance with Article 2080 of the Civil Code, "The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages and preferences of the latter."

[26] G.R. No. L-29666, October 29, 1971, 42 SCRA 119 (1971).

The Supreme Court held that the contract of absolute guaranty expressly authorized the bank to extend the time of payment and to release or surrender any security or part thereof held by it without notice to, or the consent of Santana. He had consented in advance to the release of the guaranty. The waiver is not contrary to law, nor is it contrary to public policy. The law does not prohibit the debtor-guarantor from agreeing in advance, and without notice, to the release of any security which had been given to assure payment of the obligation. The waiver is not contrary to public policy because the right is purely personal, and does not affect public interest. Neither does the return of the shares of stock novate the original contract for the obligation remains the same; and if it is a novation, it is a novation made with the consent of Santana. Moreover, the pledge is merely an accessory obligation.

It could have been different if there were no such contract of absolute guaranty to which the apellant was a party under the aforesaid Article 2080. He would have been freed from the obligation as a result of plaintiff releasing to the Tambuntings without his consent the 135 shares pledged to plaintiff bank to secure the overdraft line. For thereby subrogation became meaningless. That was a right he could avail of. He is not precluded, however, from waiving it.

Power of the Central Bank to take charge of the assets of banking institutions

Under its charter,[27] it is the responsibility of the Central Bank of the Philippines to administer the monetary and banking system of the Republic.[28] In the discharge of this function, the Central Bank is furnished by law with the requisite powers and administrative machinery. Thus, in order to assure the observance of the Central Bank Act and of other pertinent laws, and of the rules and regulations of the Monetary Board, the Central Bank is required to have a Department of Supervision and Examination which shall be charged with the supervision and periodic examination of all banking institutions.[29]

The Department of Supervision and Examination is required by law to discharge its responsibilities in accordance with the instructions of the Monetary Board.[30]

The chief of the Department is known as the Superintendent of Banks. Said Superintendent and the examiners of the Department of Supervision and Examination are authorized to administer oaths to any director, officer or employee of any institution under the supervision of the Department and to compel the presentation of all books, documents, papers, or records

[27] Rep. Act No. 265 (1948).
[28] Rep. Act No. 265 (1948), sec. 2.
[29] Rep. Act No. 265, (1948), sec. 25.
[30] Rep. Act No. 265 (1948), Sec. 25.

necessary in his or their judgment to ascertain the facts relative to the true condition of any institution.[31]

It is likwise the duty of the Superintendent, personally or by deputy, at least once in every twelve months, and at such other times as either he or the Monetary Board may deem expedient to make an examination of the books of every banking institution within the purview of the Central Bank Act and to make a report of the same to the Monetary Board.[32]

Every such institution shall afford to the Superintendent and to his authorized deputies full opportunity to examine its books, cash and available assets and general condition at any time when requested so to do by the Superintendent.[33]

Whenever, upon examination by the Superintendent or his examiners or agents into the condition of any banking institution, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the Superintendent forthwith, in writing, to inform the Monetary Board of the facts, and the Board, upon finding the statements to do business in the Philippines and shall take charge of its assets and proceeds according to law.[34]

The Monetary Board shall thereupon determine within thirty days whether the institution may be reorganized or otherwise placed in such a condition so that it may be permitted to resume business with safety to its creditors and shall prescribe the conditions under which such resumption of business shall take place. In such case, the expenses and fees in the administration of the institution shall be determined by the Board and shall be paid to the Central Bank out of the assets of such banking institution.[35]

At any time within ten days after the Monetary Board has taken charge of the assets of any banking institution, such institution may apply to the Court of First Instance for an order requiring the Monetary Board to show cause why it should not be enjoined from continuing such charge of its assets, and the court may direct the Board to refrain from further proceedings and to surrender charge of its assets.[36]

If the Monetary Board shall determine that banking institution can not resume business with safety to its creditors, it shall, by the Solicitor General, file a petition in the Court of First Instance reciting the proceedings which have been taken and praying the assistance and supervision of the court in the liquidation of the affairs of the same. The Superintendent shall

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[31] Rep. Act No. 265 (1948), Sec. 25.
[32] Rep. Act No. 265 (1948), sec. 28, par. 1.
[33] Rep. Act. No. 265 (1948), sec. 28, par. 1.
[34] Rep. Act No. 265 (1948), sec. 29, par. 1.
[35] Rep. Act No. 265 (1948), sec. 29, par. 2.
[36] Rep. Act No. 265 (1948), sec. 29, par. 3.

thereafter, upon order of the Monetary Board and under the supervision of the court and with all convenient speed, convert the assets of the banking institution to money.[37]

The most important case on banking decided by the Supreme Court during the year 1971 was that of *Ramos, et al. v. Central Bank of the Philippines*.[38] The case dealt with the proper interpretation of Section 29 of the Central Bank Act. It is unfortunate, however, that a case involving banking problems was given civil law solutions.

The petitioners filed with the Supreme Court a petition for certiorari, prohibition, and mandamus with prayer for the issuance of a writ of preliminary injunction to restrain respondent Central Bank (CB) from enforcing and implementing Monetary Board Resolution No. 1263, adopted on 30 July 1968, excluding the Overseas Bank of Manila (OBM) from clearing with the CB, that was ordered implemented on 31 July 1968 and Resolution No. 1290, adopted on 1 August 1968, and Resolution No. 1290, adopted on 1 August 1968, granting authority to the OBM Board of Directors to suspend operations thereof, which was implemented on 2 August 1968.

The OBM is a commercial banking corporation duly organized under the laws of the Philippines with principal office at Rosario Street, Manila. Petitioners are the majority and controlling stockholders thereof. The OBM was opened for business on 6 January 1964 with authorized capital stock of ₱30 million, ₱10 million of which was subscribed and ₱8 million thereof paid, but had been suspended by respondent from clearing with the CB and from lending operations for various violations of the banking laws and implementing regulations. Petitioners charged that the OBM became financially distressed because of this suspension and the deprivation by the CB of all the usual credit facilities and accommodations accorded to the other banks. The alleged exactions of onerous fines and penalties by respondent were likewise blamed for the aggravated situation. For its deficiencies it was made subject to penalties of 12% interest on overdrawings and 36% per annum on reserve deficiences, which by 1968 amounted to several millions.

By April, 1967, the financial situation of the OBM had caused counting concern in the CB. Petitioner Ramos and the OBM Management finally met with respondent CB on the necessity and urgency of rehabilitating the OBM through the extension of necessary financial assistance.

Through various conferences and correspondence, the CB pointed out the need for the OBM stockholders to execute a voting trust agreement "to stave off liquidation," and the execution of the mortgage of their prop-

[37] Rep. Act No. 265 (1948), sec. 29, par. 4.
[38] G.R. No. L-29352, October 4, 1971, 41 SCRA 565 (1971).

erties to secure OBM obligations to the CB and the endorsement of the shares of stock held by them in their corporations and enterprises.

On 20 November 1967, the petitioners executed the Voting Trust Agreement prepared by attorneys of the CB with respondent CB's Superintendent of Banks as the Trustee. The Trustee entered into the agreement pursuant to the authority given by respondent's Monetary Board under M.B. Resolution No. 2017, dated 17 October 1967. Among others, the Voting Trust Agreement provides: "The trustee is given all and full authority, subject to the limitations set forth in the law and other conditions in the contract to: (1) direct the management of the affairs and accounts and properties of the OBM; (2) vote its directors and choose the officers and employees; (3) improve, modify, reorganize its operation policies, standards, system, methods, structure, organization, personnel, staffing pattern, etc.; (4) hold and vote on the shares of stocks transferred to him as trustee; (5) safeguard the interests of depositors, creditors and stockholders; and (6) in general, to exercise all such powers and discharge all such functions as inherently pertain to the *cestui que trust* as owners and/or for the sound management of a banking institution."

Petitioners likewise conveyed by way of mortgage to the CB all their private properties and holdings to secure the obligations of the OBM to the CB, but there was no agreement as to the value of these properties, petitioners contending that they were worth over ₱141 million, but the CB appraised them at around ₱67 million.

As early as 25 September 1967, Mr. Martin Oliva, who had become president of OBM only since 13 March 1967, had written to the Superintendent of Banks that transactions worth around ₱48 million, of which over ₱43 million were time deposits, at usurious rates of interest had not been incorporated in the Bank's books nor reported to the Board of Directors. It was explained that the OBM management had resorted to these unrecorded transactions because the suspension of its lending activities after 14 months of operation reduced OBM to virtually inactivity, and it had to agree to pay high premiums or interests on such deposits because this high cost is comparatively cheaper than the Central Bank's interests on overdrawings at the rate of 12% per annum and a penalty of 36% per annum on reserve deficiencies.

Oliva's letter prompted a further investigation of OBM records by the CB examiners that revealed allegedly unrecorded deposits and transactions amounting to ₱48,007,211 as of September 13, 1967 (reduced to ₱35 million when petition was filed); diversion of deposits to accounts controlled by certain OBM officials (so-called COPICO and EMRACO accounts) and loans to the Ramos family and firms controlled them.

On December 5, 1967, new directors and officers drafted from the CB itself, the PNB and DBP were elected and installed and they took over the management and control of the Overseas Bank.

On June 14, 1968, the CB announced that only ₱10 million were available as emergency loan to OBM and requested the management of the latter to project how it could help bail out OBM.

In a memorandum submitted to the CB Governor on 22 July 1968, Mr. Orosa, OBM President, unburdened himself and deplored CB for hemming and having on supposed financial assistance. This caused, he said, the loss of "psychological advantages" initially gained by PNB's takeover of the OBM. He reminded the CB Governor about the OBM management's request on 6 January 1968 for ₱20 million loan to enable OBM to get on its feet. "At that time," he said, "the aid we are recommending, properly used, would have staved off panic and restored some confidence."

On 23 July 1968, the Superintendent of Banks recommended to the Monetary Board that OBM be liquidated under Section 29, Republic Act 265, if its "capital structure cannot be strengthened to meet the requirements of Section 22 of Republic Act 337," and if "massive financing cannot be given to enable the bank to expand its risk assets."

On 13 August 1968, the CB adopted Resolution No. 1333 forbidding the OBM from doing business and instructing the Superintendent of Banks to take charge of the Bank's assets and to take action under Section 29 of the CB Act, which amounted to a directive for the liquidation of the OBM. Implementation of the resolution was, upon petitioners' motion, restrained by the Court on 14 August 1968.

Petitioners aver that no adequate financial assistance was granted to the OBM after the execution of the Voting Trust Agreement. They further claim that the said Agreement is not only bilateral, imposing reciprocal obligations for valuable consideration, but was also entered into by respondent CB in the performance of its duties under the law; and that under said Agreement the obligation of the CB was to act and work for the "rehabilitation, normalization and stabilization" of the OBM, through the extension of adequate and necessary financial assistance to stave off liquidation, is legally demandable, as well as a duty specifically enjoined and imposed by law. And that in violation of its obligation, the CB, "after eight months of delay," adopted the questioned resolutions, without notice to or hearing the petitioners.

Justifying Resolutions 1263 and 1290, CB in its answer cited specific instances of OBM's "unusual and irregular transactions" discovered by examiners or revealed by OBM officials themselves. By way of affirmative defenses, CB averred that:

1. The CB is not a party to the Voting Trust Agreement, and therefore cannot be compelled to implement it.

2. Assuming that CB is obliged to rehabilitate OBM, it cannot give more loans to the latter than that already given to it as of 30 July 1968, without violating Section 90 of the CB Act since neither OBM nor its stockholders could put up additional capital and additional collaterals to secure CB's future advances.

4. No bank has an absolute right to take part in inter-bank clearing, because Section 100, RA 265, requires a bank as a condition to participation to keep deposit reserves, which the OBM does not have and in fact it had overdrawn its reserve account with the CB beyond the maximum fixed by law.

4. It would be illegal and contrary to public interest to construe the Voting Trust Agreement as imposing upon CB the duty to rescue OBM at all cost.

To the majority of the justices of the Supreme Court, the issue raised were:

(a) Whether or not the Supreme Court has jurisdiction to restrain the implementation of CB Resolution No. 1333;

(b) Whether or not the CB had agreed to rehabilitate, normalize and stabilize OBM;

(c) Whether or not CB Resolutions Nos. 1263, 1290 and 1333 were adopted in abuse of discretion.

The Supreme Court, speaking through Mr. Justice J.B.L. Reyes, ruled that on the first issue of jurisdiction, the CB stand is that to assail Resolution 1333 of the Monetary Board ordering the liquidation of the Overseas Bank, an action must be filed in the Court of First Instance of Manila by the Bank itself, and not by petitioning stockholders, allegedly in view of the provisions of Section 29, Republic Act No. 265, paragraph 3, reading:

> "At any time within ten days after the Monetary Board has taken charge of the assets of any banking institution, such institution may apply to the Court of First Instance for an order requiring the Monetary Board to show cause why it should not be enjoined from continuing such charge of its assets, and the court may direct the Board to refrain from further proceedings and to surrender charge of its assets."

This argument according to Justice Reyes must be rejected, for it overlooks the fact that before the Central Bank adopted said Resolution No. 1333 on 13 August 1968 the Court had already taken cognizance of the petition herein, assailing Resolutions Nos. 1263 and 1290 of the Monetary Board as "patent acts of liquidation," violative of its alleged commitment to rehabilitate the Overseas Bank; and the Court, in fact, already had required the Central Bank to answer the petition on 12 August 1962,

prior to the adoption of Resolution No. 1333. The latter resolution is clearly an act in pursuance of the policy outlined in the previous resolution [39] enjoined by the Court. Hence, if jurisdiction was already acquired to delve into the validity of Resolutions 1263 and 1290 (and this the Central Bank admits), there is no cogent reason why, after such jurisdiction had been acquired, the Court should be deprived thereof by the subsequent adoption of Resolution 1333, particularly because the latter, in relation to the antecedent facts, appears to be no more than a deliberate effort to evade the jurisdiction of the Court, and have the case thrown back to the Court of First Instance.

The plea that the Overseas Bank is not a party to the case at bar need not give concern. The petitioners are the controlling stockholders of that Bank, and are qualified to represent its interests, so that a judgment may be enforced for or against it, although it is not impleaded by name in the suits.[40] This is particularly true considering that the present management of the OBM (Overseas Bank of Manila) is at present composed of respondent's nominees, pursuant to the Trust Agreement, and they can hardly be expected to resist the plans and actions of respondent Central Bank (CB).

On the second issue, whether or not the respondent CB agreed to rehabilitate the OBM, a review of the letters from the CB to the petitioners, considered together with the terms of the Voting Trust Agreement, leaves no doubt that the CB did agree and commit itself to the continued operation and rehabilitation of the OBM.

While the trust agreement on its face creates obligations only for the Superintendent of Banks as trustee, his commitments were undeniably those of the Central Bank itself, since it was the latter that had from the very beginning insisted upon such voting trust being executed. For the Superintendent of Banks was an officer of the CB, the chief of its Department of Supervision and Examination of all banking institutions operating in the country, subject to the instructions of the Monetary Board at all times, pursuant to Section 25 of the CB charter, Republic Act No. 265; and it is not credible that he should have understood that he was entering into the trust agreement in his personal capacity.

Bearing in mind that the communications, as well as the voting trust agreement, had been prepared by the CB, and the well-known rule that ambiguities therein are to be construed against the party that caused them, the record becomes clear that, in consideration of the execution of the voting trust agreement by the petitioner stockholders of OBM, and of the mortgage or assignment of their personal properties to the CB,[41] the CB had

[39] Resolution Nos. 1263 and 1290.
[40] Albert v. Court of First Instance, G.R. No. L-26364, May 29, 1968, 23 SCRA 948, 964 (1968).
[41] Resolution No. 2015 dated October 16, 1967.

agreed to announce its readiness to support the new management "in order to allay the fears of depositors and creditors, and to stave off liquidation" by providing adequate funds for "the rehabilitation, normalization and stabilization" of the OBM, in a manner similar to what the CB had previously done with the Republic Bank.

According to the majority opinion, even in the absence of contract, the record plainly shows that the CB made express representations to petitioners that it would support the OBM, and avoid its liquidation if the petitioners would execute (a) the Voting Trust Agreement turning over the management of OBM to the CB or its nominees, and (b) mortgage or assign their properties to the Central Bank to cover the overdraft balance of OBM. The petitioners having complied with these conditions and parted with value to the profit of the CB (which thus acquired additional security for its own advances), the CB may not now renege on its representations and liquidate the OBM, to the detriment of its stockholders, depositors and other creditors, under the rule of promissory estoppel.[42]

Justice J.B.L. Reyes was of the opinion that the deception practiced by the Central Bank, not only on petitioners but on its own management team, was in violation of Articles 1159 and 1315 of the Civil Code of the Philippines:

> "ART. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."
>
> "ART. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law."

Respondent CB likewise urged in its defense that the rehabilitation of the OBM has become impossible, and points out to the reports of the Superintendent of Banks and of Mr. Augusto Orosa (the President of OBM elected by the CB nominees under the Voting Trust) that the Bank's loanable funds had to be expanded to ₱136 million to break even. It is to be borne in mind, according to the Court, that these reports were made in July, 1968, after six months of inaction on the part of the CB, without positive action on its part to comply with its previous commitments. Furthermore, while the stabilization of the OBM required injections of capital, it would be erroneous to assume that such capital would have to reach ₱130 million, or that it would have to be advanced all at once. For had the CB furnished the original aid of 30 million asked by the Orosa team early in January, 1968, and the OBM allowed to resume operations with CB support, the restored confidence would have stimulated new deposits, which, as is well-known, become in turn a source of loanable funds. It thus becomes

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[42] 19 Am. Jur. 657-658; 28 Am. Jur. 2d 656-657; 115 ALR 157.

apparent that most of the difficulties invoked now by the CB are of its own making, and are not a lawful excuse for its refusal to comply with its commitments.

The respondent CB cited American cases to the effect that the courts could not interfere with CB's discretion in determining whether or not a distressed bank should be supported or liquidated. In none of the cases cited, however, does it appear that the CB engaged to support the distressed bank in exchange for control of its management and additional mortgages in its favor, and, therefore, the authorities cited are not in point. Discretion has its limits and has never been held to include arbitrariness, discrimination or bad faith.

On the third issue, having induced the petitioners to part with additional security in reliance upon its (CB's) promises and commitments to avert liquidation and to support, normalize and rehabilitate the OBM, the respondent CB is duty bound to comply in good faith with such promises. Consequently, being contrary thereto, CB Resolutions Nos. 1263, 1290 and 1333 were annulled and set aside for having been adopted in abuse of discretion, equivalent to excess of jurisdiction.

Mr. Justice Makalintal, who wrote several decisions on Commercial Law during the calendar year 1971, made an incisive analysis of the facts and issues of the case and delivered a well thought out dissenting opinion. To him, the acts complained of were, if anything, a judicious exercise of discretion for the purpose of carrying out the policies laid down by the Central Bank Act with respect to supervision over the operation of private banking institutions; and the Court, by issuing the writs prayed for, had substituted its own judgment for that of the Monetary Board in a matter that is peculiarly within the competence of the latter.

It seems from a reading of the decision of the Court, according to him, that the purpose for which the voting trust agreement was entered into—more accurately, the goals sought to be achieved—is mistaken for the obligation thereunder, and that such obligation devolves not upon the Trustee, the Superintendent of Banks, but upon the Central Bank itself, which is not a party to the agreement.

Justice Makalintal urged that when the agreement contains an optional rescission clause expressly providing "that the Trustee, may at its option relinquish the trust, upon approval of the Monetary Board," the same should be given effect.

The adoption by the Monetary Board of Resolution No. 1333 forbidding the Overseas Bank to do business and instructing the Superintendent of Banks to take charge of its assets and take such action as may be necessary pusuant to Section 29 of the Central Bank Act should remove the present controversy from the Supreme Court and address it to the Courts of First Instance pursuant to the said section of the CB Charter.

The remedy sought by the petitioners is essentially for enforcement of an alleged contracts. This is borne out by the decision of the Court which directs the Central Bank "to comply with its obligations under the Voting Trust agreement, and to desist from taking any action in violation thereof." Justice Makalintal noted that no "act which the law specifically enjoins as a duty resulting from an office, trust, or station" is ordered to be performed. Compliance with contractual obligations is beyond the purview of mandamus, an original jurisdiction over an action for that purpose pertains to the Courts of First Instance. Such an action, he said, is a plain, speedy and adequate remedy in the ordinary course of law which, being available to petitioners, should bar the present recourse to the extraordinary writ of mandamus, especially because certain vital facts are controverted.

The rehabilitation of the distressed institution is the primary goal of the authority given to the Monetary Board, and there is nothing so sacrosanct in a voting trust agreement, or in the use of the word "rehabilitate" therein, that once it is executed the Central Bank is thereby bound to see the "rehabilitation" though as ordinary contractual commitment, no matter how costly and impractical it may prove. For Section 29 also provides that "if the Monetary Board shall determine that the banking institution cannot resume business with safety to its creditors, it shall, by the Solicitor General, file a petition in the Court of First Instance reciting the proceedings which have been taken and praying the assistance and supervision of the Court in the liquidation of the affairs of the same."

Mr. Justice Castro is another member of the Court who dissented from the majority opinion. His dissenting opinion was full of facts and figures to back his arguments showing his knowledge of the laws on banking. He stated that even if it be assumed that the intention of the CB authorities relative to the said voting trust agreement was to make the CB a party thereto, its validity and binding effect upon the CB are not legally possible since under the said agreement the CB would not only be acquiring the legal title, including voting rights, over the shares of stock of the petitioners in the OBM, but it would also be actually directing the management and operation of the bank—powers and prerogatives the acquisition of which by the CB is expressly prohibited under Sections 27 and 133 of the CB Charter.

The take-over, he said, by a new management of the operations of the OBM to stop the bank's assets and funds from further being fraudulently dissipated could bring about relative normalcy and stability and remove the immediate threat of closure. But no trustee can be expected to surmount what is humanly insurmountable. The CB is not expected, nor can be obliged, to divert its own funds for the purpose of saving a solitary bank whose in extremes condition was, in the first place, caused by the malfeasance, misfeasance and nonfeasance of its principal stockholders and officers. The CB

was established to discharge certain constituent functions. Its powers are necessarily circumscribed by law. The fact that it achieves a surplus fund in its operations does not mean that it can devote such surplus fund to any use not specifically and clearly described by law. Section 41 of the Central Bank Act, in fact, specifies the uses to which its net profits may be devoted. The "rehabilitation, normalization and stabilization" of a private commercial bank are not among these.

Assuming, according to Justice Castro, that the CB is legally committed under the voting trust agreement to rehabilitate the OBM, any action of the CB in respect thereto must have to be particularly what it can perform within the periphery of the law. Under the facts of the case at bar, the only way by which the CB can succeed in rehabilitating the OBM, under the present conditions, is to extend financial assistance through loans of astronomical magnitude granted to the latter that the Central Bank will be forced to violate the provisions of Section 90 of the Central Bank Act.

Justice Castro argued finally that logic cannot sustain the statement that the OBM stockholders were induced into mortgaging their properties for the purpose of staving off liquidation. There was a moral and legal obligation on the part of the OBM to execute such mortgages because of its huge overdrawings which were not secured by sufficient and acceptable collaterals. The CB could legally demand the execution of such mortgages without the need of providing any enticement or inducement of the OBM stockholders. Section 90 of the CB Charter requires that bank overdrawings be secured by collaterals acceptable to the Monetary Board.

CORPORATIONS

Legal capacity of foreign corporation to sue

Section 68 of the Corporation Law provides that no foreign corporation shall be permitted to transact business in the Philippines until after it shall have obtained a license for that purpose from the Securities and Exchange Commissioner, upon order of the Central Bank in the case of all kinds of banking institutions, and upon order of the Secretary of Commerce and Industry in the case of all other foreign corporations.

To give substance to the foregoing requirement of a license, it is provided in Section 69 of the same law that no foreign corporation shall be permitted to transact business in the Philippines or maintain by itself or assignee any suit for the recovery of any debt, claim or demand whatever, unless it shall have the license prescribed.

As enunciated by the Supreme Court in the case of *Marshall Wells Co. v. Elser Co.*,[42a] the purpose of the requirements is to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. The object of the statute is not to prevent the foreign corpora-

[42a] 46 Phil. 70 (1924).

tion from performing single act, but to prevent it from acquiring a domicile for the purpose of business without taking steps necessary to render it amenable to suit in the local courts. The implication of the law is that it was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines and thus in effect to permit persons to avoid their contracts made with such foreign corporations.

The applicability of the requirements set forth in Section 69 of Act No. 1459 was raised in the case of *Philippine Columbia Enterprises Co., Et Al. v. Lantin.*[43]

Private respondent Katoh & Co., Ltd. filed a complaint in the CFI of Manila alleging that it is a corporation duly organized under the laws of Japan, and enumerating ten causes of action against the defendants, petitioners herein, for the collection of payment of ten different shipments of steel bars allegedly ordered in 1966 by the defendants from the plaintiff. The complaint does not allege that plaintiff has secured a license to transact business in the Philippines, but it alleges that it "has not been and is not engaged in business in the Philippines and that the transactions averred in this complaint were exports made and consummated in Tokyo, Japan, in pursuance of international trade."

Petitioners-defendants moved to dismiss the complaint on the ground, among others, that the plaintiff had no legal capacity to sue. Respondent-plaintiff opposed the dismissal. In reply, petitioners averred that the very causes of action alleged in the complaint constitute by themselves transacting business in the Philippines by the plaintiff, for by their contracts the goods were to be delivered to, and be paid for, in the Philippines; the transactions were characterized by their frequency and continuity; and the amounts involved were substantial. Petitioners manifested their readiness to prove also that respondent had been engaged in selling and buying steel and other products for more than seven years in the Philippines, that it maintains a regular office in the Philippines, and that the contracts it had entered into were perfected and consummated in the Philippines pursuant to orders solicited and negotiated by respondent company's representatives in the Philippines.

After several hearings, the respondent court, without receiving any evidence on the motion to dismiss, issued an order deferring the determination of the motion until after the trial of the case on the merits because the ground stated therein does not appear to be indubitable. The motion for reconsideration having been denied, the present petition for certiorari was filed.

The Supreme Court noted that petitioners object to the deferment order on the ground that if they file a counterclaim against respondent foreign

[43] G.R. No. L-29072, June 7, 1971, 39 SCRA 376 (1971).

corporation, they would be recognizing the legal capacity of said corporation which they are precisely questioning.

It was ruled by the Court that this fear is without legal basis, for actions by foreign corporations are governed by rules different from those in actions against them. A counterclaim partakes of the nature of a complaint and/or cause of action against the plaintiff, so that if the petitioners-defendants should file a counterclaim, the private respondent-plaintiff would be a defendant thereto, in which case the said foreign corporation would not be maintaining a suit and, consequently, Section 69 of the Corporation Law would not apply.

The foregoing ruling of the Court is in accordance with the doctrine laid down in the case of *General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd.*,[44] where the Court had held that as long as a foreign private corporation does or engages in business in this jurisdiction, it should and will be amenable to process and the jurisdiction of the local courts. From the general statement made, it seems that the doctrine will apply whether or not the foreign corporation was licensed to engage in business in the Philippines.

In construing the provisions of Section 69 of the Corporation Law, the Supreme Court had held that an unlicensed foreign corporation may not maintain any suit in the courts of the Philippines for the recovery of any debt, claim or demand. Thus, in the aforementioned case of *Marshall Wells Co. v. Elser Co.*, the Court said that "no foreign corporation shall be permitted to transact business in the Philippine Islands, as this phrase is known in corporation law unless it shall have obtained the license required by law, and until it complies with the law, shall not be permitted to maintain any suit in the local courts."

From the principles enunciated by the Supreme Court in the cases subsequently decided by it, a distinction, however, must be made between a corporation doing business in the Philippines and a corporation not doing business in the Philippines. That is why there arose the need for determining the meaning of transacting business.

In *Mentholatum Co., Inc. v. Mangaliman*,[45] the Supreme Court declared that no general rule or governing principle can be laid down as to what constitutes "doing" or "engaging" or "transacting" business. Each case, the Court said, must be judged in the light of its peculiar environmental circumstances, upon its peculiar facts and upon the language of the statute applicable. The true test seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized, or whether it has substantially retired from it and turned it over to another.

[44] 87 Phil. 313 (1950).
[45] 72 Phil. 524 (1941).

A foreign corporation doing business in the Philippines must have a license before it may be allowed to maintain an action before the local courts, as enunciated in the *Marshall Wells* case.

A foreign corporation not doing business in the Philippines may, however, maintain an action before the local courts, even without any license to do business in the country, for at least the following purposes: (1) to obtain redress on an isolated transaction; and, (2) to protect its reputation, corporate name and goodwill acquired through the sale by importers and the extensive use within the Island of its products bearing either its corporate name or trademark.[46]

In view of the foregoing considerations, it becomes necessary for a foreign corporation to state in its pleading that it is licensed to do business in the Philippines if it is doing business here, or that it is not doing business in the country.

In the case of *Time, Inc. v. Reyes,*[47] the question raised was whether a petition for certiorari and prohibition can be dismissed on the ground that petitioner, being a foreign corporation, failed to allege its capacity to sue in the courts of the Philippines.

It appears that the petitioner is an American corporation with principal offices in New York City, and is the publisher of "Time", a weekly news magazine.

Respondents Villegas *et al.* filed a civil case in the CFI of Rizal seeking to recover from petitioner damages upon an alleged libel arising from the publication of Time (Asia Edition) magazine, in its issue of August 18, 1967, of an essay entitled "Corruption in Asia". Upon their motion, respondent judge granted leave to take depositions of certain persons in connection with the activities and operations in the Philippines of petitioner, and on November 27, 1967, issued a writ of attachment on the real and personal estate of petitioner.

Petitioner received the summons and a copy of the complaint at its offices in New York, and subsequently filed a motion to dismiss the complaint for lack of jurisdiction and improper venue. Respondent court deferred the determination of the motion to dismiss until after the trial of the case on the merits. The motion for reconsideration having been denied, the present petition for certiorari and prohibition was filed.

The Supreme Court observed that the respondents rely on Section 69 of the Corporation Law which provides: "No foreign corporation, or corporation formed, organized, or existing under any laws other than those

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[46] See 3 AGBAYANI, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES 1711 (1964 ed.) citing the cases of Marshall Wells Co. v. Elser, *supra,* note 42 and Western Electric and Supply Co. v. Reyes, 51 Phil. 115 (1927).

[47] G.R. No. L-28882, May 31, 1971, 39 SCRA 303 (1971).

of the Philippines shall be permitted to..... maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding..."

It was also noted by the Court that the respondents invoke the ruling in *Marshall Wells Co. v. Elser & Co., Inc.*[48] that no foreign corporation may be permitted to maintain any suit in the local courts unless it shall have the license required by the law, and the ruling in *Atlantic Mutual Ins. Co., Inc. v. Cebu Stevedoring Co.*,[49] that where the law denies to a foreign corporation the right to maintain suit unless it has previously complied with a certain requirement, then such compliance or the fact that the suing corporation is exempt therefrom, becomes a necessary averment in the complaint.

The Supreme Court failed to see how these doctrines can be *a propos* in the case at bar, since the petitioner is not "maintaining any suit" but is merely defending one against itself; it did not file any complaint but only a corollary defensive petition to prohibit the lower court from further proceeding with a suit that it had no jurisdiction to entertain.

Petitioner's failure to aver its legal capacity to institute the present petition is not fatal, for . . . "a foreign corporation may, by writ of prohibition seek relief against the wrongful assumption of jurisdiction. And a foreign corporation seeking a writ of prohibition against further maintenance of a suit, on the ground of want of jurisdiction, is not bound by the ruling of the court in which the suit was brought, on a motion to quash service of summons, that it has jurisdiction."[50]

Piercing the veil of corporate entity

One of the essential attributes of a corporation is that it has a personality different from that of its stockholders or members. This principle, however, has its limitations. Thus, even though a corporation will be looked upon as a legal entity as a general rule and until sufficient reason to the contrary appears, nevertheless when the motion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons.[51]

In such cases, the law disregards the fiction of corporate personality. This is sometimes referred to as "piercing the veil of corporate entity".

In the case of *H. Aronson & Co., Inc. et al. v. Associated Labor Union, et al.*,[52] the Supreme Court was faced with the problem of disregarding the fiction of corporate entity of the corporations involved therein.

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[48] 46 Phil. 70 (1924).
[49] G.R. No. L-18961, August 31, 1966, 17 SCRA 1037 (1966).
[50] 36 Am. Jur. 2d *Foreign Corporations*, sec. 506 (1968).
[51] Koppel (Phil.) Inc. v. Yatco, 77 Phil. 496 (1946).
[52] G.R. No. L-23010, July 9, 1971, 40 SCRA 7 (1971).

The facts show that Aronson was incorporated in 1920 with an authorized capital stock of ₱500,000 and a corporate life expiring May 27, 1970. Its purpose was to engage in the business of buying, importing and selling of goods at wholesale and retail, including photo materials, and school supplies. In the course of time, it became an Aronson family controlled corporation. In 1958, 13 of the 25 employees of the corporation became members of respondent Associated Labor Union. In September of the same year, because of the dismissal of a union member, the employees who were union members declared a strike which was settled only with the conciliation negotiations initiated by the Cebu regional office of the Department of Labor.

Sometime thereafter, the union and its members made demands for a collective-bargaining agreement with the corporation which refused. As a result, the employees who were union members declared a second strike in December. The company, however, acceded to the demands and entered into a collective-bargaining agreement on January 6, 1959. The agreement was renewed on March 23, 1960.

On January 6, 1960, management sent to its employees letters of termination of employment effective August 1, 1961 and informing them that due to poor business, the stockholders wanted to dissolve the corporation or to discontinue its business. On February 13, 1961, Aronson's articles of incorporation were amended shortening its corporate existence by nine years to expire July 31, 1961.

Less than a month after such amendment, Medel Office Supplies was incorporated with a capital stock of ₱100,000, and in July of the same year, Photo Materials was also incorporated with an authorized capital stock of ₱400,000.

Photo Materials was organized to engage in the business of importing, exporting, buying and selling goods, more specifically photographic equipment and supplies, and to maintain a photo processing laboratory and photographic studio, while Medel was organized to buy and sell merchandise of all kinds.

On July 15, 1961, the employees who were members of the union were required to stop working, while those who were not members were employed by the newly organized corporations: Photo Materials and Medel.

Medel started its business with the stocks and office equipment of Aronson and occupied one-half of the store and bodega formerly used by Aronson, while Photo Materials used the other half.

A charge for unfair labor practice against the three corporations was thereafter filed with the Court of Industrial Relations which found them guilty.

The issue presented before the court was whether or not the shortening of the corporate life or dissolution of Aronson and the subsequent in-

corporation of the other two petitioners were part of a plan or were intended to accomplish the dismissal of the individual respondents who were employees of Aronson.

The Supreme Court held that the combined capital of the two new corporations was exactly the amount of the capital stock of Aronson, and the corporate purposes of the new corporations were exactly the same as those of Aronson. Indeed, the facts established by the evidence lead to no other conclusion than that the two new corporations actually took over the business of Aronson. To these circumstances so blatantly revealing petitioners' purpose, must be added the following: that the new corporations started business a day after the closure of business of Aronson; that the members of the Aronson family who controlled said company are in the same controlling position in the two new corporations; and, that Aronson's employees who were not members of the respondent union later found immediate employment with the new corporations.

A corporation is defined as an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.[53] According to Chief Justice Marshall of the United States Supreme Court, it is "an artificial being, invisible, intangible and existing only in contemplation of law."[54]

The fact that a corporation is an artificial being is recognized not only by the Corporation Law but also by the Civil Code. Under its Article 44, corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member are juridical persons. As such they may acquire and possess property of all kinds, as well as incur obligations and bring civil or criminal actions in conformity with the laws and regulations of their organization.[55]

For the protection of all the foregoing rights, the guaranties and safeguards of the Constitution for the protection and preservation of property of individuals may be invoked for the protection of property of corporations. In a leading Philippine case, it has been held that private corporations are persons within the scope of the constitutional guaranties insofar as their property is concerned, and are entitled to the protection afforded by the due process clause and the equal protection clause of the Bill of Rights.[56]

It is quite clear from the foregoing that while a corporation is considered an artificial being, nevertheless it is treated as a "person" in the eyes of the law. This is in accordance with the general rule that the construction of the word "person" in a statute or a constitutional provision may

[53] Act No. 1459 (1906) as amended, sec. 2.
[54] Dartmouth College v. Woodward, 4 Wheat 518, 4 L. Ed. 629 (1819).
[55] CIVIL CODE, Art. 46.
[56] Smith Bell & Co. v. Natividad, 40 Phil. 136 (1919).

embrace a corporation whenever this is necessary in order to give effect to the reason and spirit thereof.[57]

The Supreme Court was given opportunity to further enrich jurisprudence on this question when it decided the case of *Bache & Co. (Phil.), Inc. v. Ruiz, et al.*[58]

The facts show that on February 24, 1970, respondent Commissioner Vera wrote a letter to respondent Judge Ruiz requesting for the issuance of a search warrant against petitioners for violation of Section 46(a) of the Revenue Code, in relation to other pertinent provisions thereof particularly Sections 53, 72, 73, 208 and 209, and authorizing Revenue Examiner Rodolfo de Leon, to make and file the application for search warrant which was attached to the letter.

The next day, respondent De Leon and his witness, respondent Logronio, brought with them to the Court of First Instance of Rizal, the following: (1) the letter-request of Vera; (2) an application for search warrant already filled up but still unsigned by respondent De Leon; (3) an affidavit of respondent Logronio subscribed before respondent De Leon; (4) a deposition in printed form of respondent Logronio already accomplished and signed by him but not yet subscribed; and (5) a search warrant already accomplished but still unsigned by respondent Judge.

Since respondent Judge was hearing a case at the time, he instructed by means of a note his Deputy Clerk of Court to take the depositions of respondents De Leon and Logronio. After the session adjourned, the stenographer, upon request of respondent Judge then asked Logronio to take the oath, warning him that if his deposition was found to be false, he could be charged for perjury. Respondent Judge then signed respondent De Leon's application for search warrant, Logronio's deposition and the search warrant which was subsequently issued.

Three days later, the search warrant was served on petitioners who protested on the ground that no formal complaint or tanscript of testimony was attached to the warrant. The agents of the Bureau of Internal Revenue nevertheless proceeded with their search, producing six boxes of documents.

On March 3, 1970, petitioners filed with the Court of First Instance of Rizal a petition that the search warrant be quashed and that preliminary prohibitory and mandatory writs of injunction be issued. Respondent Judge dismissed the petition after hearing.

On April 16, 1970, the Bureau of Internal Revenue made tax assessments on petitioner corporation, partly, if not entirely, based on the documents thus seized.

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[57] 1 FLETCHER. CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS 68 (Rev. ed., 1931).

[58] G.R. No. L-32409, February 27, 1971, 37 SCRA 823 (1971).

The issues raised for decision were: (1) Should the petition be granted on the ground of irregularity in the issuance of the search warrant? and, (2) Is a corporation entitled to protection against unreasonable searches and seizures?

On the first issue, the Supreme Court held that the petition should be granted for the following reasons: (a) respondent Judge failed to personally examine the complainant and his witnesses contrary to the provisions of Article III, section 1(3) of the Constitution and of Sections 3 and 4 of Rule 126 of the Rules of Court; (b) the search warrant was issued for more than one specific offense prescribed under the different provisions of the National Internal Revenue Code; and (c) the search warrant does not particularly describe the things to be seized.

On the second issue, the Court cited cases on the matter:

> "Although, for the reasons above stated, we are of the opinion that an officer of a corporation which is charged with a violation of a statute of the state of its creation, or of an Act of Congress passed in the exercise of its constitutional powers, cannot refuse to produce the books and papers of such corporation, we do not wish to be understood as holding that a corporation is not entitled to immunity, under the 4th Amendment, against unreasonable searches and seizures. A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body, it waives no constitutional immunities appropriate to such body. Its property can not be taken without compensation. It can only be proceeded against by due process of law, and is protected, under the 14th Amendment, against unlawful discrimination."[59]

In *Stonehill, et al. v. Diokno, et al.*,[60] the Supreme Court impliedly recognized the right of a corporation to object against unreasonable searches and seizures, thus:

> "As regards the first group, we hold that petitioners herein have no cause of action to assail the legality of the contested warrants and of the seizures made in pursuance thereof, for the simple reason that said corporations have their respective personalities, separate and distinct from the personality of herein petitioners, regardless of the amount of shares of stock or of the interest of each of them in said corporations, and whatever the offices they hold therein may be. Indeed it is well settled that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and can not be availed of by third parties. Consequently, petitioners herein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to

[59] Hale v. Henkel, 201 U.S. 43, 50 L. Ed. 652, 26 S. Cf. 370 (1906), Silverthorne Lumber Co. v. United States of America, 251 U.S. 385, 64 L. Ed. 319, 40 S. Cf. 182, 24 ALR 1426 (1920).

[60] G.R. No. L-19550, June 19, 1967, 20 SCRA 383 (1967).

> object to the admission of said papers in evidence belongs exclusively to the corporations to whom the seized effects belong, and may no be invoked by the corporate officers in proceedings against them in their individual capacity."

The rule is that injuries to the corporation arising from the negligence, mismanagement or fraud of its directors and officers or third persons and other strangers may be redressed in a suit filed by the corporation through its board of directors. This is already well-accepted in our jurisdiction for the Supreme Court had already held:

> ". . . the well known rule is that shareholders can not ordinarily sue in equity to redress wrong done to the corporation but that the action must be brought by the board of directors."[61]

Moreover, a corporation is a juridical person with a personality separate and distinct from the individual stockholders. In case of mismanagement, fraud, or other injuries to the corporation, the real party in interest is the corporation and not the stockholders, for under our procedural laws, every action must be prosecuted and defended in the name of the real party in interest.[62]

The above considerations, however, were not taken by the Supreme Court in the aforecited case of *Ramos, et al. v. Central Bank of the Philippines*.[63] As already mentioned, the respondent therein sought the dismissal of the petition filed by the stockholders for certiorari, prohibition and mandamus with prayer for the issuance of a writ of preliminary injunction, on the ground among others, that the stockholders failed to implead the corporation, the Overseas Bank, as a party to the case. The Supreme Court overruled the objection of the respondent and declared that:

> "The plea that the Overseas Bank is not a party to the case at bar need not give concern. The petitioners are the controlling stockholders of that Bank, and are qualified to represent its interest, so that a judgment may be enforced for or against it, although it is not impleaded by name in the suits. This is particularly true considering that the present management of the OBM is at present composed of respondent's nominees, pursuant to the Trust Agreement, and they can hardly be expected to resist the plans and actions of respondent Central Bank."

NEGOTIABLE INSTRUMENTS

Postal money order not a negotiable instrument

Under section 1 of Act No. 2031, otherwise known as the Negotiable Instruments Law, an instrument to be negotiable must conform to the fol-

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[61] Angeles v. Santos, 64 Phil. 697 (1937).
[62] RULES OF COURT, Rule 3, sec. 2.
[63] G.R. No. 29352, October 4, 1971, 41 SCRA 565 (1971).

lowing requirements: (1) it must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand, or at a fixed or determinable future time; (4) must be payable to order or to bearer; and, (5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Is a postal money order a negotiable instrument?

This was the issue involved in the case of *Philippine Education Company, Inc. v. Soriano, et al.*[64] In response to the query, the Supreme Court held that a postal money order is not a negotiable instrument as contemplated in the Negotiable Instruments Law. The reasons advanced by the highest court of the land are: (a) the ruling jurisprudence in the United States from the statutes of which our own law on negotiable instruments was patterned is that a postal money order is not a negotiable instrument; (b) that the government, in issuing a postal money order, is not engaged in any commercial transaction; and, (c) the restrictions imposed by the postal laws on money orders are inconsistent with the nature of a negotiable instrument.

The evidence introduced during the trial show that on April 18, 1958, Enrique Montinola sought to purchase from the Manila Post Office, ten money orders of ₱200 each. After the postal teller had made out the money orders, Montinola offered to pay for them with a private check, which was refused since checks were generally not accepted in payment of money orders. Montinola, however, managed to leave the building with his own check and the ten money orders without the knowledge of the teller.

Upon discovery of the disappearance of the money orders, an urgent message was sent to all postmasters and banks instructing them not to pay anyone of the money orders if presented for payment. The Bank of America received a copy of said notice three days later.

On April 23, 1958, one of the money orders was received by appellant as part of its sales receipts. The following day, the money order was deposited with the Bank of America which cleared it with the Bureau of Posts. The bank received the face value of ₱200.

In September, 1961, appellee Soriano, Chief of the Money Order Division of the Manila Post Office, notified the bank that the money order had been irregularly issued and that, in view thereof, the amount it represented had been deducted from the bank's clearing account. The bank in turn debited appellant's account.

In January, 1962, appellant filed an action against appellees praying that defendants be ordered to countermand the notice given to the bank.

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[64] G.R. No. L-22405, June 30, 1971, 39 SCRA 587 (1971).

In resolving the question raised on appeal, the Supreme Court held that it is not disputed that our postal statutes were patterned after those of the United States. For this reason, ours are generally construed in accordance with the construction given in the United States to their postal statutes, in the absence of any special reason justifying a departure from this policy or practice. The weight of authority in the United States is that postal money orders are not negotiable instruments,[65] the reason behind the rule being that, in establishing and operating a postal money order system, the government is not engaging in commercial transactions but merely exercises a governmental power for the public benefit.

It is to be noted that some of the restrictions imposed upon money orders by postal laws and regulations are inconsistent with the character of negotiable instruments. For instance, such laws and regulations usually provide for not more than one endorsement.[66]

Of particular application to the postal money order in question are the conditions laid down in the letter of the Director of Posts of October 26, 1948 to the Bank of America for the redemption of postal money orders received by it from its depositors. Among others, the condition is imposed that "in cases of adverse claim, the money order or money orders involved will be returned to you (the bank) and the corresponding amount will have to be refunded to the Postmaster, Manila, who reserves the right to deduct the value thereof from any amount due you if such step is deemed necessary." The conditions thus imposed in order to enable the bank to continue enjoying the facilities theretofore enjoyed by its depositors, were accepted by the Bank of America. That it is so is clearly inferred from the fact that it did not file any protest against the action of the Post Office in deducting the amount from its clearing account.

USURY

Creditor may recover principal

Under the provisions of Section 2 of the Usury Law, Act No. 2655, as amended, no person or corporation shall directly or indirectly take or receive in money order property, real or personal, or choses in action, a higher rate of interest or greater sum of value, including commissions, premiums, fines and penalties, for the loan or renewal thereof of forbearance of money, goods or credit, where such loan or renewal or forbearance is secured in whole or in part by a mortgage upon real estate the title to which is duly registered, or by any document conveying such real estate or an interest therein, than twelve per cent per annum.

On the other hand, Section 3 of the same law provides that no person or corporation shall directly or indirectly demand, take, receive or agree

[65] Bolognesi v. U.S., 189 F. 335; (1911) U.S. v. Stockgrowers' National Bank, 30 F. 912 (1887).
[66] 49 C.J. 1153

to charge in money or other property, real or personal, a higher rate or greater sum or value for the loan or forbearance of money, goods or credits, where such loan or forbearance is not secured by mortgage on real property, than fourteen per cent per annum.

The consequences of charging an interest rate higher than those prescribed in Sections 2 and 3 are governed by the provisions of Section 6. Thus, any person or corporation who, for any such loan or renewal thereof or forbearance, shall have paid or delivered a higher rate or greater sum or value than is allowed to be taken or received, may recover the whole interest, commissions, premiums, penalties and surcharges paid or delivered with costs and attorney's fees in such sum as may be allowed by the court in an action against the person or corporation who took or received them if such action is brought within two years after such payment or delivery.

The proper interpretation of Section 6 of the Usury Law has long been the subject matter of controversy. This was again repeated in the case of *Briones v. Cammayo, et al.*[67] The issues raised were: (1) whether the creditor, in a contract of loan tainted with usury, is entitled to collect from the debtor the amount representing the principal obligation; and, (2) in the affirmative, if he is entitled to collect interests thereon, and if so, at what rate.

The facts proved during the hearing show that on February 22, 1962, plaintiff filed an action against the defendants to recover the amount of ₱1500, plus damages, attorney's fees and costs of suit. The defendants, in their answer, alleged that they executed a real estate mortgage to secure a stated loan of ₱1500 for a period of one year without interest but the truth was that plaintiff delivered only the amount of ₱1200 and withheld the sum of ₱300 which was intended as advanced interest for one year.

The Municipal Court rendered judgment sentencing the defendants to pay ₱1500 with interest at the legal rate from February 22, 1962 plus ₱150 as attorney's fees. Upon appeal, the Court of First Instance rendered judgment ordering defendants to pay ₱1500 less usurious interest of ₱120 and ₱200 as attorney's fees or a total deduction of ₱320.

In the present appeal, it is not disputed that the loan was tainted with usury.

The Supreme Court held that the Usury Law penalized any person or corporation who, for any loan or renewal thereof or forbearance, shall collect or receive a higher rate or greater sum or value than is allowed by law, and provides further that the debtor may recover the whole interest, commissions, premiums, penalties and surcharges paid or delivered, with costs and attorney's fees, in an appropriate action against his creditor, within two years after such payment or delivery.[68]

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[67] G.R. No. L-23559, October 4, 1971, 41 SCRA 404 (1971).
[68] Act No. 2655 (1916), sec. 6.

In interpreting this provision, the Court in *Go Chioco v. Martinez,*[69] held that even if the contract of loan is declared usurious, the creditor is entitled to collect the money actually loaned and the legal interest due thereon.

In *Gui Jong v. Rivera,*[70] *Aguilar v. Rubiato,*[71] and *Delgado v. Duque,*[72] it was recognized that a usurious contract is void; that the creditor had no right of action to recover the interest in excess of the lawful rate; but that this did not mean that the debtor may keep the principal received by him as loan—thus unjustly enriching himself to the damage of the creditor.

The Court, in the case of *Lopez and Javelona v. El Hogar Filipino,*[73] ruled that while forfeiture might appear to be convenient as a drastic measure to eradicate the evil of usury, the legal question involved should not be resolved on the basis of convenience.

The view has been expressed that because Article 1957 of the Civil Code provides that contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury, shall be void, the creditor has no right to recover—not even his principal.

In the case of *Angel Jose Warehousing Co., Inc. v. Chelda Enterprises,*[74] the debtor relied on Article 1411 of the Civil Code which provides: "When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto,* they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract." It was argued that under said article, neither party may sue on the contract, but this was modified by Article 1413 of the Civil Code allowing the borrower to recover interest paid in excess of the interest allowed by the Usury Law. The Court, however, ruled that Article 1411 of the Civil Code is the same as Article 1305 of the Old Civil Code and there is no warrant for departing from previous interpretation.

Moreover, the court said, a contract of loan with usurious interest consists of principal and accessory stipulations: the principal one is to pay the debt; and the accessory stipulation is to pay interest thereon. The two stipulations are divisible in that the former can stand without the latter, and under Article 1420 of the Civil Code, "in case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may

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[69] 45 Phil. 256 (1923)
[70] 45 Phil. 778 (1924).
[71] 40 Phil. 570 (1919).
[72] 44 Phil. 739 (1923).
[73] 47 Phil. 249 (1925).
[74] G.R. No. L-25704, April 24, 1968, 23 SCRA 119 (1968).

be enforced." In simple loan with stipulation of usurious interest, the prestation of the debtor to pay the principal debt, which is the cause of the contract, is not illegal. The illegality lies only as to the prestation to pay the stipulated interest; hence, being separable, the latter only should be deemed void, since it is the only one that is illegal.

Neither is there a conflict between the Civil Code and the Usury Law. In Section 6 of the latter, any person who for a loan shall have paid a higher rate or greater sum or value than is allowed in said law, may recover the whole interest paid. Under Article 1413 of the former, interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of payment. Interest paid in excess of the interest allowed by the usury laws means the whole usurious interest.

The principal debt, remaining without stipulation for payment of interest, can thus be recovered by judicial action. And in case of such demand, and the debtor incurs in delay, the debt earns interest from the date of the demand (in this case, from the filing of the complaint). Such interest is not due to stipulation, for there was none, the same being void. Rather it is due to the general provision of law that in obligations to pay interest by way of damages.[75]

In answer to the contention that the forfeiture of the principal of the usurious loan is necessary to punish the usurer, the court stated that there is already adequate provision for punishment of the usurer, namely, criminal prosecution.

TRADEMARKS AND TRADENAMES

Determinative factor to contest registration

Although the Civil Code of the Philippines contains provisions dealing with trademarks and tradenames, its Article 522 provides that said trademarks and tradenames are governed by special laws. Obviously, the special law referred to is Republic Act No. 166, as amended, more popularly known as the Trademark Law.

Under section 2 of Republic Act No. 166, trademarks, tradenames and service marks owned by persons, corporations, partnership or associations domiciled in any foreign country may be registered, provided that said marks or names are actually in use in commerce and services not less than two months in the Philippines before the time the applications for registration are filed.

Section 2-A of the same law was inserted by Section 1 of Republic Act No. 638, and provides that anyone who lawfully produces or deals in

[75] CIVIL CODE, Art. 2209.

merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trademark, a tradename or a service mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or service of others.

The case of *Acoje Mining Company, Inc. v. The Director of Patents,*[76] involves a question relating to the registration of a trademark. The petitioner therein, a domestic corporation filed on September 14, 1965, an application for registration of the trademark LOTUS used on soy sauce. Use in commerce in the Philippines of the mark since June 1, 1965 was asserted. The Chief Trademark Examiner rejected the application because the same mark is already registered in the name of Philippine Refining Company, another domestic corporation. The latter company uses the mark on edible oil.

The Director of Patents upheld the rejection on the ground that while there is a difference between soy sauce and edible oil and there were dissimilarities in the trademarks due to type of letters used as well as in the size, color and design employed, still the close relationship of the products is such "that purchasers would be misled into believing that they have a common source."

The Supreme Court held that the decision of the respondent Director must be reversed. It then proceeded to cite the case of *American Wire and Cable Company v. Director of Patents*[77] in which the Supreme Court had ruled that "the determinative factor in a contest involving registration of trademark is not whether the challenging mark would actually cause confusion or deception of the purchasers but whether the use of such mark would likely cause confusion or mistake on the part of buying public. In short, to constitute an infringement of an existing trademark patent and warrant a denial of an application for registration, the law does not require that the competing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity between the two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the newer brand for it."

Can it be said that petitioner's application would be likely to cause confusion or mistake on the part of the buying public? The answer should be in the negative. It does not defy common sense to assert that a purchaser would be cognizant of the product he is buying. There is quite a difference between soy sauce and edible oil.

When regard is had for the principle that the two trademarks in their entirety as they appear in their respective labels should be considered in relation to the goods advertised before registration could be denied, the

[76] G.R. No. L-28744, April 29, 1971, 38 SCRA 480 (1971).
[77] G.R. No. L-26557, February 18, 1970, 31 SCRA 544 (1970).

conclusion is inescapable that respondent Director ought to have reached a different conclusion. Petitioner has successfully made out a case for registration.

Application for registration

Section 7 of Republic Act No. 166 provides that upon the filing of an application for registration and the payment of the required fee, the Director shall cause an examination of the application to be made, and, if on such examination, it shall appear that the applicant is entitled to registration, the Director, upon payment of the required fee, shall cause the mark or tradename to be published in the Official Gazette.

Any person who believes that he would be damaged by the registration of a mark or tradename may, upon payment of the required fee and within thirty days after the publication, file with the Director an opposition to the application. Such opposition, under Section 8 of the Trademark Law, shall be in writing and verified by the opositor, or by any person in his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates or registration of marks or tradenames registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation thereof into English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended for an additional thirty days by the Director, who shall notify the applicant of such extension.

In the case of *The Cudahy Packing Company v. The Director of Patents,*[78] the opposition to the application for registration was filed on behalf of a foreign corporation.

It appears from the record that the respondent corporation filed on September 21, 1960 two applications with the Patent Office for separate registrations of two trademarks which said corporation had allegedly been using since June 1, 1960 on its vegetable oil products. The applications were published in the June 5, 1961 issue of the Official Gazette which was officially released on June 29, 1961.

On July 28, 1961, the law firm of Lichauco, Picazo & Agcaoili received a cablegram from Langner, Parry, Card & Langner of Chicago, U.S.A., the international trademark agents of petitioner, a foreign corporation duly organized under the laws of Maine, asking said law firm to oppose before July 31 the trademark applications. Pressed for time, the law firm filed a petition with the Patent Office on July 31, 1961 asking for an extension of 30 days within which to file a notice of opposition. The Director of Patents gave them up to August 29, 1961 within which to submit the opposition.

[78] G.R. No. L-22647, July 30, 1971, 40 SCRA 137 (1971).

On August 25, 1961, the law firm filed an unverified notice of opposition. Within 60 days thereafter, the duly verified notice of opposition was filed in accordance with Rule 187(c) of the Revised Rules of Practice before the Patent Office in trademark cases which provides that "an unverified notice of opposition may be filed by a duly authorized attorney, but such opposition will be null and void unless verified by the opposer in person within 60 days after such filing."

On August 28, 1961, the law firm filed a duly authenticated power of attorney executed by petitioner Cudahy, appointing the former as its attorney to prosecute the opposition.

In its answer to the opposition, respondent corporation prayed for dismissal on the ground that when the law firm moved for extension of time to file the notice of opposition, it did not yet have a written power of attorney to intervene in the case as required by Rule 19 of the Revised Rules of Practice which provides that "before any attorney-at-law or other recognized person will be allowed to take action in any case or proceeding, *ex parte* or *inter partes*, a written power of attorney or authorization must be filed in the particular case or proceeding."

Since the power of attorney was executed on August 7, or a week after the law firm filed the motion for extension, the Director dismissed the opposition.

The Supreme Court noted that the action taken by petitioner's counsel and subsequently held null and void by the Director was merely to ask for an extension of time for filing a notice of opposition on the ground that it would take some time to prepare the opposition papers in the United States and to have them properly authenticated by the Philippine Consul. The petition was on its face quite reasonable and the Director of Patents so found it and ruled that it was "based on meritorious grounds."

In view of the foregoing considerations, it was held that the requirement of Rule 19 is not jurisdictional in nature, especially in regard to a mere motion for extension. There is nothing so important or so decisive in such a motion insofar as the merits of the case are concerned, as to render it valueless accompanied by a power of attorney or written authorization. Indeed it may happen that the extension is sought precisely because the requisite written authority of counsel to act in behalf of the client may not arrive on time. In such a case, to say that counsel cannot even file a motion for extension would pose a dilemma beyond solution.

In any event, whether or not failure to comply strictly with Rule 19 may, under certain circumstances, justify the Director of Patents in denying the extension prayed for, the fact is that in this case he granted the petition, and his action cannot be considered null and void because of such noncompliance nor on the ground of lack of jurisdiction.

The suggestion that the cabled authorization was not sufficient for purposes of the requirement in Rule 19 because it did not come directly from petitioner gives greater importance to form than to substance and reads into said rule a more restrictive meaning than its words justify. It does not provide that the authorization must be given by the party himself.

The Court held that when the law firm asked for the needed extension of time to file the notice of opposition, it did so in substancial conformity with Section 187(b) of the Revised Rules of Practice in the Patent Office, which provides that "for good cause shown, and upon payment of the required fee, the time for filing a notice of opposition may be extended by the Director for an additional thirty days, upon written request of the opposer . . ."

Respondents would give the term "opposer" a literal interpretation and thereby rule out any request for extension filed by counsel. This interpretation is not borne out by the realities of law practice, whether before the courts or before administrative tribunals, where the litigants are invariably represented by lawyers, who actually sign the necessary pleadings, provided of course they are duly authorized.

Respondent Director was ordered to give due course to petitioner's notice of opposition to the trademark applications of respondent corporation.

Cancellation of mark or tradename registration

May the registration with the Patents Office of a mark or tradename be cancelled? The answer to the query must of necessity be in the affirmative for as a matter of fact, Republic Act No. 166, as amended, provides for the grounds and procedure for such cancellation.[79] Thus, if the Director finds that a case for cancellation has been made out, he shall order the cancellation of the registration. The order, however, shall not become effective until the period for appeal has elapsed, or if the appeal is taken, until the judgment on appeal has become final. When the order or judgment becomes final, any right conferred by such registration upon the registrant or any person in interest of record shall terminate. Notice of cancellation shall be published in the Official Gazette.

The case of *General Garments Corporation v. The Director of Patents* [80] involves a proceeding for the cancellation of registration of a trademark.

The facts show that petitioner, a domestic corporation obtained the registration with the Philippines Patent Office on November 15, 1962 of

[79] See secs. 17, 18 and 19.
[80] G.R. No. L-24295, September 30, 1971, 41 SCRA 50 (1971).

the trademark "Puritan" for assorted men's wear. On March 9, 1964, the respondent corporation, existing under the laws of Pennsylvania, filed a petition with respondent Patent Office for the cancellation of the registration of the trademark registered in the name of the petitoner, alleging ownership and prior use in the Philippines of said trademark on the same kind of goods, which use it had not abandoned, and alleging further that the registration thereof by petitioner had been obtained fraudulently in violation of Section 17(c) and Section 4(d) of Republic Act No. 166.

On March 30, 1964, petitioner moved to dismiss the petition of respondent on the principal issue of whether or not a foreign corporation not licensed to do business and not doing business in the Philippines, has legal capacity to maintain a suit in the Patent Office for cancellation of a trademark registered therein.

The motion to dismiss as well as its reconsideration were denied by the Director of Patents; hence, this petition for review.

The pertinent provisions of the Trademark Law invoked in this case are as follows:

> "Sec. 17. *Grounds for cancellation.* Any person, who believes that he is or will be damaged by the registration of a mark or tradename, may, upon the payment of the prescribed fee, apply to cancel said registration upon any of the following grounds:
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> * * * * *
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> (c) That the registration was obtained fraudulently or contrary to the provisions of section 4, Chapter II thereof;
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> * * * * *
>
> "Sec. 4. Registration of trademarks, tradenames and service-marks which shall be known as the principal register. The owner of a trademark, tradename or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register, unless it:
>
> * * * * *
>
> (d) consists of or comprises a mark or tradename which so resembles a mark or trade name registered in the Philippines or a mark or tradename previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with goods, business or services of the applicant, to cause confusion or mistake or to deceive purchasers; after one time of . . . or x x x."

The Supreme Court noted that it was the contention of petitioner that respondent, being a foreign corporation, not licensed and not doing business in the Philippines, is not comprehended within the term "any person" who may apply for cancellation under Section 17(c) of the Trademark Law. It was held, however, that the fact that respondent may not transact business in the Philippines unless it has obtained a license for that purpose, nor maintain a suit in Philippine courts for the recovery of any debt, claim or

demand without such license[81] does not make respondent any less a juridical person.

Indeed an exception to the license requirement has been recognized in this jurisdiction, namely, where a foreign corporation sues on an isolated transaction. As first enunciated in *Marshall Wells Co. v. Elser & Co.*,[82] "the object of the statute[83] was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts . . . the implication of the law (being) that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine Courts. . ."

An analogous question arose in *Western Equipment & Supply Co. v. Reyes*,[84] in which the court said:

> "A foreign corporation which has never done x x x business in the Philippine Islands and which is unlicensed and unregistered to do business here, but is widely and favorably known in the Islands through the use therein of its products bearing its corporate and tradename has a legal right to maintain an action in the Islands. x x x The purpose of such a suit is to protect its reputation, corporate name and goodwill which has been established through the natural development of its trade for a long period of years, in the doing of which it does not seek to enforce any legal or contract rights arising from, or growing out of any business which it has transacted in the Philippine Islands. x x x The right to the use of the corporate or trade name is a proporety right, a right *in rem*, which it may assert and protect in any of the courts of the world—even in jurisdictions where it does not transact business—just the same as it may protect its tangible property, real or personal, against trespass or conversion."

Petitioner argues that the ruling in *Western Equipment* has been superseded by the later decision in the case of *Mentholatum Co. v. Mangaliman*,[85] where it was held that inasmuch as Mentholatum Co. was a foreign corporation doing business in the Philippines without the license required by Section 68 of the Corporation Law, it could not prosecute an action for infringement of its trademark which was the subject of local registration. The court recognized a distinction between the two cases. Moreover, the ruling in the *Mentholatum* case was subsequently derogated when Congress, purposely to "counteract the effects" of said case, enacted R.A. No. 638, inserting Section 21-A in the Trademark Law, which allows a foreign corporation or juristic person to bring an action in Philippine courts for infringement of a mark or trade name, for unfair competition, or false de-

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81 CORPORATION LAW, secs. 68 & 69.
82 46 Phil. 70 (1924).
83 Act No. 1459 (1906), secs. 68 & 69.
84 51 Phil. 115 (1927).
85 72 Phil. 524 (1941).

signation of origin and false description, "whether or not it has been licensed to do business in the Philippines... at the time it brings complaint."

In any event, respondent is not suing for infringement or unfair competition under Section 21-A, but for cancellation under Section 17 on one of the grounds enumerated in section 4. The first kind of action is cognizable by the Courts of First Instance,[86] the second partakes of an administrative proceeding before the Patent Office.[87] And while a suit under Section 21-A requires that the mark or trade name alleged to have been infringed has been "registered or assigned" to the suing foreign corporation, a suit for the cancellation of the registration of a mark or trade name under Section 17 has no such requirement. For such mark or trade name should not have been registered in the first place (and consequently may be cancelled if so registered) if it "consists of or comprises a mark or trade name which so resembles a mark or trade name... previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with goods, business or services of the applicant, to cause confusion or mistake or to deceive purchasers;..."

Petitioner likewise argues that under Section 37 of the Trademark Law respondent is not entitled to the benefits thereof because the Philippines is not a signatory to any international treaty or convention relating to marks or trade names or to the repression of unfair competition. Section 37 reads in part:

> "Persons who are nationals of, domiciled in, or have a bona fide or effective business or commercial establishment in any foreign country, which is a party to any international convention or treaty relating to marks or tradenames, or the repression of unfair competition to which the Philippines may be a party, shall be entitled to the benefits and subject to the provisions of this Act to the extent and under the conditions essential to give effect to any such convention and treaties so long as the Philippines shall continue to be a party thereto. . . ."

This provision was incorporated in the law in anticipation of the eventual adherence of the Philippines to any international convention or treaty for the protection of industrial property. The provision will be operative only when the Philippines becomes a party to such convention or treaty.

In the meantime, regardless of Section 37, aliens or foreign corporations are accorded benefits under the law. For instance, under Section 2, the trademarks, trade names and service marks owned by persons, corporations, partnerships or associations domiciled in any foreign country may be registered in the Philippines, provided that the country of which the applicant for registration is a citizen grants by law substantially similar privileges to citizens of the Philippines.

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[86] Sec. 27.
[87] Sec. 18 in relation to sec. 8.

INSURANCE

Liability of insurer

The general rule is that the liability of an insurance company is extinguished upon payment or indemnification of the insured for the loss, damage or liability arising from an unknown or contingent event. The mode of extinguishment of liability thus set forth easily distinguishes an insurance company, or an ordinary bonds or commercial contracts surety company whose liability is solidary with the principal debtor or obligor in case of nonperformance of the presentation or obligation agreed upon, from a bail bond surety.

How, then, is an insurer differentiated from a bail bond surety? The provisions of law relating to matters concerning bail bond sureties can be found in Chapter 4, Title XV, Book IV of the New Civil Code and in Rule 114 of the New Rules of Court.

Under Section 16 of Rule 114 of the said Rules of Court, "upon application filed with the court and after due notice to the fiscal, the bail bond shall be cancelled and the sureties discharged from liability (a) where the sureties so request upon surrender of or ordered into custody on the same charge or for the same offense; (c) where the defendant is discharged by the court at any stage of the proceedings, or acquited, or is convicted and surrendered to serve the sentence; and (d) where the defendant dies during the pendency of the action."

On the other hand, under Section 15 of the same Rule 114, when the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of thirty days, the bondsmen (a) must produce the body of their principal or give the reason for its nonproduction; and (b) must explain satisfactorily why the defendant did not appear before the court when first required so to do. Failing in these two requisites, a judgment shall be rendered against the bondsmen.

Our Supreme Court had occasion to compare the liability of an ordinary bonds or commercial contracts surety from that of a bail bond surety company in the case of *People of the Philippines v. Franklin.*[88]

An information was filed in court against Franklin for estafa. Upon a bail bond being posted by the Asian Surety and Insurance Company in the amount of ₱2,000, she failed to appear, and when the court postponed the arraignment to another date, she failed to appear again. Whereupon

[88] G.R. No. L-21507, June 7, 1971, 39 SCRA 363 (1971).

the court ordered her arrest and required the surety company to show cause why the bail bond posted by it should not be forfeited. As the company could neither produce the accused nor give a satisfactory explanation, the court rendered the judgment of forfeiture.

Subsequently, the surety company filed a motion for reduction of bail on the ground that its inability to surrender the accused was due to the fact that the Government had allowed her to leave the country. The motion as well as the reconsideration having been both denied, the present appeal was taken.

The specific issue raised was: May a surety company be released from liability under the bail bond posted by it because its failure to produce and surrender the accused was due to the alleged negligence of the Philippine Government in issuing a passport to said accused enabling her to leave the country?

The Supreme Court answered in the negative. In support of its ruling, the case of *U.S. v. Bonoan*,[89] was quoted, to wit:

> "The rights and liabilities of sureties on a recognizance or bail bond are, in many respects, different from those of sureties on ordinary bonds or commercial contracts. The former can discharge themselves from liability by surrendering their principal; the latter, as a general rule, can only be released by payment of the debt or performance of the act stipulated."

In the more recent case of *Uy Tuising*,[90] the Supreme Court ruled that:

> "By the mere fact that a person binds himself as surety for the accused, he takes charge of, and absolutely becomes responsible for the latter's custody, and under such circumstances it is incumbent upon him, or rather, it is his inevitable obligation, not merely a right, to keep the accused at all times under his surveillance, inasmuch as the authority emanating from his character as surety is no more or less than the Government's authority to hold the said accused under preventive imprisonment."

It is clear, therefore, that in the eyes of the law, a surety becomes the legal custodian and jailer of the accused, thereby assuming the obligation to keep the latter at all times under his surveillance, and to produce and surrender him to the court upon the latter's demand.

That the accused in this case was able to secure a passport which enabled her to go to the United States was, in fact, due to the surety company's fault because it was its duty to do everything and take all steps necessary to prevent that departure.

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[89] 22 Phil. 1 (1912).
[90] 61 Phil. 404 (1935).

Interpretation of contracts

It is well-settled that in the construction and interpretation of contracts of insurance, doubts must be liberally resolved in favor of the insured and strictly against the insurer. The reason is that a contract of insurance is a contract of adhesion, and the terms in an insurance policy which are ambiguous, equivocal or uncertain are to be construed strictly against the insurer so as to effect the dominant purpose of indemnity or payment to the insured, especially where a forfeiture is involved. The rationale behind all these is that the "insured usually has no voice in the selection or arrangement of the words employed and that the language of the contract is selected with great care and deliberation by experts and legal advisers employed by, and acting exclusively in the interest of the insurance company."[91]

The foregoing rule of statutory construction was employed by the Supreme Court in two cases decided in 1971.

The first of these cases is that of *Gentral Surety and Insurance Company v. C. N. Hodges and the Court of Appeals*.[92] Respondent Hodges sold two lots to a certain Layson for ₱43,000 payable in installments. By January 15, 1954, the remaining balance was only ₱15,516, and in order that he could use the lots as collateral for a loan with a bank, Layson persuaded Hodges to execute a deed of absolute sale with the condition that Layson would put up a surety bond to answer for the remaining installments.

A promissory note was then executed by Layson in favor of Hodges for ₱15,516, with interest of one per cent of default. To guarantee the note, petitioner executed through its branch manager in Iloilo and in favor of Hodges a surety bond which was good for twelve months from date thereof.

When Layson defaulted, Hodges demanded payment from petitioner which failed to honor its commitment despite repeated requests for extension of time to pay. After the present action was commenced, petitioner disclaimed liability on the ground: (a) that the surety bond is null and void, it having been issued by the manager after her authority was withdrawn; (b) that even under her original authority, the manager could not issue surety bonds in excess of ₱8,000 without the approval of petitioner's main office, which approval was not given in this case; and, (c) that the present action is barred by the provision in the surety bond to the effect that all claims and actions thereon should be filed within three months from the date of its expiration.

The trial court rendered judgment against petitioner requiring it to pay the sum of ₱8,000. Hodges appealed because the decision limited the

[91] 44 C.J.S. Insurance, sec. 297 (1945).
[92] G.R. No. L-28633, March 30, 1971, 38 SCRA 159 (1971).

liability to ₱8,000 and petitioner also appealed because it was held liable under a contract entered into by its agent in excess of authority.

The Court of Appeals modified the judgment by increasing the liability of petitioner to ₱17,826.08 including interest. Petitioner appealed to the Supreme Court alleging that the Court of Appeals erred: (1) in finding that petitioner was liable on a bond issued by an agent whose authority had already been withdrawn and revoked; (2) in applying the rule on implied admission by reason of failure to deny under oath the authenticity of a pleaded document; and, (3) in not considering the legal effect of the waiver contained in the disputed bond and in not disposing of this case in the light of such waiver.

As regards the first assignment of error, the Supreme Court upheld the finding of the Court of Appeals that there appears to be no showing that the revocation of authority was made known to the public in general by publication, nor was Hodges notified of such revocation despite the fact that he was a regular client of the firm. Furthermore, some surety bonds issued by the branch manager in favor of Hodges after her authority had allegedly been curtailed, were honored by petitioner despite the fact that these were not reported to the main office at the time of their issuance. By these acts, petitioner ratified the manager's unauthorized acts and as such, it is now estopped from setting forth lack of authority to issue surety bonds.

It has been held that although the agent may have acted beyond the scope of his authority, or may have acted without authority at all, the principal may yet subsequently see fit to recognize and adopt the act as his own. Ratification being a matter of assent to and approval of the act as done on account of the person ratifying, any words or acts which show such assent and approval are ordinarily sufficient.[93] Moreover, the revocation of agency does not prejudice third persons who acted in good faith without knowledge of the revocation.[94] And indeed, Article 1922 of the Civil Code provides: "If the agent had general powers, revocation of the agency does not prejudice third persons who acted in good faith and without knowledge of the revocation. Notice of the revocation in a newspaper of general circulation is a sufficient warning to third persons."

The second assignment of error assails the finding that petitioner is liable for the full amount of the surety bond in view of its failure to deny under oath the genuineness and due execution of the bond, copy of which was attached to the complaint. Section 8, Rule 8 of the Rules of Court provides: "When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading x x x, the genuineness and due execution of the instrument shall be deemed admitted

[93] Sta. Catalina v. Espitero, CA-G.R. No. 27075-R.A., April 28, 1964.
[94] Joson v. Garcia, CA-G.R. No. 29336-R, Nov. 19, 1962.

unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; x x x."

In *Yu Chuck v. Kong Li Po*,[95] the Supreme Court held that "where a case has been tried in complete disregard of the rule and the plaintiff having pleaded a document by copy, presents oral evidence to prove the due execution of the document as well as the agent's authority x x x and no objections are made to the defendant's evidence in reputation, the rule will be considered waived."

In the case at bar, the parties acted in complete disregard of the rule. Hodges did not object to the evidence of petitioner that the manager had no authority to issue a surety bond, much less one in excess of ₱8,000. Hence, Hodges must be deemed to have waived the benefits of said rule and petitioner can not be held liable in excess of ₱8,000.

Under the third assignment of error, petitioner maintains that having been instituted nine months after the expiration of the surety bond, the present action is barred by a provision in the said bond that it "will not be liable for any claims not discovered and presented to the company within three months from the expiration of this bond and that the obligee hereby waives his right to file any court action against the surety after the termination of the period of three months above-mentioned."

In the case of *Pao Chuan Wei v. Nomorosa*,[96] the Supreme Court, in interpreting a similar provision, held "that the three-month period" prescribed "established only a condition precedent, not a limitation of action", and that when a claim has been presented within said period, the action to enforce the claim may be "filed within the statutory time of prescription". The case of *Zabaljaurregui v. Luzon Surety Co.*,[97] clarified this view in the sense that the above-quoted provision was "merely interpreted to mean that presentation of the claim within hree months was a condition precedent to the filing of a court action. Since the obligee in said case presented his claim seasonably although it did not file the action within the same period, this Court ruled that the stipulation in the bond concerning the limitation being ambiguous, the ambiguity should be resolved against the surety, which drafted the agreement, and that the action could be filed within the statutory period of prescription."

The Supreme Court reiterated the same principle in the case of *Communications Insurance Company, Inc. v. Manila Port Service*.[98]

The facts proved during the trial show that the plaintiff-appellee brought suit against appellant to recover the amount representing the value of goods either lost or pilfered while under appellant's custody. The goods

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[95] 46 Phil. 608 (1924).
[96] 103 Phil. 57 (1958).
[97] G.R. No. L-16251, August 31, 1963, 8 SCRA 740 (1963).
[98] G.R. No. L-22656, June 10, 1971, 39 SCRA 491 (1971).

came in six different shipments from abroad destined for the Fort of Manila where appellant, a subsidiary of the Manila Railroad Company, was the arrastre contractor. Upon arrival of the vessels at said port, the cargoes were discharged unto appellant's custody. Upon delivery to the respective consignees, it was found that some of the goods were either in damaged condition or short of the quantity manifested in the corresponding bills of lading. The losses were, upon demand paid by herein appellee, their insurer, who later filed the necessary suit to recover from appellant the amounts it had paid to the consignees.

The short-deliveries and damages were admitted to have taken place while the cargoes were under appellant's custody. The latter, however, invoked the provision of Section 15 of the Management Contract and disclaimed liability on the ground that the consignees had failed to file the requisite claims within 15 days from the date of the discharge of the last package from the carrying vessel. It is established, however, that appellee filed provisional claims after the discharge of several of the packages although before the discharge of the last package from the respective carrying vessels.

The Supreme Court did not accept the view that the contractual provision relied upon did not allow a consignee of goods discharged from a vessel to file a claim based on damage or shortlanding until after the discharge of the last package from the carrying vessel. While the Court agreed that a claim filed before the actual commencement of the discharge of goods carried by a vessel was legally ineffective under the provision of the Management Contract relied upon, because it would be a purely speculative claim,[99] the Court saw no cogent reason to outlaw a claim similar to the ones involved in this case filed after the discharge of several or majority of the packages carried by the vessel, belonging to the same consignee. The Court has upheld this view in *Malayan Insurance v. Manila Port Service*,[100] *Switzerland, General Insurance Co., Ltd., et al. v. Manila Railroad*,[101] and *Insurance Company v. Manila Port Service*.[102]

The Court has heretofore held that some features of Section 15 of the Management Contract appear to be harsh and unreasonable.[103] The Court considers it a duty to tone them down and give them a reasonable and humane interpretation.

It is timely to recall at this point the case of *Young v. Midland Textile Insurance Company*,[104] wherein the Court held that the liberal construc-

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[99] Universal Insurance & Indemnity Co. v. Manila Railroad Co., G.R. No. L-24600, April 27, 1970, 32 SCRA 364 (1970).

[100] G.R. No. L-22687, March 28, 1969, 27 SCRA 760 (1969).

[101] G.R. No. L-22150, April 22, 1968, 23 SCRA 111 (1968).

[102] G.R. No. L-24887, April 22, 1968, 23 SCRA 114 (1968).

[103] Sun Bros. v. Manila Port Service, G.R. No. L-13500, April 29, 1960, 58 O.G. 1722 (Feb., 1962), 107 Phil. 988 (1960).

[104] 30 Phil. 617 (1915).

tion of insurance contracts in favor of the insured does not obtain "where the terms of the policy are clear and specific." Thus, in the case of *Communications Insurance v. Manila Port Service,* although some features of Section 15 of the Management Contract appear to be "harsh and unreasonable", still the Contract must remain the law between the parties to the same.

Venue of actions

Under the present state of the law, contracts of insurance are governed by the provisions of the Insurance Act as well as of the Civil Code and supplemented by the general principles on insurance prevailing in the United States and the Philippines.

Article 2011 of the Civil Code provides that "the contract of insurance is governed by special laws. Matters not expressly provided for in such special laws shall be regulated by this Code."

A suit to enforce a contract of insurance is a personal action, the venue of which must conform with the provisions of Rule 4 of the New Rules of Court.

The question of venue of an action based on a contract of insurance was raised in the case of *Universal Insurance and Idemnity Company v. Cansino, Jr.* Respondent Age Construction entered into a contract of lease involving several units of construction equipment, one of which was a vibrator stipulated to be worth not less than ₱500. The lease contract was executed in the City of Manila and provided that the equipment was to be used on a construction project of the lessee and returned to the respondent upon termination of the lease. The lessee also undertook to insure the equipment against loss, the corresponding policy to be issued in favor of the lessor.

The policy was issued by the petitioner with the respondent as the assured. The place of execution was Makati, Rizal.

In due time, the construction project of the lessee was finished, but the vibrator was not returned, the lessee alleging that it had been lost. Respondent filed an action in the City Court of Manila for the recovery of the value of the vibrator. Upon order of the respondent Judge, the petitioner was impleaded as alternative party defendant in view of the allegation in the answer that the vibrator had been insured with petitioner.

The allegation with respect to the new defendant (petitioner) is that the plaintiff (respondent) verbally requested said defendant to pay the insurance value of the vibrator but that the demand was not complied with.

[105] G.R. No. L-25082, November 23, 1971, 42 SCRA 216 (1971).

Petitioner filed a motion to dismiss insofar as it was concerned on the ground, among others, that venue was improperly laid. The motion as well as its reconsideration was turned down and the case set for trial.

A petition for prohibition was thereupon commenced in the CFI of Manila seeking to stop respondent Judge from further proceeding with the case, alleging that the denial by him of the motion to dismiss was without or in excess of jurisdiction and a grave abuse of discretion. The CFI sustained the order of respondent Judge and dismissed the petition for prohibition.

The issue raised before the Court was whether or not venue was properly laid in the civil case against the petitioner insurance company.

The Supreme Court held that the complaint was filed against the lessees alone and was predicated on the lease contract for breach of a stipulation therein. That action could proceed to judgment without bringing in the petitioner insurance company as defendant, the latter not being a party to the said contract, and its liability, if any, being based on the insurance policy it had issued. In fact, the prayer in the amended complaint was merely to hold it alternatively responsible. It is clear, therefore, that the petitioner was not an indispensable party in the action filed against the original defendants, since without its joinder a final determination of said action could be obtained.

Petitioner was only a proper or necessary party within the meaning of Section 8, Rule 3 of the Rules of Court which provides: "When persons who are not indispensable but who ought to be parties if complete relief is to be accorded as between those already parties have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them summoned to appear in the action. But the court may, in its discretion, proceed in the action without making such persons parties, and the judgment rendered therein shall be without prejudice to the rights of such persons."

The joinder of proper parties requires that they be subject to the jurisdiction of the court as to both service of process and venue.

In the instant case, there is no agreement in the insurance policy issued by petitioner as to where an action for recovery thereon should be filed. Consequently, Rule 4, section 1 (b), subparagraph 2, should govern, to wit: "All other civil actions (that is, actions other than forcible entry and detainer) in inferior courts should be brought: if there is no such agreement, in the place of execution of the contract sued upon as appears therefrom."

The place of execution is clear enough on the face of the policy: it was Makati, Rizal.

In the case of *Enriquez v. Macadaeg*,[106] the Court held that prohibition is the proper remedy against a judge who proceeds "in defiance of the Rules of Court by refusing to dismiss an action which could not be maintained in his court" on the ground of improper venue.

The foregoing case of *Universal Insurance v. Cansino* deals with an action subject to the jurisdiction of inferior courts in which venue is properly laid primarily in the place specified by the parties, or in the absence of agreement thereon, in the place of execution of the contract sued upon as appears therein. Noteworthy in this connection is the elementary rule in procedure that if improper venue is not objected to in a motion to dismiss, the same is deemed waived.

If there is no agreement between the parties as to the venue, in the absence of evidence as to the place of execution of the contract, the same must be directed to the place where the defendant resides or may be served with summons. As ruled in the case of *Clavecilla Radio System v. Antillon*,[107] the residence of a corporation is the place where the principal office is established.

Admiralty

Section 92 of the Insurance Act defines marine insurance as "an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits or other insurable interest in movable properties, may be exposed during a certain voyage or a fixed period of time." According to Vance, the risks insured against appearing in a form long in use among companies engaged in maritime insurance include "perils x x x of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, x x x barratry of the master and mariners, and mariners, and of all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandise or any part thereof."

Under section 44, paragraph (d), of the Judiciary Act of 1948, the Courts of First Instance shall have original jurisdiction "in all actions in admiralty and maritime jurisdiction, irrespective of the value of the property in controversy or the amount of the demand."

Whether or not an insurance contract is maritime depends not on the place where the contract is made and is to be executed, making the locality the test, but on the subject matter of the contract, making the true criterion the maritime service or the maritime transaction.[108]

The case of *The American Insurance Company, Inc. v. Macondray & Company, Inc.*,[109] illustrates the assumption of jurisdiction by the Court

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[106] 84 Phil. 674 (1949).
[107] G.R. No. L-22238, February 18, 1967, 19 SCRA 379 (1967).
[108] 2 C.J.S. Admiralty, sec. 23 (1936).
[109] G.R. No. L-23222, June 10, 1971, 39 SCRA 494 (1971).

of First Instance over an admiralty case although the amount in controversy was only ₱1,889.58 which should ordinarily have been within the jurisdiction of inferior courts since the amount involved was less than ₱10,000.00.

Sometime in 1962, certain cargoes were imported by Atlas Consolidated Mining and Development Corporation, and were loaded by the shipper, Anor Corporation of New York, on board the S/S "Toledo" at the port of New York for delivery to Atlas at Cebu via Manila. The freight up to Cebu was paid in advance. The plaintiff insured the cargoes against damage up to Cebu in favor of the consignee. The "Toledo" discharged them at the port of Manila, and for their transhipment to Cebu, they were loaded on board the M/S "Bohol". Upon arrival in Cebu, the cargoes were discharged and delivered to the consignee minus one skid of truck parts which was not loaded on the "Bohol". In view of the less, the consignee filed the corresponding claim with appellant, as agent in the Philippines of the "Toledo", which disclaimed liability alleging that the cargoes had been discharged in full at the port of Manila.

A claim for the insured value of the missing cargo was filed with appellee under the covering insurance policy and the same was duly paid, thereby acquiring, by subrogation, the rights of the consignee. Thereafter, the corresponding action was filed to recover from appellant what appellee had paid to the consignee.

The Supreme Court observed that the appellant had raised the question of the lower court's alleged lack of jurisdiction. It held, however, that while it is true that the case involved only the sum of ₱1,889.58, nevertheless it is also true that appellee's action against appellant is one involving admirably jurisdiction, the exercise of which pertains originally and exclusively to Courts of First Instance.

Appellant also contended that appellee had no cause of action against it, and relied on the provisions of paragraph 22 of the bill of lading to the effect that the carrying vessel, her owner and agent, are not liable for loss or damage occuring after discharge of the goods. Appellant's contention rests entirely on the erroneous assumption that the carrying vessel had discharged all the goods covered by the bill of lading in accordance with its obligation. Under the Carriage Contract covering the cargoes in question, it was the duty of the carrying vessel to discharge them at the port of Cebu, via the port of Manila. It is clear, therefore, that the discharge effected at the latter port did not terminate the carrying vessel's responsibility which included the transhipment of the cargoes.

Invoking the provisions of paragraph 11 of the bill of lading, appellant advanced the theory that the action should have been directed against the shipper. It is clear, however, that the shipper complied with its part of the transaction by delivering the lost cargo to the "Toledo" at the port

of New York; thereafter paragraph 11 of the bill of lading operated to make appellant the shipper's forwarding agent whose duty precisely was to have the cargo, upon arrival at the port of Manila, transhipped to the port of Cebu.

PUBLIC SERVICE

Procedure

Well-settled is the doctrine that the Public Service Commission is not a tribunal of justice since its functions are limited and are merely of an administrative character. Equally accepted is the rule that the Commission is not bound by the technical rules of evidence in the conduct of its hearings and investigations.

Under existing jurisprudence, the Commission is not obliged to comply with the rules of procedure established for judicial litigations. As a matter of fact, the law empowers the Commission to adopt its own rules to govern the conduct of all proceedings before it. Only in the absence of such rules promulgated by the Commission are the provisions regulating judicial proceedings observed.

The case of *Generoso Villanueva Transportation Company, Inc. v. Moya*,[109a] offers an interesting trend towards strict observance of the rules of procedure.

On January 13, 1969, respondent Moya filed an application with the Commission to operate a taxicab service in Bacolod City and to any point in the island of Negros. The application, with due notice, was set for hearing on March 31, 1969. At 8:00 o'clock in the morning of said date, the petitioner herein filed a motion to dismiss the application, the motion alleging that the applicant was the holder, by purchase of a franchise the express terms of which prohibit the holder thereof from applying for additional units during the lifetime of such franchise. At the lower left hand corner of page 2 of the motion, the following words appear: "Copy furnished Atty. Jesus Torrecareon, for applicant". The motion does not contain any notice of the time and place of hearing.

At the initial hearing, counsel for petitioner and counsel for another oppositor entered their respective appearances. The hearing was, however, postponed upon their request as a consequence of which the Commission gave oppositors five days within which to file their respective oppositions. Counsel for petitioner did not inform the hearing Commissioner of the filing of the motion to dismiss.

No written opposition was ever filed, and the case was set for hearing without the petitioner being notified of the action.

[109a] G.R. No. L-31620, October 29, 1971.

Subsequently, the Commission granted the respondent a certificate of public convenience to operate a 20-unit taxi service in Bacolod and from that city to any point in the island of Negros.

In its decision, the Commission observed that the motion to dismiss does not show any proof of service to the adverse party. Hence, it ruled that in view of noncompliance with the rudimetary rules of procedure embodied in Section 6, Rule 15 of the Rules of Court designed to protect the substantial rights of party litigants, the "Commission can not take cognizance nor even consider the afore-mentioned motion to dismiss." The case was, therefore, deemed and declared uncontested.

The Supreme Court held that the Commission correctly ruled that the petitioner's motion to dismiss was but a mere scrap of paper, pursuant to the doctrine laid down and reiterated by the Court in *Manakil and Tison v. Revilla*,[110] and *Roman Catholic Bishop of Lipa v. Municipality of Unisan*.[111]

It is well for advocates to understand and remember the clear and uncomplicated rules concerning the filing, service and proof of motions and other pleadings. These rules, which are meant to secure to every litigant the adjective phase of due process of law, apply to proceedings before the Public Service Commission, in the absence of different and valid statutory or administrative provisions prescribing the ground rules for the investigation, hearing and adjudication of cases before it.[112]

Running along the same course is the case of *Arrow Transportation Corporation v. Kintanar*.[113] The private respondent Japitana applied with the Public Service Commission for a certificate of public convenience to operate twenty units of PU automobile service in Cebu. The application was subsequently granted.

Petitioner, a duly authorized operator of a PU automobile service in Cebu moved for a reconsideration of the decision granting the application on the ground that he was affected by the application and that he was not served a copy of the same, as required by the regulations of the Commission and by the terms of the notice itself. Finding the motion for reconsideration well taken, the Commission reopened the case to allow the operator to introduce its evidence.

Interpretation of law

Despite the fact that the Public Service Act was approved in 1936, the law has not yet been exhaustively explored giving occasion for the Supreme Court to interpret the provisions thereof in 1971.

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[110] 42 Phil. 81 (1921).
[111] 44 Phil. 866 (1920).
[112] Sambrano v. Public Service Commission, 66 Phil. 193 (1938).
[113] G.R. No. L-32676, August 31, 1971, 40 SCRA 445 (1971).

The case of *Escoto v. Anunciacion Vda. de Granada*[114] provided the opportunity for scrutinizing the provisions of Section 16 of the Public Service Law.

It appears that respondent Granada instituted an action in March 1964 against Rosita Natividad, operator of several PUJ jitneys, to recover damages for the death of her husband, who was hit by one of said vehicles. The driver had been criminally convicted, and in the civil suit, Granada was awarded an indemnity of ₱70,000 by the CFI of Iloilo on September 11, 1965, and execution pending appeal was ordered. Having been affirmed by the Court of Appeals, the judgment became final when the Supreme Court denied review thereof.

Meanwhile, Natividad and Escoto, on April 27, 1970 appealed to the Public Service Commission for approval of the sale for ₱40,000 of the 77 jitneys and the public service certificates owned by the former to the latter, pursuant to a deed allegedly executed on June 3, 1964, almost six years prior to the petition to the Commission. No objection having been filed despite publication, the Commission approved the transfer on August 5, 1970.

On September 23, 1970, Granada petitioned the Commission for a reopening of the case alleging that the sale was simulated and fictitious. Despite the opposition of Escoto, the Commission granted the petition, and after hearing, found that the sale was presumptively in fraud of creditors under Article 1387 of the Civil Code, providing that: "Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission."

The Commission found that Granada had sustained or was in danger of sustaining injury as a result of the transfer, and in view thereof, revoked its previous approval of the sale and ordered that Escoto's certificates be cancelled. Hence, this appeal by certiorari.

The Supreme Court held that in petitioning the Commission for the approval of the transfer, the applicants did not disclose that a judgment had been previously obtained against the transferor, nor that a writ of execution had been issued against her, thereby rendering the transfer presumptively fraudulent. Nor is it doubtful that the Commission could very well have refused to approve the transfer, since the latter was subject to rescission by the regular courts, leading to a consequent disruption of the public services transferred, to the detriment of the general public. Moreover, the Commission could not but view with disfavor a petition for its approval of a

[114] G.R. No. L-33088, August 31, 1971, 40 SCRA 440 (1971).

transaction of doubtful correctness, for such approbation in a derogatory light, making it appear as if it were cooperating to defraud a creditor.

The Commission had authority to revoke its approval, because under the Public Service Law [115] it could cancel or revoke a certificate "whenever the facts and circumstances on the strength of which a certificate was issued have been misrepresented or materially changed," concealment of material facts being in effect a misrepresentation. The order complained of is proof that the Commission regarded the facts concealed from it as material and that, if known, would have caused it to withhold or deny approval of the transfer in question. In *Pecson v. Pecson*,[116] the Court upheld the Commission's power to cancel a certificate of public convenience upon proof that the holder was a mere dummy of the transferor. The case at bar being very similar in nature, it should be governed by the same principle.

Another case in point is that of *Calderon v. Public Service Commission*.[117]

Private respondent Milo was the grantee of a municipal franchise, and upon application, was granted a certificate of public convenience for the operation of electric service in Pulilan, Bulacan, in a decision of respondent Commission rendered on November 10, 1958.

On February 15, 1967, private respondent sold his franchise and certificate of public convenience to petitioner. The parties then filed with respondent Commission a joint petition for approval of the sale. Respondent Milo likewise executed an affidavit stating that "I have no objection and will not interpose any in the early approval of the sale and transfer subject of the above case."

Associate Commissioner Panganiban, to whom the case had been assigned, delegated the reception of evidence to the chief of the industrial division, Engineer Talavera, who was the same commissioner that received the evidence in the original case granting Milo the subject certificate of public convenience.

Talavera conducted inspections of petitioner's service and received evidence in support of the petition. Thereafter, on the basis of the evidence submitted, Panganiban rendered decision finding the petition in order and approving the transfer and sale of the franchise and certificate of public convenience.

Thirty days after the decision, respondent Milo filed a petition for reconsideration alleging that the decision was incomplete and premature. At the hearing of the reconsideration, respondent added as new ground the fact that Talavera was not a lawyer and could not be authorized to receive the evidence in the case.

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[115] Com. Act No. 146 (1936), sec. 16.
[116] 78 Phil. 522 (1947).
[117] G.R. No. L-29228, April 30, 1971, 38 SCRA 624 (1971).

Respondent Commission granted the reconsideration on the ground that Talavera was not qualified to receive and process evidence under Section 32 of Commonwealth Act 146 which provides that: "The Commission may also, by proper order, authorize any attorneys of the legal division or division chiefs of the Commission, if they be lawyers, to hear and investigate any case filed with the Commission and in connection therewith to receive such evidence as may be material thereto. At the conclusion of the hearing or investigation, the attorney or division chief so authorized shall submit the evidence received by him to the Commission to enable the latter to render its decision."

Within the reglamentary 30-day period, petitioner filed the present petition which the Supreme Court accepted.

The only issue raised was whether or not the decision rendered by Commissioner Panganiban was, on the basis of the evidence received by Talavera, who admittedly is not a lawyer, valid.

The answer of the Court is that respondent Milo must be held to be estopped from assailing the delegation of the reception of evidence to Talavera, and questioning the validity of the decision thus rendered, after not having consented thereto. If respondent were to be consistent with his present posture, he must perforce concede the nullity of the Commission's original decision granting him the subject certificate of public convenience for the reception of evidence in said case was likewise delegated to and received by Talavera.

Whatever defect there may have been in delegating the reception of evidence to a nonlawyer but to Talavera with his long experience and knowledgability as chief of the industrial division must be deemed waived by the parties consent to his designation.

Such defect in the delegation of the reception of evidence by the person designated by the Commission was invariably held to be a procedural defect which was deemed waived if no timely objection were raised by a party. By timely objection is meant when the point is raised at the beginning of the hearing or investigation before the person assigned to receive the evidence, and not after he has completed the investigation. The reason is obvious. If the objection is raised at the beginning of the hearing, and the objection is sustained, the trouble and expense that a trial or an investigation generally entails could be avoided and the case may then be tried by the Commission, or by a member thereof, as the law requires. And if the objection is interposed opportunely and is overruled and the investigation is continued over and above the objection of the opposing counsel, the party so objecting can later reiterate his objection and pray for the nullification of the proceedings for then it is not fair that he be made to suffer the consequence resulting from the mistaken resolution of the officer assigned to receive the evidence.

Powers of the Commission

Like any other body invested with powers, the Public Service Commission has been the object of proceedings intended to question the propriety of its actions and decisions.

In the case of *Tamaraw Taxicab Company, Inc. v. The Public Service Commission*,[118] respondent Dimayuga was the original grantee of a certificate of public convenience for the operation of 45 taxicab units in Manila. In 1959, he leased the certificate to petitioner, and in 1960 sold it to the lessee for ₱112,500. Simultaneously with the execution of the deed of sale, the president of petitioner executed a so-called "undertaking", which recited that: petitioner undertakes to return the certificate of public convenience to Dimayuga; petitioner binds itself to execute a deed of absolute sale to Dimayuga only not later than December 31, 1964; and, the arrangement is known to, and with the conformity of, all the stockholders and directors of petitioner.

The sale to petitioner was approved by respondent Commission; however, in 1961, Dimayuga and the Southern Star filed an application with the Commission alleging that petitioner had sold back the franchise to Dimayuga who in turn assigned it to Southern Star. The applicants prayed that the sale and the assignment be approved, but the petitioner opposed the application alleging that the sale was void having been executed by one who was not authorized for the purpose.

The Commission proceeded to hear the case, but petitioner filed an action for declaratory relief in the CFI of Rizal praying that the sale in question be declared unenforceable for want of authority on the part of the one who signed on behalf of the company.

On October 12, 1961, the Commission rendered a decision approving the application for transfer of the certificate of public convenience to Southern Star, which was found to be a corporation financially qualified to continue operation of the service, without prejudice to the final decision of the court in the action for declaratory relief.

The Supreme Court held that the Public Service Commission did not err in approving the sale of the certificate of public convenience to Dimayuga and the assignment thereof to Southern Star Taxicab Company. The signature of the president of petitioner is not denied. Moreover, the issue of the correctness of the decision has become moot since under the so-called "undertaking", petitioner bound itself to sell the franchise to Dimayuga not later than December 31, 1964.

Respondent Commission properly refrained from resolving the issue of the enforceability of the deed of sale, not only because it had no juris-

[118] G.R. No. L-19362, August 30, 1971, 40 SCRA 424 (1971).

diction to do so, but also because the issue was pending before the Court.[119] This does not mean, however, that the Commission was totally without jurisdiction to act on the respondents' application for approval and to decide it favorably on a prima facie showing of merit. In the case of *Dagdag v. Public Service Commission*,[120] the Supreme Court said: "Under section 20(g) of the Public Service Act, the Commission has the power and authority to approve a sale or transfer of a certificate of public convenience if (1) there are just and reasonable grounds for making the transfer; and, (2) the sale or transfer is not detrimental to the public interest. The fact that the question of the validity of the transfer, or the title or ownership over the franchise, is pending determination in the courts, does no deprive the Commission of the power to approve the transfer provisionally where these conditions set by the law are satisfied, in order to protect the public interest..."

Once again, the prior operator rule or established operator rule surfaced in one of the cases decided by the Supreme Court during the year in review. This doctrine was discussed in the case of *Blanco v. Manalo, et al.*[121]

It appears that a total of 357 applications to operate taxicab units were filed separately by individual applicants with the Public Service Commission. Fifty-nine of them were filed by taxicab operator, while the remaining 298 were filed by nonoperators praying that they be authorized to operate the number of taxicab units applied for separately by each of them in the city of Manila and suburbs. Fifty-seven applications were dismissed for failure of the applicants to appear on the date of the hearing while three others were dismissed upon petition of the applicants themselves. Severally oppositions to the applications were filed with the Commission.

After proper notice by publication to all parties concerned, all the applications were heard jointly upon agreement of the parties. Upon the evidence presented, the Commission found that there existed public necessity for the operation of additional taxicab units in the city of Manila and suburbs and that all the applicants had the necessary financial capacity to acquire and operate whatever number of units would be awarded to each of them. The Commission, however, authorized only 350 additional taxicab units instead of the 14,995 applied for.

Resolving the question of who among the applicants should be the awardees in the allocation of 350 units the Commission said:

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[119] Hoc Lian Ho Dry Goods Club v. Meralco, 63 Phil. 804 (1936); Dagdag v. Public Service Commission, 104 Phil. 162 (1958); Batangas Laguna Tayabas Bus Co. v. Public Service Commission, G.R. Nos. L-25994, L-26004, L-26046, August 31, 1966, 17 SCRA 1111 (1966); Gray v. Kiungco, G.R. No. L-25222, September 27, 1968, 25 SCRA 216 (1968).

[120] 104 Phil. 162 (1958).

[121] G.R. No. L-21842, May 29, 1971, 39 SCRA 50 (1971).

"In the case of *Bohol Land Transportation Co. v. Jureidini*,[122] the Supreme Court ruled that 'before granting a certificate of public necessity and convenience to a transportation company or common carrier on land, there being another with a proper certificate the latter should be given an opportunity to improve its service, if deficient or inadequate,' and in the case of *Yangco v. Esteban*,[123] (58 Phil. 345), the Supreme Court laid down the following doctrine: 'Where two operators are more than serving the public, there is no reason to permit a third operator to engage in competition with them x x x.' Furthermore, the Supreme Court stated 'being old operators, unquestionably able and ready to increase their units, the petitioners are entitled to protection and priority as against new operators.[124]

"In view of the fact that applicant-operators who appeared are willing and capable to increase their equipment, we believe that in justice to them, they should be entitled to preference than the new applicants. The present applicant-operators are entitled to be given every opportunity to improve their services as they have not been making good business lately due to the recent increase in the prices of cars, spare parts and fuel which prompted the Commission to grant them an increase in fares . . . in order to allow them a fair and reasonable return for their investments. . . . Considering the fact that the Commission has actually only 92 transportation inspectors in the field distributed throughout the country, we believe that with the maintenance of the present number of taxicab operators, there will be no additional burden in the exercise of its power of supervision." x x x.

The Commission approved the applications of the taxicab operators and allocated amongst them the 330 additional units in proportion to the number of units they were then operating.

From said decision, petitioner appealed by filing with the Supreme Court the present petition for review.

The Supreme Court noted that it is petitioner's contention that, as the taxicab operators-applicants had sold and/or assigned their franchises, in whole or in part, and had violated the Commission's rules and regulations, the Commission should have held that they were estopped to claim, and/or that they have waived their right to, and/or that they had lost their right to preference in the allocation of the 330 additional taxicab units authorized in the decision appealed from.

On the above issues, the Commission ruled that the taxicab operators-applicants had the right, subject to the Commission's approval, to sell, in whole or in part, their respective franchises or certificates of public convenience which were just like any other ordinary property. While apparently the Commission believed petitioner's claim that some of the operators-applicants had sold some of their taxicab units, it held nevertheless that there was no sufficient evidence to show that these sales constituted what the

[122] 53 Phil. 560 (1929).
[123] 58 Phil. 345 (1933).
[124] Encarnacion Elchico v. Gallardo, G.R. No. L-4860, September 5, 1960.

Commission called "trafficking". By this term, the Commission most probably had in mind the case of parties who apply for and are authorized to operate taxicab units, not to render service to the public but to engage in speculation by thereafter selling said units and asking for authority to operate additional ones. The Court agrees with the Commission that the record does not show that anyone of the operators-applicants had been guilty of this practice.

The appealed decision likewise shows that the Commission found that the taxicab operators-applicants had not been making good business lately. This makes the appealed decision fall within the ruling in the case of *Manila Yellow Taxicab v. Public Service Commission*,[125] to the effect that no preference should be granted to present and actual taxicab operators in the allowance of additional authorized units in the absence of evidence of the resultant loss to them should a new applicant be granted the franchise applied for or a portion of the aforesaid additional units.

The decision in the *Blanco* case is simply an affirmance of the "prior operator rule." As aptly stated in the case of *Tan Sima v. Hacbang*,[126] the purpose of the prior operator rule is to prevent ruinous and wasteful competition in order that the interests of the public may be conserved and preserved. The government having taken over the supervision of all public utilities, so long as an operator with a prior license complies with the terms and conditions thereof, as well as the reasonable demands of the public, it is the duty of the Commission to protect rather than destroy its investment by the granting of a second license to another person over the same route of travel.

What is the nature of a provisional permit to operate a public service? This question was posed in the case of *Pangasinan Transportation Company, Inc., and Philippine Rabbit Bus Lines, Inc. v. Pampanga Bus Company*.[127]

The Pampanga Bus Company (Pambusco) filed with the Public Service Commission an application, which was twice amended, for a certificate of public convenience to operate a PUB service on the Baguio City-Bonifacio Monument, Caloocan City line. The petitioners herein filed their respective oppositions to the application.

After several postponements, Pambusco finally presented on September 16, 1964 its proof of publication and service of the pleadings to the affected oppositors and on October 26, 1964 its witness who testified on the alleged public need for additional bus service on the Baguio City-Manila run.

On March 23, 1965 and while the application for the certificate of public convenience was pending, Pambusco filed with the Commission an

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[125] G.R. No. L-2875 3114-3208 October 31, 1951, 90 Phil. 301 (1951).
[126] 58 Phil. 16 (1933).
[127] G.R. No. L-25023, February 24, 1971, 37 SCRA 588 (1971).

application for a provisional permit to operate a PUB service "between Baguio and Bonifacio Monument and intermediate points and vice versa". After learning of the application, the petitioners asked for an opportunity to oppose the same but the Commission instead proposed a "check" of the volume of passenger traffic on the proposed line for a period of thirty days. The parties accordingly agreed to hold the hearing in abeyance pending the results of the scheduled check.

A few days after the completion of the check, the Commission issued an order granting Pambusco a provisional permit to operate a PUB service not on the Baguio City-Bonifacio Monument run but on the Baguio City-San Fernando, Pampanga run.

On September 29, 1965, the oppositors filed the instant petition for certiorari, alleging abuse of discretion on the part of the Commission in issuing the order granting the provisional permit.

In 1966, Pambusco filed with the Commission an application to amend its certificate of public convenience so as to extend its Cubao, Quezon City-San Fernando, Pampanga line to include the San Fernando, Pampanga-Baguio City line. Inspite of opposition, the Commission allowed Pambusco to operate ten auto-trucks on the Cubao, Quezon City-Baguio City route.

Philippine Rabbit then contended that dismissal of the instant petition would in effect revive the provisional authority to Pambusco to operate on the Baguio City-San Fernando line.

The Supreme Court held that any correction of the errors allegedly committed by the Commission in issuing the order complained of granting to Pambusco provisional authority to operate on the Baguio City-San Fernando line would have no practical value and effect.

Philippine Rabbit overlooks the fact that said provisional authority "shall be valid only for a period of 6 months from date" hereof. Dismissal of the petition at bar would therefore not revive and render effecttive the provisional permit, for the same has, by the mere lapse of time, expired and ceased to be valid.

Petitioner also loses sight of the fact that Pambusco operates a PUB service on the Quezon City-Baguio City line by virtue of the amendment of its certificate of public convenience. It is easily perceivable that this defeats the very purpose for which the petitioners sought to enjoin Pambusco from complying with the order granting the latter provisional permit to operate on the San Fernando, Pampanga-Baguio City line.

Whether or not the Public Service Commission may grant a temporary permit to operate a public service is no longer an open question. In the leading case of *Javellana v. La Paz Ice Plant & Cold Storage Company*,[127a]

[127a] 64 Phil. 983.

it was stressed that where the case cannot be decided at once, the Commission may issue a provisional permit to meet an urgent public need.

An order of a commissioner of the Public Service Commission can not be based on a vacated ruling or decision. This, in capsule form, is the gist of the decision in the case of *Arrow Transportation Corporation v. Kintanar*,[128]

Respondent Japitana applied with the Public Service Commission for a certificate of public convenience to operate 20 units of PU automobile service in Cebu. Hearing was set for April 8, 1970, and notices thereof were published in newspapers of general circulation in Cebu. No opposition having been filed, the application was considered an uncontested case and heard ex parte before respondent Commissioner Kintanar, who ordered the issuance of the certificate of public convenience applied for.

Petitioner, a duly authorized operator of a PU automobile service in Cebu, filed on May 16, 1970 a motion for reconsideration, alleging that it was affected by the application but had not been served with a copy thereof nor with a copy of notice of hearing, as required by the regulations of the Commission and by the terms of the notice itself.

On June 18, 1970, the Commission *en banc,* including respondent Kintanar, granted the motion for reconsideration, reopening the case and returning it to the Second Division of which respondent was a member "with the end in view of allowing the oppositor to introduce its evidence."

The decision of Kintanar granting Japitana's application stated that it would become final 30 days after notice thereof to the applicant, or after April 30, 1970. On July 21, 1970, Japitana filed a petition with the Commission alleging that he was supposed to register 20 units under his certificate but that he had only five then available, and praying that he be given an extension to register the twenty units. Overruling the opposition of petitioner, respondent Kintanar issued an order on August 5, 1970 granting an extension of 60 days. The instant petition for certiorari was filed after the motion for reconsideration of petitioner was denied.

The Supreme Court observed that the order complained of purported to extend the period for the implementation of a decision which had been vacated, precisely so that petitioner could file its opposition and present its evidence.

It held, however, that there was nothing to extend insofar as the period for registration was concerned. It is pointless to speak of the authority of the Commission to grant provisional permits for the operation of public utilities, because no such provisional permit was given. The order of August 5 was not one, but simply a grant of extension of time to register a number of units by virtue of a decision which had become nonexistent for that

[128] G.R. No. L-32676, August 31, 1971, 40 SCRA 445 (1971).

purpose. To consider that order as in effect a provisional permit would be inconsistent with the sense of the resolution of the Commission *en banc* granting petitioner's motion to set aside the decision and ordering that the case be set for hearing *de novo* with notice to said petitioner.

Respondent's contention that the reception of evidence in contested cases may be delegated to one commissioner is beside the point. It is not his power to receive evidence that is questioned, nor even his power to issue ancillary orders in the course of the hearing. For the order complained of, assuming that it is incidental in character, is incidental not with respect to reception of evidence but with respect to a decision that no longer exists.