The second theory of the plaintiff contradicts its first theory for while the first theory presupposes transfer of the ownership, the second theory is that the plaintiff still retained ownership of the sugar and was therefore entitled to the release thereof for sale.

The allegation of negligence by the Bank not having been pleaded in the lower court, the same cannot be the subject of appeal.

The decision appealed from is affirmed. (*Jose R. Martinez, Etc. vs. Philippine National Bank, G. R. No. L-4080*, prom. Sept. 21, 1953.)

PUBLIC UTILITY OR PUBLIC SERVICE; STEVEDORING OR LIGHTERAGE AND HARBOR TOWAGE BUSINESS ALTHOUGH UNDER LEASE CONTRACT IS A PUBLIC SERVICE OR UTILITY COVERED BY THE PUBLIC SERVICE LAW.

FACTS: The Luzon Stevedoring Co., Inc. and the Visayan Stevedore Transportation Co. were engaged in the stevedoring of cargo such as sugar, oil, fertilizer and other commercial commodities, loading such in their barges and towing them by tugboats from Manila to various points in the Visayan Islands, under lease contracts. For the service freightage charges per unit were made. But there was no fixed route in the transportation, the same being left at the indication of the owner or shipper. Upon complaint of the Philippine Shipowners' Association charging that the said companies were engaged in the transportation of cargo in the Philippines for hire or compensation without authority or approval of the Philippine Service Commission resulting in ruinous competition, said Commission rendered decision restraining them from further operating their watercraft to transport goods for hire or compensation between points in the Philippines until the rates they propose to charge are approved by said body.

The petitioners seek the review of the decision, contending that if the Public Service Act were to be construed in such a manner as to include private lease contracts, said law would be unconstitutional, thus implying that to prevent the law from being in contravention of the Constitution, it should be so read as to embrace

only those persons and companies that are in fact engaged in public service, i.e., who offer their services indiscriminately to the public.

HELD: Under the definition of the term "public service" in Section 13(b) of the Public Service Law (Com. Act No. 146) it is not necessary that one holds himself out as serving or willing to serve the public in order to be considered as performing a public service.

There is no fixed definition of what constitutes public service or public utility and it is not always necessary, in order to be a public service, that an organization be dedicated to public use, i.e., be ready and willing to serve the public as a class. It is only necessary that it must in some way be impressed with a public interest; and whether the operation of a given business is a public utility depends upon whether or not the service rendered by it is of a public character and of public consequence and concern (51 C. J. 5). Thus a business may be affected with public interest and regulated for public good although not under any duty to serve the public (53 Am. Jur. 572). Public utility, even where the term is not defined by statute, is not determined by the number of people actually served. Nor does the mere fact that service is rendered only under contract prevent a company from being a public utility (43 Am. Jur. 573). On the other hand, casual or incidental service devoid of public character and interest, is not brought within the category of public utility. The demarcation line is not susceptible of exact description or definition, each case being governed by its peculiar circumstances.

Commonwealth Act No. 416 declares in unequivocal language that an enterprise of any of the kinds enumerated therein is a public service if conducted for hire or compensation even if the operator deals only with a portion of the public or limited clientele. The business complained of was a matter of public concern. The Public Service Law was enacted not only to protect the public against unreasonable charges and poor, inefficient service, but also to prevent ruinous competition. That is the main purpose in bringing under the jurisdiction of the Public Service Commission motor vehicles, other means of transportation, ice plants, etc., which cater to a limited portion of the public under private agreements. To the extent that such agreements may tend to wreck or impair the financial stability and efficiency of public utilities who do offer service to the public in general, they are affected with public interest and come within the police power of the state to regulate.

The appealed order of the Public Service Commission is affirmed. (*Luzon Stevedoring Co., Inc., et al. vs. Public Service Commission, G. R. No. G*-5458, prom. Sept. 16, 1953.)

REMEDIAL LAW

EVIDENCE; "FALSUS IN UNO, FALSUS IN OMNIBUS", SCOPE OF.

FACTS: At about midnight in the evening of December 23, 1949, while Norberto Ramil and his wife, Jacinta Galasinao, were sleeping in their house situated not far away from the municipal building of Antatet (now Luna), Province of Isabela, they were awakened by the barking of dogs and the grunting of pigs. As Ramil got up and walked towards the window to see what the matter was, he was met by two persons who levelled their guns at him, demanding that he produce his pistol. Norberto answered that he had none and the men fired at him, resulting in the death of the latter. As the wife and the two children cried for help, the intruders cowed them to silence, threatening them with death should they shout. The intruders then went inside the bedroom and ransacked the contents of the trunk which contained their valuables. Cash worth ₱10 and jewels worth ₱180 were taken away.

The intruders were later identified to be Balbino Gabuni, Juanito Dasig, Marcelino Dayao, and Sergio Eduardo. Prosecuted for the crime, the accused were convicted on the testimony principally of Mallillin, corroborated by that of Andres Bumanglag, and that of the wife of the deceased.

The accused appealed, contending that the testimony of Mallillin, who they alleged was one of the members of the group, and whose confession of the occurrence was obtained by a promise by Constabulary Lieutenant Panis that he would be excluded from the information and would be made a state witness should he tell the whole truth, is not admissible and neither should it be made admissible against the appellants. The appellants further claim that Mallillin was an accomplice in the crime and his testimony contains flaws in many particulars, so that the maxim "falsus in uno falsus in omnibus" should be applied to the whole of his testimony, so that the judgment of conviction would then have no leg to stand on.

HELD: We take advantage of this opportunity to explain the true scope of this much invoked and abused rule of *falsus in uno, falsus in omnibus.* Professor Wigmore states that this rule ceased to be the rule in the 18th century. He criticizes the broad rule as unsound because it is not true to human nature; that because a person tells a single lie, he is lying throughout his whole testimony, or that there is strong possibility that he is so lying. The reason for it is that once a person knowingly and deliberately states a falsehood in one material aspect, he must have done so as to the rest. But it is also clear that the rule has its limitations, for when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. Because though a person may err in memory or in observation in one or more respects, he may have told the truth as to others. (*III Wigmore, Secs.* 1009-1015, *pp.* 674-683.) There are, therefore, these requirements for the application of the rule, i.e., that the false testimony is as to a material point, and that there should be a conscious and deliberate intention to falsify. (*Lyric Film Exchange, Inc. vs. Cowper,* 1937, 36 *O. G.* 1642.)

With the above limitations of the rule in mind, it is clear that the maxim should not apply in the case at bar, for three reasons. First, there is sufficient corroboration on many grounds of the testimony. Second, the mistakes are not on the very material points. Third, the errors do not arise from an apparent desire to pervert the truth, but from innocent mistakes and the desire of the witness to exculpate himself though not completely.

Having found that sufficient admissible evidence worthy of credit proves beyond reasonable doubt the guilt of the appellants, the decision appealed from is affirmed. (*People vs. Juanito Dasig, et al., G. R. No. L*-5273, prom. Aug. 25, 1953.)

IN PETITIONS FOR DISSOLUTION OF CORPORATIONS, COURT OF FIRST INSTANCE HAS JURISDICTION TO ISSUE APPOINTMENT OF RECEIVER.

FACTS: Asuncion Lopez Vda. de Lizares, Encarnacion Lizares