HELD: L had no right to the proceeds because, although at the time of the auction he was already a partner in FELCO, yet he was not a creditor. L's motion for intervention, claiming ownership of FB's shares was not the "proper action" defined in Sec. 1, Rule 2, Rules of Court. The court, therefore, acted in excess of its jurisdiction by granting the motion without notice to A & D who were indispensable parties to L's motion. (LEYTE SAMAR SALES CO. *vs.* CEA, G. R. No. L-5963 May 20, 1953.)

TRANSITIONAL PROVISIONS

Rights declared for first time shall have retroactive effect; Exception; Art. 2253 construed.

FACTS: Defendants contend that, while it is true that the four minor defendants are illegitimate children of Nebreda, and under the old Civil Code are not entitled to any successional rights, however, under the new Civil Code they are given the status and rights of natural children and are entitled to the successional rights which the law accords to the latter (Arts. 2264 and 287, new Civil Code), and because these successional rights were declared for the first time in the new Code, they should be given retroactive effect even though the event which gave rise to them may have occurred under the prior legislation (Art. 2253, new Civil Code).

HELD: There is no merit in this claim. Art. 2253 provides that rights which are declared for the first time shall have retroactive effect even though the event which gave rise to them may have occurred under the former legislation, but this is so only when the new rights do not prejudice any vested or acquired right of the same origin. As already stated, the right of ownership of the widow over the lands in question became vested in 1945 upon the death of her husband. The new right recognized by the new Civil Code in favor of the illegitimate children of the deceased cannot, therefore, be asserted to the impairment of the widow's vested right. (USON *vs.* DEL ROSARIO ET AL., G. R. No. L-4963, Jan. 29, 1953.)

COMMERCIAL LAW

CONTRACTOR'S BOND

Watch-man considered laborer under P. A. No. 3959; Owner of house cannot exempt himself from his obligations under P. A. No. 3959.

Where a contractor has been engaged to construct a house, a person employed by such contractor as *watchman* with the obligation to take charge of, and keep watch over, the construction materials during construction of the house, is considered a "laborer" under the provisions of Public Act No. 3959.

A provision in a contract of construction which provides that the owner of the house shall not be responsible for any claim for daily wages not paid by the contractor is null and void and of no effect because contrary to the policy established by Act No. 3959. (FERNANDEZ *vs.* GARCIA AND OCAMPO, G. R. No. L-5527, Jan. 30, 1953.)

CORPORATIONS

Capital stock subscription; When acceptance by corporation necessary.

FACTS: This is a claim made in the testate proceedings of one Damasa Crisostomo, for the collection of ₱20,000.00, representing the value of her subscription to the capital stock of the Quezon College, Inc. It was opposed by the administrator of the estate, and the court, after hearing, dismissed the claim by the Quezon College, Inc. From the evidence it appears that the application for subscription was written in a general form. The late applicant fixed her own plan of payment. There is nothing in the record to show that the college accepted the terms or plan of payment during the lifetime of the deceased.

HELD: There was absolute necessity on the part of the college to express its agreement or acceptance in order to bind

the applicant Damasa Crisostomo. (TRILLANA *vs.* QUEZON COLLEGE, INC., G. R. No. L-5003, June 27, 1953.)

Calls for payment of unpaid subscription need to be published; When publication may be dispensed with.

FACTS: This is an action to recover an unpaid subscription to the capital stock of plaintiff corporation. The call of the Board of Directors was not published in a newspaper of general circulation as required by Sec. 40 of the Corporation Law. Defendant claimed the action was premature because there had been no valid call for payment. From the trial court's decision holding the action premature, plaintiff appealed.

HELD: Sec. 40 of the Corporation Law is mandatory as regards publication and the reason therefor is not only to assure notice to all subscribers but also to assure equality and uniformity in the assessment on stockholders. Under the Corporation Law, notice of call for the payment of unpaid subscription must be published, except when the corporation is insolvent, in which case payment is demandable immediately. (LINGAYEN GULF ELECTRIC CO. INC. *vs.* BALTAZAR, G. R. No. L-4824, June 30, 1953.)

Principle of "piercing the corporate veil" applied.

When two different entities—one a duly incorporated business, the other a mere family entity—are both owned by the same person, operate under a single management, have only one payroll, use the same delivery equipment interchangeably and simultaneously, and the employees of which may be interchanged as the management chooses, they will be considered one business with two trade names in order not to avoid the jurisdiction of the Court of Industrial Relations. (LA CAMPANA COFFEE FACTORY INC. *vs.* KAISAHAN NG MGA MANGGAGAWÁ and CIR, G. R. No. L-5677, May 25, 1953.)

No hold-over in a director's term upon failure to comply with by-laws; When court may grant authority to call a meeting; Sec. 20, P. A. No. 1459 construed.

Where the by-laws provided for the election of the board of directors in a meeting to be called by the chairman thereof every even year, the failure to call such a meeting does not

give the directors the right to continue in office by reason of a hold-over.

Upon showing of good cause therefor, e.g., the failure, neglect or refusal of the chairman of the board of directors to call a meeting of the stockholders to elect a new board of directors by the by-laws, the court may grant to a stockholder the authority to call such a meeting and preside thereat, without need of serving notice upon the old board. (PONCE ET AL. *vs.* ENCARNACION ET AL., G. R. No. 5883, Nov. 28, 1953.)

Derivative suit.

FACTS: Asuncion Lizares and Encarnacion Panlilio, in their own behalf and in behalf of the minority stockholders of the Financing Corporation of the Philippines, filed a complaint against said corporation and its president, J. A. Araneta, alleging mismanagement and fraud in the conduct of corporate affairs and asking that the corporation be dissolved and a receiver appointed pending the disposition of the case. The trial court granted the petition for a receiver. Araneta filed a petition for a writ of *certiorari* with preliminary injunction.

HELD: Minority members, if unable to obtain redress and protection of their rights within the corporation, must not be left without such redress and protection. So that when the cause of the complaint is strictly a matter between stockholders, not involving acts or omissions warranting *quo warranto* proceedings, minority stockholders are entitled to have such dissolution. The trial court has both jurisdiction over and discretion to appoint a receiver. (FINANCING CORPORATION and ARANETA *vs.* TEODORO ET AL., G. R. No. L-4900, Aug. 31, 1953.)

INSURANCE

Production of insurance policy necessary to establish claim.

FACTS: Banton Corporation insured a cargo of mackerel goods consigned to Macondray & Co. Inc. The insurance policy was indorsed to Macondray. Part of the cargo was lost and the rest damaged. Macondray sued defendant for a recovery over the policy. The loss had been due to undetermined causes. Macondray relied for his claim on Ocean Cargo Certificate No. 365064 which stipulated that insurance had been made "under Open Policy No. 6128 for Banton Corporation."

Macondray did not present said Open Policy No. 6128 and, moreover, failed to establish that loss was recoverable under the policy. Ocean Cargo Cert. No. 365064 provided: "Unless otherwise expressely stated hereon, this insurance only covers the risk of breakages, leakage, or rust when caused by stranding, sinking, burning, or collision of the vessel."

HELD: Cert. No. 365064 was subject to the terms of Open Policy No. 6128 and Macondray was therefore bound to present the latter document to establish the fact that loss had been due to causes covered by the policy. The terms of policy No. 6128 cannot be prejudiced by the weakness of its evidence, notwithstanding the failure of Macondray to produce it. Proof by Macondray of loss or damage did not make it incumbent upon defendant to prove that such lose or damage was not covered by insurance. It was necessary for Macondray to produce policy No. 6128 to establish its claim. (MACONDRAY & CO. INC. *vs.* THE CONNECTICUT FIRE INS. CO. OF HARTFORD, G. R. No. L-5184, May 29, 1953.)

NEGOTIABLE INSTRUMENTS

Period of payment construed.

FACTS: In 1944, defendants executed in favor of plaintiff a promissory note of ₱10,000.00, Philippine currency, "payable four years after date," with interest at 10% per annum. As security for the note, defendants mortgaged a piece of land with the stipulation "that payment of the interest as well as the obligation shall be made in full, whatever legal tender or currency is prevailing and in use at the time the obligation becomes due and payable."

Defendants failed to pay and plaintiff brought an action to foreclose. A decision was rendered in favor of plaintiff.

HELD: The period stipulated is presumed to be established for the benefit of both debtor and creditor (Art. 1196, N.C.C.). The provision in the mortgage deed that its duration shall not exceed four years from date does not necessarily argue that the promissory note secured by it could be paid at any time during those four years. Since the note was made payable at a fixed period after date and payment was to be made in the currency prevailing at the end of that period, the promissor must pay the full amount of the obligation in Philippine currency. (GARCIA *vs.* DE LOS SANTOS ET AL., G. R. No. L-5054, Aug. 31, 1953.)

TRANSPORTATION

Public Service Law; Interpretation of Sec. 13 (b) *thereof; What is included in term "public service."*

FACTS: The Public Service Commission prohibited petitioners from further operating, for hire or compensation, their watercraft in the transport of goods between points in the Philippines until the rates charged were approved by the P.S.C. The question raised is whether or not petitioners come under the application of the law.

HELD: It is not necessary under Sec. 13 (b) for one to hold himself out as serving or willing to serve the public in order to be considered a public service operator. In *Luzon Brokerage* Co. *vs.* P.S.C., 40 O.G. 7 (s) 271, it was held that a public service is that rendered for compensation although limited exclusively to customers of the operator. Since, therefore, they perfrom such service, petitioners must come within the jurisdiction of the P.S.C. since it is latter's duty to regulate public services which affect the interest of the general public. (LUZON STEVEDORING CO., INC. *vs.* PUBLIC SERVICE COMMISSION ET AL., G. R. No. L-5458, Sept. 16, 1953.)

Effect of failure to give notice or hold a hearing to amend a certificate of public convenience.

FACTS: Petitioner is the holder of various certificates of public convenience to operate auto-truck services between Balara and various points in the City of Manila and its suburbs. Respondent CAM Transit Co., Inc., also holds a certificate of public convenience to operate along a line between Balara and City Hall, Manila.

In 1952, CAM filed a petition with respondent Public Service Commission praying that its certificate covering the Balara-City Hall line be amended so that the route would be along another line. In effect, the amendment sought by CAM would enable it to travel along points already covered by petitioner. Acting upon this petition, the Commission,

without previous notice to petitioner and without a hearing thereon, ordered the modification of CAM's line.

HELD: The issuance of the order without proper notice to petitioner and without affording him the opportunity to be heard in opposition to CAM's petition, was a violation of petitioner's right not to be deprived of his property without due process of law. (HALILI *vs.* PUBLIC SERVICE COMMISSION ET AL., G. R. No. L-5948, April 29, 1953.)

Conversion of temporary to permanent certificate of public convenience; Increase of equipment and lines.

FACT:: M.G. petitioned the Public Service Commission for (1) the conversion of her temporary certificate to a permanent one and (2) the issuance of a new certificate to increase her equipment to accomodate additional routes. The second petition was opposed by E.F. and A-M Trans. Co., pre-war operators of the line covered by said petition. The Commission granted both petitions. Appeal for review.

HELD: The appealed decision is reversed insofar as same grants the issuance of a new certificate. Being old operators and undoubtedly prepared to increase their units and improve their services to conform to the public demand, appellants are enlitled to protection against, and priority over new operators (Batangas Trans. Co. vs. Orlanes, 52 Phil. 455). (FERNANDO ET AL. *vs.* GALLARDO, G. R. No. L-4860, Sept. 8, 1953.)

Carriage of Goods by Sea Act—Applicability.

The Carriage of Goods by Sea Act is applicable to all contracts for the carriage of goods to and from Philippine ports in the field of foreign trade. And an action filed to recover damage to goods one year, two months and nine days from delivery of the goods to petitioner is barred by prescription. (CHUA KUY *vs.* EVERETT STEAMSHIP CORP., G. R. No. L-5554, May 27, 1953.)

TRADENAMES AND TRADEMARKS

Geographical names and surnames as tradename or trademark; Damages for infringement of tradename or trademark.

FACTS: Plaintiffs-appellants are engaged in the business of manufacturing articles of wear. They have been in that business since 1938, having obtained the registration for the said articles the trademark "WELLINGTON." In 1940, they registered the business name "WELLINGTON COMPANY." Their invoices, stationery, and sign board bear the tradename "WELLINGTON COMPANY," and in newspaper advertisements they described their business as "WELLINGTON SHIRT FACTORY."

Defendant Chua applied for and obtained the registration of the business name "WELLINGTON DEPARTMENT STORE" in 1946. That same year, this business name was changed to "WELLINGTON DEPARTMENT STORE, INC."

Hence, this action for damages and to enjoin the defendant corporation from using the business name "WELLINGTON DEPT. STORE" and the corporate name "WELLINGTON DEPT. STORE, INC."

HELD: The term "Wellington" is either a geographical name or the surname of a person. Mere geographical names are ordinarily regarded as common property, and it is a general rule that the same cannot be appropriated as the subject of an exclusive trademark or tradename (52 Am. Jur. 548). Even if "Wellington" were a surname, which is not even that of the plaintiffs-appellants, it cannot also be validly registered as a tradename (Sec. 4, Par. (e), R. A. No. 166). As the term cannot be appropriated as a trademark or a tradename, no action for violation thereof can be maintained. The right to damages and for an injunction for infringement of a trademake or a tradename is granted only to those entitled to the exclusive use of a registered trademark or tradename (Sec. 23, R. A. No. 166). (ANG SI HENG ET AL. *vs.* WELLINGTON DEPT. STORE, INC. ET AL., G. R. No. L-4531, Jan. 10, 1953.)

Circumstances to be taken into account to determine whether or not there was unfair competition; Concept of unfair competition.

In order to determine whether defendants are liable for *unfair competition*, defined in Chap. VI, Sec. 29, R. A. No. 166, and have deceived the public into believing that the goods they sell are of plaintiffs' manufacture, all the surrounding circumstances must be taken into account, especially the identity or similarity of names and of business, how far the names are a true description of the kind and quality of the articles manu-

factured or the business carried on, the extent of the confusion which may be created or produced, the distance between the place of business of one and the other party.

While there is similarity between the trademark or tradename "Wellington Co." and that of "Wellington Dept. Store," no confusion or deception can possibly result from such similarity because the latter is a "department store," while the former does not purport to be so. The name "Wellington" is admittedly the name of the trademark on articles of wear, whereas the name used by defendant indicates a department store. Neither can the public be said to be deceived into the belief that the goods being sold in defendant's store originate from plaintiffs, because defendant's store sells no shirts or wear bearing the trademark "Wellington." Lastly, defendant's store is situated on the Escolta, while plaintiffs' place of business is located in another business district. The mere fact that two or more customers of plaintiffs thought of the probable identity of the products sold by one and the other is not sufficient proof of the supposed confusion that the public has been led into by the use of the name adopted by defendants. It is not competition that the law seeks to prevent but unfair competition, wherein a newcomer in business tries to grab or steal away the reputation or goodwill of the business of another. (ANG SI HENG ET AL. *vs.* WELLINGTON DEPT. STORE, INC. ET AL., G. R. No. L-4531, Jan. 10, 1953.)

WAREHOUSE RECEIPTS

Quedans; Indorsement and delivery thereof to secure loan does not operate to transfer ownership of sugar to pledgee.

FACTS: This is an action to recover a sum of money—the value of sugar lost during the Japanese occupation. To secure a balance on a crop loan, the estate of Pedro Rodriguez delivered and indorsed to defendant bank by way of pledge two quedans representing sugar deposited with the central. After the war, the balance of the debt was paid. Plaintiff estate now seeks to recover the value of the sugar lost on the theory that the PNB was the owner of the sugar by virtue of the indorsement and delivery of quedans, and should therefore bear the loss.

HELD: Ownership of the sugar was not transferred to the PNB. Firstly, there was no sale because the essential requisite of consideration was lacking; secondly, the sugar was merely pledged.

DISSENT: Sec. 41 of the Warehouse Receipts Law provides that a person with whom a negotiable receipt is negotiated acquires among other things direct ownership over the goods, inspite of an indorsement and delivery being merely for security. (TESTATE ESTATE OF PEDRO RODRIGUEZ *vs.* PHILIPPINE NATIONAL BANK, G. R. No. L-4080, Sept. 21, 1953.)