denied. (*In the Matter of the Petition of Yu Singco vs. Republic of the Philippines, G. R. No. L-6162*, prom. Dec. 29, 1953.)

COMMERCIAL LAW

TRANSPORTATION: IN AN ACTION FOR DAMAGES CAUSED BY THE BREACH OF CARRIER'S OBLIGATION TO CARRY A PASSENGER SAFELY TO HIS DESTINATION IT IS NOT NECESSARY TO PROVE THE NEGLIGENCE OF THE DRIVER IN ORDER THAT LIABILITY MAY ATTACH. THE SALE OR LEASE OF A FRANCHISE WHICH REQUIRES THE APPROVAL OF THE PUBLIC SERVICE COMMISSION IS NOT EFFECTIVE AGAINST THE COMMISSION AND THE PUBLIC, IF MADE WITHOUT THE APPROVAL OF SAID COMMISSION.

FACTS: Tomasita Arca, a school teacher with an annual compensation of ₱1,320 boarded the jeepney driven by Leonardo de Guzman at Tanza, Cavite, in order to go to Cavite City. She paid the usual fare for the trip. While the jeepney was on its way to its destination, it collided with a bus of the Luzon Bus Line causing as a result the death of Tomasita. Tomasita's widower and four children instituted this action against the defendants, owners of the jeepney, praying that they be ordered to pay an indemnity in the amount of ₱31,000, because of the jeepney's failure to transport Tomasita safely to her destination and her resultant death.

Defendants claimed that the present case should be held in abeyance until final termination of the criminal case instituted against the driver of the bus, involving the same issues, who was found by the Provincial Fiscal of Cavite upon investigation to be the one at fault for the collision.

The lower court rendered a decision dismissing the case, holding that defendants are not liable because it was not proven that the collision which resulted in the death of Tomasita was due to the negligence of the driver of the jeepney, whose ownership is attributed to defendants. From this decision plaintiffs have appealed.

HELD: The Court of Appeals affirmed the decision appealed from, but in so doing it predicated its affirmance not on plaintiffs' failure to prove that the collision was due to the negligence of the driver but on the fact that Marcelino Ignacio was not the one operating the jeepney but one Leoncio Tahimik who had leased the jeepney by virtue of a document duly executed by the parties. And not agreeable to this finding, plaintiffs filed the present petition for review.

In their first assignment of errors, petitioners claim that the lower court erred in ruling that to maintain an action for damages caused by the breach of a carrier's obligation to carry a passenger safely to his destination it is necessary to prove that the damages were caused by the negligence of the driver of said carrier. This, they claim, is contrary to the ruling of this Court in the case of Castro v. Acro Taxicab Co.[1] The ruling of the court below on this point having been overruled, we see no reason why the same issue should now be reiterated in this instance.

The second error refers to the person who was actually operating the jeepney at the time of collision. It is claimed that while Marcelino Ignacio, owner of the jeepney, leased the same to one Leoncio Tahimik on June 8, 1948, and that at the time of the collision it was the latter who was actually operating it, the contract of lease was null and void because it was not approved by the Public Service Commission as required by section 16, paragraph h, of the Public Service Law.

There is merit in this contention. The law really requires the approval of the Public Service Commission in order that a franchise, or any privilege pertaining thereto, may be sold or leased without infringing the certificate issued to the grantee. The reason is obvious. Since a franchise is personal in nature, any transfer or lease thereof should be notified to the Public Service Commission so that the latter may take proper safeguards to protect the interest of the public. Thus it follows that if the property covered by the franchise is transferred, or leased to another without obtaining the requisite approval, the transfer is not binding against the Public Service Commission and in contemplation of law the grantor continues to be responsible under the franchise in relation to the Commission and the public. Since the lease of the jeepney in question was made without such approval, the only conclusion that can be drawn is that Marcelino Ignacio still continues to be its operator in contemplation of law, and as such is responsible

[1] 46 O. G. 2028-2029.

for the consequences incident to its operation, one of them being the collision under consideration.

Though section 16, paragraph h, provides in its last part that "nothing herein contained shall be construed to prevent the sale, alienation or lease by any public utility of any of its property in the ordinary course of business", such provision only means that even if the approval has not been obtained the transfer or lease is valid and binding between parties although not effective against the public and the Public Service Commission. That approval is only necessary to protect public interest.

Wherefore, the decision appealed from is reversed and defendant Marcelino Ignacio ordered to pay the plaintiffs the sum of ₱31,000 as damages, with costs. (*Sancho Montoya vs. Marcelino Ignacio, G. R. No. L-5868*, prom. Dec. 29, 1953.)

CORPORATIONS: THE COURT MAY DETERMINE EX-PARTE THE EXISTENCE OF "GOOD CAUSE" IN SECTION 26 OF THE CORPORATION LAW AND "GOOD CAUSE" EXISTS WHEN THE COURT IS APPRAISED OF THE FACT THAT THE BY-LAWS OF THE CORPORATION REQUIRE THE CALLING OF A GENERAL MEETING OF THE STOCKHOLDERS TO ELECT THE BOARD OF DIRECTORS BUT THE CALL FOR SUCH MEETING HAS NOT BEEN MADE.

FACTS: This is a petition for a writ of certiorari to annul the order of the respondent court, issued pursuant to section 26, Act No. 1459, otherwise known as the Corporation Law, and the order of said court denying the motion of said petitioners to have said previous order set aside.

The petitioners aver that the voluntary dissolution of the Daguhoy Enterprises, Inc. and the appointment of Potenciano Gapol, the largest stockholder, as receiver were agreed upon at a meeting duly called. However, Gapol, instead of filing a petition for voluntary dissolution of the corporation, filed a complaint to compel the petitioners to render an accounting of the funds and assets of the corporation, to reimburse it, jointly and severally, for such sum as may be found after the accounting shall have been rendered to have been misspent, misapplied, misappropriated and converted by the petitioner Domingo Ponce to his own use and benefit. Petitioners further aver: that subsequently, Gapol on January 3, 1952 filed a petition praying for an order directing him to call a meeting of the stockholders of the corporation and to preside at such meeting in accordance with section 26 of the Corporation Law; that two days later, without notice to the petitioners and the other members of the board of directors and in violation of the Rules of Court,[1] the respondent court issued the order as prayed for, which petitioners learned of only on February 27; that the election of Juanito R. Tianzon as member of the board of directors was illegal because he was not a member of the Legionarios del Trabajo, as required and provided for in the by-laws of the corporation; that petitioners' subsequent motion to set aside the order of January 5 was denied.

HELD: The only question to determine in this case is whether under and pursuant to section 26 of Act No. 1459, the respondent court may issue the order complained of. Said section provides that on the showing of good cause therefor, the court may authorize a stockholder to call a meeting and to preside thereat until the majority stockholders representing a majority of the stock present and permitted to vote shall have chosen one among them to preside it. And this showing of good cause therefor exists when the court is apprised of the fact that the by-laws of the corporation require the calling of a general meeting of the stockholders to elect the board of directors but the call for such meeting has not been made.

The requirement that "on the showing of good cause therefor," the court may grant to a stockholder the authority to call such meeting and to preside thereat does not mean that the petition must be set for hearing with notice served upon the board of directors. The respondent court was satisfied that there was a showing of good cause for authorizing the respondent Gapol to call a meeting of the stockholders for the purpose of electing the board of directors as required and provided for in the by-laws, because the chairman of the board of directors called upon to do so had failed, neglected, or refused to perform his duty.[2]

[1] Which require that the adverse parties be notified of the hearing of the motion three days in advance.

[2] This may be likened to a writ of preliminary injunction or of

That the relief granted by the respondent court lies within its jurisdiction is not disputed. Having the authority to grant the relief, the respondent court did not exceed its jurisdiction; nor did it abuse its discretion in granting it.

With persistency petitioners claim that they have been deprived of their right without due process of law. But they had no right to continue as directors of the corporation unless reelected by the stockholders in a meeting called for that purpose every even year. They had no right to a hold-over brought about by the failure to perform the duty incumbent upon one of them.[3] If they felt they were sure to be reelected, why did they fail, neglect, or refuse to call the meeting to elect the members of the board? Or, why did they not seek their reelection at the meeting called to elect the directors pursuant to the order of the respondent court?

The alleged illegality of the election of one member of the board of directors at the meeting called by the respondent Gapol as authorized by the court, being subsequent to the order complained of, cannot affect the validity and legality of the order. If it be true that one of the directors elected at the meeting called by the respondent Gapol was not qualified in accordance with the provisions of the by-laws, the remedy of an aggrieved party would be *quo warranto*. Also, the alleged previous agreement to dissolve the corporation does not affect or render illegal the order issued by the respondent court.

The petition is denied, with costs against the petitioners. (*Domingo Ponce and Buhay L. Ponce vs. Demetrio B. Encarnación and Potenciano Gapol, G. R. No. L-5883*, prom. Nov. 28, 1953.)

attachment which may be issued ex-parte upon compliance with the requirements of the rules and upon the court being satisfied that the same should issue. Such provisional reliefs have not been deemed and held as violative of the due process clause of the Constitution.

Delaware is a state that has a law similar to ours and there the chancellor of a chancery court may summarily issue or enter an order authorizing a stockholder to call a meeting of the stockholders of the corporation and preside thereat. This means that the chancellor may issue such order without notice and hearing. (In re Jackson, 9 Del. 279, 81 Atl. 992; In re Gullah, 13 Del. Ch. 1, 114 Atl. 496.)

[3] The by-laws of the corporation in this case provided that the Chairman of the Board of Directors was to call a general meeting of the stockholders to elect the Board of Directors every even year during the month of January.

REMEDIAL LAW

JURISDICTION OF WORKMEN'S COMPENSATION COMMISSION: REPUBLIC ACT 772 CONFERRED UPON THE WORKMEN'S COMPENSATION COMMISSION "EXCLUSIVE JURISDICTION" TO HEAR AND DECIDE ALL CLAIMS FOR COMPENSATION UNDER THE WORKMEN'S COMPENSATION ACT, ON AND AFTER JUNE 20, 1952, SUBJECT TO APPEAL TO THE SUPREME COURT.

FACTS: This is an appeal from an order of Hon. Jesus Y. Perez of the C.F.I. of Bulacan dismissing plaintiffs' complaint for workmen's compensation on the ground that the matter properly falls within the jurisdiction of the Workmen's Compensation Commission.

The fatal accident which befell the husband of the plaintiff occurred in January, 1952, and action was commenced in the C.F.I. of Bulacan in August, 1952. Appellants contend that the date of the accident, and not the date of filing the complaint should be considered because the right to compensation of the laborer or employee or his dependents, like the obligation of the employer to pay the same, begins from the very moment of the accident.

HELD: It is true that the right arises from the moment of the accident, but such right must be declared or confirmed by the government agency empowered by law to make the declaration.

Republic Act No. 772 which took effect on June 20, 1952, conferred upon the Workmen's Compensation Commission "exclusive jurisdiction" to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court.[1]

Appellants further argue that Republic Act No. 772 should not be enforced as to accidents happening before its approval, because it has introduced changes affecting vested rights of the parties. Without going into details, it might be admitted that changes as to substantive rights will not govern such "previous" accidents. But here we are dealing with remedies and jurisdiction which the Legislature has power to determine

[1] Before the passage of said Act, demands for compensation had to be submitted to the regular courts.