AMNESTY PROCLAMATION

Scope of Amnesty Proclamation No. 76, Series of 1948.

FACTS: Defendants G.O. and A.H. appealed from a judgment of the Court of First Instance of Quezon convicting them of the crime of murder. The victim, a former Huk, was continuously in touched with the MP's, received money from them and actually caused the arrest of two Huks. Consequently, he was ordered executed by the Huk command as a spy.

HELD: His execution by order of the Huk command should be considered, under Amnesty Proclamation No. 76, as an act incident to or in furtherance of the commission of the crimes of rebellion or sedition, and, therefore, covered by its provisions. As both G.O. and A.H. have duly filed their applications in time, they are entitled to the benefits of the amnesty, although they were already under detention when the amnesty was proclaimed. Judgment reverse. (PEOPLE *vs.* OBENIA, G. R. No. L-4218, Prom. May 19, 1952.)

COMMERCIAL LAW

CORPORATION LAW

Test of Nationality of a Corporation.

FACTS: During the Occupation, the deposits of two American-controlled corporations in the Philippine Trust Co. were ordered transferred to the Bank of Taiwan by the Japanese authorities. After the war, the checks covering these deposits were transferred by the corporation to the herein plaintiff who now seeks the payment of said deposits from the Philippine Trust Co. One of plaintiff's contentions is that said corporations cannot be classified as enemy corporation because some of the shares of each belong to a Filipino stockholder.

HELD: The transfer by the defendant Philippine Trust Co. of the deposits of pre-war depositors to the Bank of Taiwan as depository of the Bureau of Enemy Property Custody of the Japanese Military Administration, upon orders of the Japanese Military Authorities released the defendant bank from its obligations. Furthermore, the fact that certain shares of stock are owned by a Filipino stockholder does not change the nationality of said corporation inasmuch as the nationality of a private corporation is determined by the character or citizenship of its controlling stockholders. (S. DAVIS WINSHIP *vs.* PHILIPPINE TRUST CO., G. R. No. L-3869, January 31, 1952.)

Distinction between Corporation and Stockholder.

FACTS: Defendant claims that Jose Araneta was her agent in he sale and at the same time the president of Gregorio Araneta, nc. Trial court distinguished between Jose Araneta, the agent, nd, Gregorio Araneta, Inc. Defendant claims that the fiction of orporate entity distinct from its stockholders should be disregarded vhen such is used to commit fraud or an illegal act.

HELD: Gregorio Araneta, Inc. had long been organized and

engaged in real estate business. The corporate entity was not used to circumvent the law or perpetrate a deception. The contract and the roles of the parties to it were exactly as they purported to be and were fully revealed to the seller, Paz Tuason. To disregard the fiction of a distinct corporate entity would in this case not prevent the commission of a fraud but pave the way for the evasion of a legitimate and binding commitment by the seller. The courts will not ignore the corporate entity to further this perpetration of a fraud. (GREGORIO ARANETA, INC. *vs.* PAZ TUASON DE PATERNO ET AL., G. R. No. L-2886, August 22, 1952.)

Consolidation of Corporations sanctioned by the Corporation Law (Sec. 28½).

FACTS: Plaintiffs as minority stockholders of the L.T.B. Co. instituted an action to restrain its Board of Directors from carrying out a resolution approved by 92½% of the stockholders, authorizing said Board of Directors to take the necessary steps to consolidate the properties and franchises of the L.T.B. Co. with those of the B.T. Co. on the ground that the proposed consolidation was illegal because the unanimous vote of the stockholders was not secured. The lower court found that the controversial proposed acts to be performed by the Board of Directors are within the authority granted under Sec. 28½ of the Corporation Law and dismissed the complaint, from which judgment plaintiffs appealed.

HELD: From the evidence presented, it is apparent that the purpose of the resolution is not to dissolve the L.T.B. Co. but merely to transfer its assets to a new corporation in exchange for its corporation stock. This comes squarely within the purview of section 28½ of the corporation law which provides among others, that a corporation may sell, exchange, lease or otherwise dispose of all its property and assets, including its good will, upon such terms and conditions as its Board of Directors may deem expedient when authorized by the affirmative vote of the shareholders holding at least ⅔ of the voting power. The words "or otherwise disposed of" is very broad and in a sense covers a merger or consolidation. (REYES ET ALS. *vs.* BLOUSE ET ALS., G. R. No. L-4420, May 19, 1952.)

INSURANCE

Unjustifiable refusal to accept payment of premium does not cause the lapse of the policy.

FACTS: On April 15, 1940, the defendant American corporation ssued its twenty-year endowment policy insuring the life of C.G. ınd designating plaintiff as the beneficiary. The premiums for the irst two years were paid. The premium accruing April 15, 1942 vas not actually paid, but there was tender of payment which was ıot accepted because at the time it was tendered the office was losing for the day on account of the threat of bombing by Japanese planes.

HELD: There is no question that under the terms of the policy, ıon-payment of premiums on time would cause the lapse thereof. There is no question that the annual premium for same policy was ue and payable on April 15, 1942 there being no allegation as to ny cash surrender value from which premium could be advanced y the insurer.

War is no excuse for non-payment, but in this case the insurer efused to accept it for the reason above stated, and such refusal as not justified. The insurer, therefore, may not assert non-payıent of the premium as a defense to an action on the policy.

The act of the insurer or his agent in refusing the tender of a remium properly made, will necessarily stop the insurer from claimg a forfeiture from non-payment. (ALICIA S. GONZALES *vs.* ASIA IFE INSURANCE COMPANY, G. R. No. L-5188, 1952.)

Effect of Failure of Insurer to notify Insured of opening of its fice during the war.

FACTS: Ramon Gonzaga was served a 20-year endowment policy r ₱11,000.00 on September 26, 1939, and paid the agreed yearly emium for three consecutive years, after which war broke out. olicy however continued in force up to June 12, 1943, under its tomatic premium loan clause. During the Japanese occupation, fendant opened in the house of a Filipino employee in Ermita, r the purpose of receiving premiums from their policy holders. efendant, however, failed to advise the insured of the defendant's w address.

HELD: In the face of Japanese military duress, the failure of the fendant to advise the insured of their new address did not work a forfeiture of its right to have the premium satisfied promptly. ıe defendant's opening of an interim office partook of the nature a privilege to the policy holders to keep their policies operative her than a duty to them under the contract. (FIDELA SALES DE

GONZAGA *vs.* CROWN LIFE INSURANCE Co., G. R. No. L-5197, March 20, 1952.)

"Reinsurance" within meaning of Sec. 202-C of Insurance Law; foreign insurance company may not withdraw certificate of authority pending claim against it.

FACTS: Petitioners, foreign insurance companies doing business in the Philippines, insured properties of Yu Hun & Co., which properties were later burned. Yu Hun sued to recover insurance upon insurers' refusal to pay. Pending suit, insurers asked for permission to withdraw their certificates of authority, claiming that their "liabilities" to Yu Hun have been "reinsured" in accordance with section 202-C of the Insurance Act, as amended by R. A. No. 447. Question is whether petitioners may be allowed to withdraw under the said section.

HELD: Section 202-C has three parts. The first speaks of liabilities of the foreign insurer to policy holders and creditors, the second and third, of its outstanding policies, i.e., the policies on which no claim has as yet arisen because the risk insured against has not yet happened. Present case falls under the first part.

"Reinsurance", as contemplated by Sec. 202-C, applies to "a contract between two insurers by which the one assumes the risk of the other and becomes substiuted to its contracts, so that *on the assent* of the original policyholders, the liability of the first insurer ceases and the liability of the second is substituted." Since Yu Hun never agreed to the reinsurance, the original insurers, petitioners herein, are not released. It is fundamental in our civil laws that the debtor (insurer) may not have himself substituted by another without the consent of the creditor (policyholder). (SCOTTISH UNION & SCOTTISH ASSURANCE CORP. LTD. ET AL. *vs.* THE HON. HIGINIO MACADAEG & YU HUN & Co., G. R. Nos. L-5717, L-5751, and L-5756, November 19, 1952.)

Condition Precedent to Withdrawal of Foreign Corporation.

The procedure under R. A. No. 447 is intended to govern the conduct of the Insurance Commissioner in the return of deposits upon withdrawal. The liquidation of liabilities or rights of claimants against foreign corporations is regulated by the procedure under such law. The condition precedent for withdrawal is the discharge of liabilities to policyholders and creditors. Sec. 202-C, as amended by R. A. No. 447 applied. (SCOTTISH UNION & NATIONAL INSURANCE CO. ET ALS. *vs.* THE HON. HIGINIO MACADAEG ET AL., G. R. Nos. L-5717, 5751, and 5756, August 30, 1952.)

PUBLIC SERVICE LAW

Conversion of emergency to permanent certificate of public convenience; increase of equipment and trips.

FACTS: B.M. Co. was an old operator of buses in the Luzon Line. E.F., an emergency operator in the same line petitioned the Public Service Commission (PSC) for a regular certificate of public convenience and an increase of trips and equipment. Petition was opposed by B.M. Co.. At the hearing E.F. adduced evidence while B.M. Co. proposed that the PSC should check the line. B.M. Co. claims that E.F.'s petition should be denied because they agreed that the denial or approval of the same was to depend upon the result of the checking. The checking was stopped because of dissidents. The PSC and E.F. deny this claim, state that the real agreement was on the evidence already submitted and the records of the PSC.

HELD: Regardless of the understanding between the parties, the best evidence of the volume of traffic is the checking of the same. If it is true that the checking was stopped by the dissidents the actual volume has yet to be determined. The operation of colorum cars should first be stopped, then that would be the appropriate time to increase the trips and equipment of E.F. Besides B.M. Co. has the capacity to absorb any increase in traffic.

However, although the older operator, B.M. Co. cannot be issued the corresponding certificate of public convenience because notwithstanding the opportunity given to it, it failed to increase its own equipment. New operators should be given a chance to give the service needed by the public. (THE BAGHRACH MOTOR CO. *vs.* ENCARNACION EL CHICO VDA. DE FERNANDO, G. R. No. L-4315, July 9, 1952.)

Evidence of citizenship.

Where the applicant alleged in a petition and declared as a witness before Public Service Commission the fact of his Filipino citizenship and that his father was a registered voter, there is suf-

ficient evidence of his citizenship. (ZAMBOANGA TRANS. ET AL. *vs.* FARGAS, G. R. No. L-4604, March 28, 1952.)

When modification of an order of the Public Service Commission not justified.

FACTS: NA (petitioner herein) filed an application for a certificate of public convenience to install and operate an ice plant with a cold storage service *in the city of Iloilo* and with the right and authority to sell ice not only within the said city but also throughout the Province of Iloilo. EJ (respondent herein) opposed. On March 28, 1950, the Public Service Commissior. (PSC) rendered a decision approving NA's application. Upon motion for reconsideration filed by EJ, the PSC modified its decision in the sense of allowing the applicant the right to install her ice plant somewhere within the Province of Iloilo and *notwithin the city* as allowed her in the original decision.

HELD: This modification cannot be made. In the first place, all the evidence submitted by NA was all aimed at establishing that public necessity and convenience warranted that the ice plant be installed *in said city*. No effort has been made by EJ to show that any particular town in the Province of Iloilo would offer enough demand to warrant the operation of an ice plant in order to make worthwhile a huge investment in that place. In other words, the *place* of the establishment of the ice plant was never brought out in the pleadings (including EJ's motion for reconsideration) or in the evidence.

Moreover, the petitioner has already made a huge investment by acquiring the necessary site for the ice plant and the buildings and machineries to complete the factory. This investment was made in line with the decision of the PSC dated March 28, 1950 and, hence, was made in good faith. The modification made by the PSC is unfair and unjust as it ignores the big investment already made by petitioner. (NATIVIDAD ARIAGA *vs.* ELPIDIO JAVELLANA, G. R. No. L-4821, December 17, 1952.)

Delegation of authority to receive evidence to an individual other than a commissioner improper; effect of failure to interpose timely objection thereto. Section 3, *Public Service Law as amended by Republic Act No.* 178.

FACTS: Application for a certificate of public convenience to install and operate an ice plant. According to the practice then prevailing in the PSC was authorized to receive the evidence of both the applicant and oppositor. On the strength of the evidence thus received, the PSC rendered its decision. Oppositor (petitioner herein) filed a motion for reconsideration, and while this motion was pending consideration, petitioner filed a motion to set aside the decision invoking the ruling recently laid down by the Supreme Court in the case of Silva *vs.* Cabrera, G. R. No. L-3629.

HELD: In the Cabrera case, it was held that the reception of evidence in a contested case may be delegated only to one of the commissioners and to no one else and that if this procedure is not followed the proceedings are null and void. But this requirement is merely procedural in nature and could be waived by a party if no timely objection is interposed by him. If the objection is interposed after the evidence has been presented, it comes late and should be disregarded.[1] (R. J. ENRIQUEZ & Co., *vs.* ATILIANO M. ORTEGA, G. R. No. L-4865, December 22, 1952.)

THE SECURITIES ACT

Power of the Securities and Exchange Commission to Investigate Violations of the Corporation Law by a Corporation: Section 1, *C. A. No.* 287.

FACTS: Upon complaint of NA and PR, the SEC demanded from respondent MP that he allow the investigation of the books of the corporation, International Colleges, Inc., by the SEC. Respondent refused. Hence, the petitioner filed an action against the respondent to declare him in contempt of the Commission. Found guilty, respondent appealed on the ground that the SEC has no power to investigate the books of a private corporation, said power resting exclusively with the President of the Philippines.

HELD: The power conferred upon the SEC by C. A. No. 287

[1] Section 3 of Republic Act No. 723 amending section 32 of the Public Service Law provides that "the Commission may also, by proper order, authorize any of the 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." By express provision of the Act, R. A. No. 723 was to take effect on the date of its approval on June 6, 1952.

does not refer only to matters relating to the registration of corporations and all other forms of associations but to all violations of laws by corporations because, under C. A. No. 287, the SEC is: (1) Entrusted with the powers, duties, and functions theretofore performed and exercised by the Bureau of Commerce in connection with the registration of corporations and all other forms of associations and (2) charged with the enforcement of all laws affecting corporations and associations, with the exception that the power now exercised by other bureaus and offices over certain classes of corporations shall remain unaffected. Hence, the officers of a corporation may be punished for contempt for failure to comply with an order of the SEC to have its corporate books and records examined by the Commission. (SECURITIES AND EXCHANGE COMMISSION *vs.* MARCOS PIMENTEL, G. R. No. L-4228, January 23, 1952.)

THE NEGOTIABLE INSTRUMENTS LAW

What is "reasonable time" for presenting check for payment; effect of failure to present check for payment within a reasonable time upon liability of endorser.

FACTS: On March 13, 1948 at the Surigao Branch of the PNB, Seeto presented a check for ₱5,000 drawn by Gan Yek Kiao against the Cebu Branch of the Philippine Bank of Communications. Check was dated at Cebu on March 10, 1948 and was payable to cash or bearer. Seeto made general and unqualified endorsement of the check and PNB branch gave him ₱5,000. Check was mailed to PNB's Cebu branch on March 20 and was presented to the drawee bank on April 9 but was dishonored for insufficient funds. PNB after failing to recover ₱5,000 from Seeto instituted action in lower court claiming that defendant had given assurance to the PNB agency in Surigao that the drawee of the check had sufficient funds and that on these assurances agency delivered the ₱5,000. Lower court ruled against defendant Seeto.

On appeal to Court of Appeals, latter relying on Sec. 143 and 144 of Negotiable Instrument Law, held that PNB was guilty of unreasonable delay in presenting check for payment.

HELD: Secs. 143 and 144 are not applicable in this case inasmuch as they refer to presentment for acceptance. However, Sec. 186 of Negotiable Instrument Law provides that "a check must be presented for payment within a reasonable time after issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay." Silence of Sec. 186 as to endorser is due to the fact that his discharge is covered by Sec. 84 to the effect that when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. While the drawer is discharged only to the extent of loss covered by delay, endorser is wholly discharged thereby irrespective of any question of loss or injury. Check was cashed on March 13. It was not mailed to the Cebu branch until March 20 or 7 days later. Even allowing 10 days for check to reach Cebu branch, or until March 30, another week was allowed to elapse before presentment of April 9. (PHILIPPINE NATIONAL BANK *vs.* BENITO SEETO, G. R. No. L-4388, August 13, 1952.)