weapon or hands it to another to examine or hold for a moment, or to shoot at some object." (*Sanderson vs. State,* 5 *S. W.* 138; 68 *C. J.* 22.)

In the light of these considerations, it is a mistake to point to the case of United States *vs.* Samson, *supra.* His holding or carrying of his father's gun was not incidental, casual, temporary or harmless. Away from his father's sight and control, he carried the gun for the only purpose of using it, as in fact he did with fatal consequences.

The Samson case and the case at bar differ fundamentally in that in the former, although Samson had physical control of his employer's shotgun and cartridges, his possession thereof was undoubtedly harmless and innocent as evidenced by the fact that apparently he bore them in full view of the people he met and the authorities, unlike in the latter wherein the accused carried same for the purpose of using it.

The penalty of five to ten years' imprisonment for possessing or carrying firearms is not cruel or unusual, having due regard to the prevalent conditions which the law proposes to suppress or curb. The rampant lawlessness against property, person, and even the very security of the Government, directly traceable in large measure to promiscuous carrying and use of powerful weapons, justify the imprisonment which in normal circumstances might appear excessive. The constitutionality of an act of the legislature is not to be judged in the light of exceptional cases, and the law is not to be declared unconstitutional just because of certain circumstances.

Judgment modified accordingly so as to impose the penalty of five years, with the recommendation, however, that the imprisonment be reduced to six months so as not to make the punishment too harsh. (*People vs. Alberto Estoista, G. R. No. L*-5793, prom. Aug. 27, 1953.)

COMMERCIAL LAW

SALES; ENDORSEMENT OF QUEDANS TO CREDITOR TO SECURE INDEBTEDNESS DOES NOT MAKE CREDITOR OWNER OF GOODS COVERED THEREBY; LOSS OF GOODS COVERED BY QUEDANS INDORSED IS BORNE BY INDORSER AND NOT BY INDORSEE.

FACTS: As of February, 1952, the estate of Pedro Rodriguez was indebted to the Philippine National Bank in the amount of ₱22,128.44

representing the balance of the crop loan of the estate for the 1941-1942 sugar cane crop. In said month the administratrix of the estate, upon the request of said Bank through its Cebu branch, delivered and endorsed to the latter two quedans covering 2,198.11 piculs of sugar issued by the Bogo-Medellin Milling Co., although according to the Bank only one quedan covering 1,071.04 piculs was delivered. The sugar covered by said quedans was lost sometime in 1943, due to the last war. In 1948 the above indebtedness was paid to the Bank upon insistence and pressure by said Bank, according to the appellant.

Under the theory that if the Bank did not refuse to release the sugar when the plaintiff asked for it it could have been sold at ₱25.00 per picul or for a total amount of ₱54,952.75, the plaintiff brought this action for the recovery of said sum. After trial, the Court of First Instance of Manila dismissed the complaint on the ground that the transfer of the quedans to the Bank did not transfer the ownership of the sugar, and consequently the loss thereof should be borne by the plaintiff. From said decision the administrator appeals.

The plaintiff contends that (a) the delivery and indorsement of the quedans to the Bank transferred the ownership of the sugar to the latter (Sec. 41, Warehouse Receipts Law) so that the Bank should suffer its loss, on the principle that "a thing perishes for its owner", (b) had the Bank released the sugar in February, 1942, plaintiff could have sold it for ₱54,952.75, from which the loan could have been deducted, the balance to have been retained by plaintiff, and that since the loan was liquidated in 1948, then the whole expected sales price of ₱54,952.75 should now be paid by the Bank to the plaintiff, and (c) that the defendant failed to exercise due care for the preservation of the sugar so that the loss was due to its negligence as a result of which said defendant should bear the loss.

HELD: Where the transaction involved in the transfer of a warehouse receipt or quedan is not a sale but pledge or security, the transferee or indorsee does not become the owner of the goods but he may only have the property sold and then satisfy the obligation from the proceeds of the sale. It is clear, therefore, that at the time the sugar was lost sometime during the war, the estate of Pedro Rodriguez was still the owner thereof, so that said goods are to be regarded as lost on account of the real owner, mortgagor or pledgor.

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.