103 Phil. 553

[G.R. No. L-10556. April 30, 1958]

RICARDO GUREBA, PLAINTIFF AND APPELLANT, VS. JOSE MANUEL LEZAMA, ET AL., DEFENDANTS AND APPELLEES.

BAUTISTA ANGELO, J.:

Plaintiff instituted this action in the Court of First Instance of Iloilo to have Resolution No. 65 of the Board of Directors of the La Paz Ice Plant and Cold Storage Co., Inc., removing him from his position of manager of said corporation declared null and void and to recover damages incident thereto. The action is predicated on the ground that said resolution was adopted in contravention of the provisions of the by-laws of the corporation, of the Corporation Law and of the understanding, intention and agreement reached among its stockholders.

Defendant answered the complaint setting up as defense that plaintiff had been removed by virtue of a valid resolution.

In connection with this complaint, plaintiff moved for the issuance of a writ of preliminary injunction to restrain defendant Jose Manuel Lezama from managing the corporation pending the determination of this case, but after hearing where parties presented testimonial and documentary evidence, the court denied the motion. Thereafter, by agreement of the parties and without any trial on the merits, the case was submitted for judgment on the sole legal question of whether plaintiff could be legally removed as manager of the corporation merely by resolution of the board of directors or whether the affirmative vote of 2/3 of the paid shares of stocks was necessary for that purpose. And passing upon this legal point, the trial court held that the removal of plaintiff was legal and dismissed the complaint without pronouncement as to costs. Plaintiff appealed to the Court of Appeals but finding that the question at issue is one of law, the latter certified the case to us for decision.

Section S3 of the Corporation Law provides: "Immediately after the election, the directors of a corporation must organize by the election of a president, who must be one of their

number, a secretary or clerk who shall be a resident of the Philippines * * * and such other officers as may be provided for in the by-laws." The by-laws of the instant corporation in turn provide that in the board of directors there shall be a president, a vice-president, a secretary and a treasurer. These are the only ones mentioned therein as officers of the corporation. The manager is not included although the latter is mentioned as the person in whom the administration of the corporation is vested, and with the exception of the president, the by-laws provide that the officers of the corporation may be removed or suspended by the affirmative vote of 2/3 of the paid-up shares of the corporation (Exhibit A).

From the above the following conclusion is clear: that we can only regard as officers of a corporation those who are given that character either by the Corporation Law or by its by-laws, The rest can be considered merely as employees or subordinate officials. And considering that plaintiff has been appointed manager by the board of directors and as such does not have the character of an officer, the conclusion is inescapable that he can be suspended or removed by said board of directors under such terms as it may see fit and not as provided for in the by-laws. Evidently, the power to appoint carries with it the power to remove, and it would be incongruous to hold that having been appointed by the board of directors he could only be removed by the stockholders.

The above interpretation finds also support in the American authorities. Fletcher, in his treatise, states the rule in the following wise: "It is sometimes important to determine whether a person representing a corporation is to be classed as an officer of the company or merely as an agent or employee, especially in construing statutes relating only to 'officers' of corporations. Generally the officers of a corporation are enumerated in its charter or by-laws, and include a president, vice-president, secretary, treasurer and sometimes others. The statutes in most of the states expressly provide for the election of a president, secretary and treasurer, and then provide that there shall be such other officers, agents and factors as the corporation shall authorize for that purpose. If the charter expressly enumerates who shall be officers of the company, a person whose position is not enumerated is not an officer as to members of the corporation, since the charter is conclusive upon them" (Fletcher, Cyclopedia of the Law of Private Corporations, Vol. II, p. 19). It has been likewise held "that the offices pertaining to a private corporation are defined in its charter and by-laws, and that no other positions in the service of the corporation are offices" (Ann. 53 A.L.R., 599).

Indeed, there are authorities galore that hold that a . general manager is not an officer of

a corporation, even if his powers and influence may be as great as those of any officer in said organization.

> "Officers Distinguished from Mere Employees.—As already stated, both officers and employees are agents of the corporation and the difference between them is largely one of degree; the officers are the most important employees exercising greater authority or power in the management of the business. Ordinarily, too, the principal offices are designated by statute, charter or by-law provisions, and specific duties are imposed upon certain officers. Thus the state statute or a by-law may provide that stock certificates shall be signed by the president and countersigned by the secretary or treasurer. The general manager of a corporation is not ordinarily clashed as an officer, but his powers and influence may be quite as great as those of any person in the organization" (Grange, Corporation Law for Officers and Directors, p. 432; Italics supplied.)

> "One distinction between officers and agents of a corporation lies in the manner of their creation. An officer in created by the charter of the corporation, and the officer is elected by the directors or the stockholders. An agency is usually created by the officers, or one or more of them, and the agent is appointed by the same authority. It is clear that the two terms officers and agents are by no means interchangeable. One, deriving its existence from the other, and being dependent upon that other for its continuation, is necessarily restricted in its powers and duties, and such powers and duties are not necessarily the same as those pertaining to the authority creating it. The officers, as such, are the corporation. An agent is an employee. 'A mere employment, however liberally compensated, does not rise to the dignity of an office.' 21 Am. & Eng, Enc. Law (2d Ed.) 836. In Wheeler & Wilson Mfg. Co. vs. Lawson, 57 Wis. 400, 15 N. W. 398, it was held that under a statute requiring an affidavit to be made by an officer of a corporation, the general agent or 'managing agent, within the state, of a foreign corporation is not an officer. In Farmers' Loan & Trust Co. *vs.* Warring, 20 Wis. 305, Service was made upon the 'principal agent' of a corporation holding in trust a railroad, when the statute required service upon a 'principal officer.' In answering the question whether or not the agent was a principal officer the court said: 'It is evident he was net, and must be regarded only as an agent, not as an officer of

any kind, much less a principal officer.' A ruling that a 'general manager' of a corporation was not authorized to verify pleadings, under a statute requiring verification by 'an officer' was made in Meton *vs.* Isham Wagon Co. (Sup.) 4 N. Y. Supp. 215. In Raleigh, etc. U. Co. *vs.* Pullman Co., 122 Ga. 704, 50 S.E. 1008 (4), it was held that the term 'general manager.' as applied to one representing a corporation, arid especially a railroad corporation, imported an agent of a very extensive authority; but it was not ruled that even the term 'general manager" would import that the person holding that position was necessarily an officer of the company. One distinction between an officer and an agent suggested in Commonwealth *vs.* Christian, 9 Phila. (Pa.) 558, is that an officer of a corporation, if illegally excluded from his office, may by mandamus compel the corporation to reinstate him; while an agent may be dismissed without cause, and his only remedy would be compensation in damages. It would not be contended that the 'general agent of the defendant at Columbus,' in the event of his discharge, could be reinstated by mandamus. *We do not think the general agent at Columbus was ail officer of the defendant company. Therefore his alleged waiver of a condition in the policy was not binding upon the company.*" (Vardeman *vs.* Penn. Mut. Life Ins. Co., 125 Ga. 117, 54 S.E. p. 66; Italics supplied.)

"The plaintiff predicates this action on said contract, and claims that the same being signed by the defendant through its 'general manager' if admitted in evidence, would show sufficient authority *prima facie* to do any act which the directors could authorize or ratify. The instrument in question being signed by James W. Codle, "*General Manager*', and no evidence on the trial being produced showing the duties of said manager or what kind of an office he was general manager of, the words 'general manager' without proof as to the nature of services performed by the person called 'general manager' have no meaning in law, excepting that the person hearing the title is mi employee who has been designated with a title. ' It does not make him an officer of the company employing him." (Studebaker Bros. Co. *vs.* K. M. Rose Co., 119 N.Y.S. pp. 970, 97; Italics supplied.)

We therefore hold that plaintiff has been properly removed when the board of directors of the instant corporation approved its Resolution No. 65 on June 3, 1948. We will now clarify some of the points raised by the distinguished dissenter in his dissenting opinion.

The fact that the "manager" of the corporation in the several statutes enacted by Congress is held criminally liable for violation of any of the penal provisions there-in prescribed does not make him an "officer" of the corporation. This liability flows from the nature of his duties which are delegated to him by the board of directors. He is paid for them. Hence, he has to answer for them should he use it in violation of law. In the case of Robinson *vs.* Moark-Nemo Consol Mining Co., et al., 163 S. W. 889, in connection with the liability of the manager, the court said:

> "Common justice and common sense demand that, where those in charge and control of tile management of a corporation direct it along paths of wrongdoing, they should be held accountable by law * * *. This doctrine will prevent many wrongs, and have a salutary influence in bringing about the lawful and orderly management of corporations."

It is claimed that the cases of Meton *vs.* Isham Wagon, 4 N.Y.S., 215 and State *vs.* Bergs, 217 N. W., 736, supporting the theory that a manager is not necessarily an officer, are in *illo tempore*.[1] It is submitted that we do not adopt a rule just because it is new nor reject another just because it is old. We adopt a rule because it is a good and sound rule. The fact however is that they are not the only authorities supporting that theory. Additional cases are cited by Fletcher in support thereof, such as the cases of Vardeman *vs.* Penn. Mut. Life Ins. Co.*, supra;* Studebaker Bros. Co. *vs.* E. M. Rose Co., *supra.*

The dissenting opinion quotes from Thompson and Fletcher to support the theory that the general manager of a corporation may be considered as its principal officer even though not so mentioned in its charter or by-laws. We have examined the cases cited in support of that theory but we have found that they are not in point. Thus, we have found (1) that the parties involved are mostly outsiders who press their transactions against the corporation; (2) that the point raised is whether the acts of the manager bind the corporation; (3) that the tendency of the courts is to hold the corporation liable for the acts of the manager so long as they are within the powers granted, hence, the courts emphasized the importance of the position of manager; and (4) the position of manager was discussed from the point of view of an outsider and not from the internal organization of the corporation, or in accordance with its charter or by-laws.

In the present case, however, the parties are the manager and the corporation. And the solution of the problem hinges on the internal government of the corporation where the

charter and the by-laws are necessarily involved in the determination of the rights of the parties. Indeed, it has been held: "But it is urged that a corporation may have officers not recognized by the charter and by-laws. *It is possible this may be so as to matters arising between strangers and the corporation."* [Com. *vs.* Christian, 9 Phila. (Pa.) 556; italics supplied].

The cases on all fours with the present are those of State ex rel Blackwood *vs.* Brast, et al., 127 S. E. 507 and Denton Milling Co. *vs.* Blewitt, 254 S. W. 236, 238, where the parties involved are the manager and the corporation. The issue raised is the relation of the manager towards the corporation. The position of the manager is discussed from the point of view of its internal government. And the holding of the court is that the manager is the creation of the board of directors and the agent through whom the corporate duties of the board are performed. Hence, the manager holds his position at the pleasure of the board. This stipulation is well expressed in the following words of Thompson:

> "The "word 'manager' implies agency, control, and presumptively sufficient authority to hind a corporation in a case in "which the corporation was an actual party. It has been said that such agent must have the same general supervision of the corporation as is associated with the office of cashier or secretary. *By whatever name he may he called, such managing agent is a mere employee of the board of directors and holds hi? position subject to the particular contract of employment; and unless the contract of employment fixes hiss term of office, it may be terminated at the pleasure of the board.* * * * The manager, like any other appointed agent, is subject to removal when his term expires and on the request of the proper officer he should turn over his business to the corporation and, where he refuses to comply, he may be restrained from the further performance of work for the corporation." (Thompson on Corporations, Vol. III, 3rd., pp. 209-210; Italics supplied.)

It is not correct to hold that the theory that a manager is not classed as an officer of a corporation is only the minority view. If we consider the states that hold that managers are merely agents or employees as among those that hold the theory that managers are not necessarily officers, then our theory is supported by the majority view. Indeed, this view is upheld by nine states,[2] where as only six states adopt the view that managers are considered principal officers of the corporation.[3]

The dissenting opinion quotes the provision of the by-laws relative to the administration of the affairs of the instant corporation. It is there provided that the affairs of the corporation shall be successively administered by (1) the stockholders; (2) the board of directors; and (3) the manager. From this it concludes that the manager should be considered an officer.

The above enumeration only emphasizes the different organs through which the affairs of the corporation should be administered and the order in which the powers should be exercised. The stockholders are the entity composing the whole corporation. The board of directors is the entity elected by the stockholders to manage the affairs of the corporation. And the manager is the individual appointed by the board of directors to carry out the powers delegated to him. In other words, the manager is the creation of the board of directors. He is an alter ego of the board. As our law provides that only those enumerated in the charter or in the by-laws are considered officers, the manager who has not been so enumerated therein, but only incidentally mentioned in the order of management, cannot be considered an officer of the corporation within their purview.

The mere fact that the directors are not mentioned in the by-laws as officers does not deprive them of their category as such for their character as officers is secured in the charter. The same is not true with the manager. Custom and corporate usages cannot prevail over the express provisions of the charter and the by-laws.

There is no comparison between an appointee of the President, especially one in the judiciary, and the appointee of the board of directors of a corporation. In the first case, removal is especially provided for by law and in the second, the appointee holds office at the pleasure of the board. And with regard to the powers of the board of directors to remove a manager of the corporation, Thompson has the following to say:

> * * * Below the grade of director and such other officers as are elected by the corporation at large, the general rule is that the officers of private corporations hold their offices during the will of the directors, and are hence removable by the directors without assigning any cause for the removal, except so far as their power may be restrained by contract with the particular officer,—just as any other employer may discharge his employee. Speaking generally, it may be said that the power to appoint carries with it the power to remove. * * * the directors who appoint a ministerial officer may undoubtedly remove him at

> pleasure, and he has no remedy other than an action for damages against the corporation for a breach of contract. * * * The ordinary ministerial and other lesser officers, however, hold their offices during the pleasure of the directors and may be removed at will, without assigned cause. Of this doss of officers and agents are the secretary and treasurer of the corporation, the general manager, the assistant manager, the field manager, the attorney of the company, an assistant horticulturist, and the bookkeepers." (Thompson on Corporations, Vol. III, 521-523.)

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Paras, C. J, Montemayor, Concepcion, Reyes, J. S. L., and *Endencia, JJ.,* concur.

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[1] Cited by Grange, Corporation Law for Officers and Directors, p. 432.

[2] Georgia-Vanderman *vs.* Pcnn. Mut. Life Ins. Co., *supra;* New York-Studebaker Bros. Co. vs. R. M. Rose Co., supra; OklahomaBadger us. Oil Gas Co. Preston, 49 Okla. 270, 152 Pac. 383; Wisconsin-Wheeler & Wilson Mfsr. Co., *vs.* Lawson, 57 Wis. 400, 15 N. W. 898; Louisiana-Roberts *vs.* J. A. Masquere Co., 158 La. 642, 104 So. 484; Texas-Denton Milling Co. *vs.* Blewett, 264 S. W. 236; West Virginia-State *vs.* Brast, 98 W. Va. 127 S. E. 507; South Dakota-Magpie Gold Mining Co. *vs.* Sherman, 23 S. Dak. 232, 121 N. W. 770; South Carolina-Silverthorne *vs.* Barnwedd Lumber Co,, 96 S. Car. 32, 79 S. E. 619.

[3] Kansas-Kansas City *vs.* Cuiinan, 65 Kansas 68, 68 Pac. 1099; Missouri-Robinson *vs.* Moark—Nemo Consol, Min. Co., supra; North Carolina-Kelly *vs.* Newark Shoe Stores Co., 190 N. Car. 406. 130 S. E. 32; Colorado-Robert E. Lee S. Mining Co., *vs.* Omaha Grant, 16 Colorado 118, 122, 26 Pac. 326; New Mexico-Steams-Roger Mfg. Co. *vs.* Aztec Gold, 93 Puc. 706; Nebraska-Ritchie *vs.* Illinois Cent. E. Co., 12S N. W. 35.

D I S S E N T I N G :

BENGZON, *J,*

Disposition of this appeal depends on the question whether Manager Ricardo Gurrea is

"an officer" of the corporation. If he is, he wins. The majority says he is not.

I disagree, because the authorities hold the manager to be the principal executive officer of the corporation, because our Legislature considers him as such, or at least as one of the principal officers, and because we have heretofore regarded him as an officer of the corporation. Moreover, judging from the history of this corporation's organization and operation I think the stockholders intended that the manager shall be removed only by a two-thirds vote.

I. *Manager is principal executive officer.* West Coast *vs.* Hurd, 27 Phil., 401, held that corporations may not be criminally prosecuted for violations of the law although their officials could be made liable therefor.

Thereafter several statutes have been enacted expressly making the "manager" criminally responsible for violations by the corporation of: the Usury Laws,[1] the Price Control Law,[2] the law on Employment of Women and Children[3] the Chemistry Law,[4] the Minimum Wage Law,[5] the Chemical Engineering Law,[6] the Labor on Sunday Law,[7] and other laws.[8] Only the Manager; not the president, nor the directors nor other officers. This obviously shows that in the opinion of the legislature, the manager is the principal executive officer of the corporation, through whom the latter acts and transacts business.

In this case however, this Court (the majority) declares that the manager is not even an officer. Did the Legislature err? Let the authorities speak.

> "A general manager of a corporation has been defined to be a person who really has the most general control over the affairs of the corporation, and who has knowledge of all its business, and property, and can act in emergencies on his own responsibility; he may be considered the 'principal officer." (Thompson on Corporations, Vol. III p. 209, citing 14 Am. & Eng. Ency. of Law (2d od.) 1002; American Inv. Co. *vs.* Cable Co., 4 Ga. App. 106, 60 S.E. 1037; Kansas City *vs.* Cullinan, 65 Kans. 68, 68 Pac. 1099; Manross *vs.* Uncle Sam Oil Co., SS Kans. 2S7, Pac. 38BJ Ann. Cas. 1914, 827; Robmson *vs.* Moark-Nemo Cansol Min, Co., 178 Mo. App. 531, 103 S. W. 885. See also Kelly *vs.* Newark Shoe Stores Co., 190 N. Car. 406, 180 S. E. 32.)
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> "A general manager, where his duties are fixed by by-laws or otherwise, has been denned as "the person who really has the most general control over the

> affairs of a corporation, and who has knowledge of all its business and property, and who can act in emergencies on his own responsibility; who may be considered the principal officer." (Fletcher, Cyclopedia of Corporations Vol. II p. 598 citing: Anderson's Law Dictionary (quoted in Robert E. Lee Silver Min. Co. *vs.* Omaha & Grant Smelting & Refining Co., 16 Colo. 118, 122, 26 Pac. 826; Kansas City *vs.* Culliman, 65 Kan. 68, 77, 68 Pac. 1099; Stearns-Roger Mfg. Co. *vs.* Aztec Gold Mining & Milling Co. 14 N. M. 300, 830, 93 Pac. 706); Marderoaian V. National Casualty Co.; Cal. App., 273 Pac. 1093; State ex rel. Blackwood *vs.* Brast, 98 W. Va. 596, 127 S. E. B07, See also Manross *vs.* Uncle Sam Oil Co., 88 Kan. 237, 128 Pac. 385, Ann. Gas. 1914 827; Robinson *vs.* Moark-Nemo Consul, Min. Co., 178 Mo. App. ESI, 163 S. W. 886; Eitchie *vs.* Illinois Cent. R. Co., Neb. 631, 635, 128 N. W. 85; Booker-Jones Oil Co. *vs.* National Refining Co. (Tex. Civ App) 132 S. W. 816.
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> Thompson Op. Cit. Vol. Ill sec. 1690. In the Grange quotation, majority implicdly admits "manager" is the same as "general manager."
>
> "Manager" and "General Manager" are interchangeable.[x]

The Legislature was right. It punished the principal executive officer for wrongs committed for and by the corporate entity.

II. *Textbook vs. Treatises.* The majority disregarded the extensive treatises of Thompson on Corporations (12 volumes) and Fletcher on Corporations (20 volumes), only to rely on the one-volume work of Attorney Grange, confessedly (in its preface) not written for "the corporation lawyer," being a "concise" statement of the basic principles of corporation law. In support of his statement, said attorney cites *two cases* only: Meton vs. Isham Wagon, 4 N. Y. Suppl. and State *vs.* Bergs, 195 Wis. 73, 217 N. W. 736.

The first was decided in *illo tempore*, long ago, in 1889; at that time corporate development was in its initial stages. And it was decided by the Supreme Court of New York, which everybody knows is only an appellate court, the highest court in that state being the Court of Appeals.

The second case expressly follows the Meton decision. On the other hand more than ten cases from eight states of the American Union support the Thompson and Fletcher excerpts above quoted. Clearly the choice of this Court's majority, reflects the minority view.

Worse still, it ignores the Congressional viewpoint.

The majority decision draws the conclusion that the manager is not an officer, from these two propositions or premises: Generally, the officers in a corporation are mentioned in its charter as an officer in the by-laws of the La Paz Ice Plant and Cold Storage Co., Inc. Let me analyze these propositions in their order.

III. *By-laws mention manager.* As to the first, observe the word "generally." The quotations from Thompson and Fletcher do not rest on the charter or by-laws of the corporation. They consider the duties and powers of the position. And our own laws, the Usury Law, the Price Control Law, the Law on Employment of Women and Children, the Chemistry Law, the Minimum Wage Law, the Chemical Engineering Law, the Labor or Sunday Law, etc., postulate the manager's dominant official position in the corporate set-up regardless of whether he is mentioned in the by-laws. The first proposition of the majority decision could be applied to other less known officials, such as the cashier, the auditor, superintendent, branch manager, etc.

Nevertheless, for the sake of argument, I will admit the first proposition as an absolute rule, with no exceptions: officers of the corporation must be mentioned in its charter and/or by-laws. Is the manager mentioned in the by-laws of the La Paz Ice Plant? I say yes, definitely; and I quote the by-laws:

"ABMINISTBACION"

> "Art. ll.o-)-Para]os efectos del Gobicrno y administraeion de la Corporaeion, se eonsidcrara corno central, la ofieina de la Corporacion en La Pan, Iloilo, I. F,
>
> "Art. l3.o-)-La Corporaeion sera en lo sucesivo administrada por: 3.0-la Junta General de los Accionistas, 2.0-la Juntas de Directores y S.c— *el Gerente*."

It will thus be seen that, together with the directors, the manager (gerente) is named as one of the administrators which means officers.

There is no specific article in its by-laws enumerating the officers of this corporation. True, there is a portion entitled "Funcionarios" and under it several articles specify the duties, respectively of the President, Vice-President, Secretary and Treasurer. And

obviously because they found therein no article on the duties of the manager (gerente) the majority concluded, inchisio unius est exclusio alterius, ergo, the manager is not "funcionario." Yet they dare not argue thusly, because if they did, I would answer: directors are not mentioned therein, ergo directors are not officers too and then their position would become untenable.

The "manager" (gerente) and the directors are not mentioned under "Funcionarios" because *they had already been mentioned* in the previous articles above quoted under " Administration"; and because it was thought unnecessary to define their powers and duties, those of the directors being fixed by the corporation laws, and those of the manager by general corporate usage.

> "The governing principle "with reference to the general power of a manager is that where he has the actual charge and management of the business, by the appointment of or with the knowledge of the directors, the corporation will be bound by his acts and contracts which are necessary or incident in the course of the business, ¦without other evidence of actual authority. As a general rule, he has authority to do anything which is ordinarily necessary to the principal business of the corporate organization and not in excess of its powers. * * * His apparent authority is said to be co-extensive with the scope of all managerial requirements and necessities. A general manager acting within the scope of his authority has the power to bind the corporation as to contracts and dealings with its corporate property. He has power to do any act necessary to carry on the ordinary business of the corporation. He has no authority, however, to bind the corporation as to matters outside the scope of the corporate purposes," (Thompson on Corporations Vol. III p. 210-212.)

IV. *Manager higher than secretary or treasurer.* Indeed, if we were to make comparisons, the manager should be placed on a higher level than the secretary or treasurer whom the majority would qualify as officers, because the manager being expressly allowed to take part in the "*administration*" "gobierno y administracion" which concerns itself with "the over-all determination of major policies and objectives," [9] besides exercising other *executive* functions, the manager I repeat, exerts far greater power than the above two officials in the affairs of the corporation.

In fact some of our statutes put him on the same class as the president of the corporation,

when it comes to responsibility for violations of law. "The president or the manager" shall be liable—several statutes so provide[10] —not the secretary or treasurer.

V. *This Court held manager is officer.* This Court itself impliedly admits the manager of a corporation to be an officer thereof, because in Yu Chuk *vs.* Kong Li Po 46 Phil. 608, we held that by virtue of his position, the manager could validly make reasonable contracts of employment binding on the corporation. And our Rules recognize in him power to represent the corporation as an officer[11] thereof, because said Rules provide that service of summons upon the manager is service in the corporation.

VI. *Appointing power, sometimes not power to remove.*

The majority finds it hard to believe that being an appointee of the board of directors, the manager could not be removed by the latter. They forget that in the law of officers such a situation often obtains. The President appoints the members of this Court, and other officials; but he cannot remove them. True, the Constitution so provides. But in this case also the by-laws of the corporation so provide: its officers may be removed only by two-thirds vote of the paid-up shares.

Their decision does not explain, but the majority's thinking appears to be influenced by the apprehension that if Gurrea's contention (2/3 vote) is now sustained, he may never be replaced, because he own one-half of the shares, and he may abuse his powers. To me that is a groundless worry. The board of directors has means to check. And then, what are courts for? Where is the protection extended to stockholders against abuses of those in control?

VII. *Stockholders intended security for manager.* It would be interesting to inquire whether in approving the two-thirds requirement in the by-laws, the stockholders intended to apply it only to the Vice President, the Secretary and the Treasurer—excluding the manager—as the majority opinion declares.

It must be remembered that since the beginning, Gurrea's family owned or controlled one-half of the shares and Manuel Lezama's family the other half. Evidently, because Gurrea voted for them, Lezama and two others of his family became directors in the five-man board of directors. In reciprocity for such vote or concession, Gurrea was named manager.[12] As owner of one-half of the shares Gurrea could effectively block approval of any bylaws that did not protect his interest. Therefore, he would not have approved the by-laws in question if they did not protect his position as manager[13], knowing that *being in*

the minority in the board of directors his position would be at the mercy of the Lezama family. The bargain between the Lezama and Gurrea families must have been this: Majority of directors of Lezama; minority for Gurrea plus the position of manager;[14] the Lezama directors cannot be changed by Gurrea alone (he owns one half only); and Gurrea may not be changed by the Lezama directors (they have one-half shares only).

In fact this arrangement continued for a long period of time (beginning in the year 1927) until the Lezamas thought of the "appointed-by-directors-removed-by-directors" idea in 1948-ironically enough, after the corporation had declared substantial dividends[15] under Gurrea's management. VIII. My vote goes without hesitation to appellant Gurrea, with due respect of course to the majority opinion. He should be reinstated and compensated. How, I need not explain, my opinion having been overruled.

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[1] Act 8998

[2] Republic Act 609 sec. 12

[3] Republic Act 679 sec. 12(c)

[4] Republic Act 754 see. 23

[5] Republic Act 602 sec. lB(b)

[6] Republic Act 318

[7] Republic Act 946′

[8] See Republic Act 776; Commonwealth Act 303; Commonwealth Act 617.

[x] Thompson Op. Cit. Vol. Ill sec. 1690. In the Grange quotation, majority impliedly admits "manager" is the same as "general manager,"

[9] Spriegel, Principles of Business Organization and Operation p. 40.

[10] See Acts Noa. 8916, 898S, 4003; Republic Acts 122, 134, 746 and 1168.

[11] We wouldn't let the corporation be bound by a mere employee.

[12, 13] and [14] and secretary. I disregard this position because it is not important to him.

[15] 98,240 on a capital of P25.000 (Exhibits G and A.)

F U R T H E R D I S S E N T I N G :

BENGZON, *J.*

I am flattered that, after reading my above dissent, the majority has found it necessary to re-write its decision in an effort to answer *some*—not all—of the points I raised or to remove the grounds on which rested a couple of objections (V. Textbook *vs.* Treatises). For once, the "voice in the wilderness" has been heard.

No need to re-write my dissent to meet the 'altered situation. Otherwise, the majority decision might again be reformed, and the discussion will be prolonged or will never end.

Now I am thoroughly convinced of the justness of my vote for appellant (with apologies to my honored colleagues on the other side), because having expressly undertaken to rebut my above dissent, the majority decision left *one vital point tin-touched* [1] the stockholders in approving the by-laws intended the manager to be a "funcionario," removable only by two-thirds vote. Also because the revised version of the majority opinion is partly founded (again my apologies) on two *fallacious propositions* which, contained in a few lines, will require more than two pages to refute.[2]

To match my contention that eight states of the American Union consider the manager as officer of the corporation, the majority now argue that nine states hold managers to be "agents or employees"; and so they claim to reflect the prevailing view. It is inferable from their statement that some of the states (or decisions) they have in mind hold managers as agents, and others employees. How many belong to the last class (managers-are-employees), they are careful not to specify; thus the suspicion can not be downed that less than eight belong to that class; otherwise, there was no reason to include the other kind of cases (managers-are-agents) to be able to list nine states in their column.[3] Yet, the issue here is not whether managers are agents or not. Undoubtedly, officers—including managers—of the corporation are also its agents; hence, those

"managers-are-agents" decisions neither boost their position nor counter check mine.

First fallacy.—And yet, this seems to be the majority's unexpressed method of reasoning on this matter of "managers-are-agents": There are decisions holding the manager to be an agent of the corporation; there are also decisions holding that an agent of a corporation is not an officer thereof; hence, all these decisions combine to hold that the manager is not an officer.

Books on the science of correct thinking repudiate the fallacious argumentation known as "Equivocation." It consists in using the same word in different meanings, for example: Spirits are incorporeal; liquors are spirits; therefore, liquors are incorporeal. The wrong conclusion stems from the fallacy of employing "spirits" in a double meaning.

Reduced to a shorter syllogism, the majority's position is this: manager is agent of the corporation; Agent is not officer; therefore, manager is not officer.

With all due respect, I say, there is sophistical "equivocation" here. In the major premise "agent" is used in general (common noun) to denote "representative," any one acting or speaking for the corporation. Whereas, Agent in the second premise (capital letter, because proper noun) is used in particular, i.e., a person occupying the position in the corporation designated "Managing Agent" "General Agent" "Principal Agent" or simply "Agent". The decisions supporting this second premise simply hold that this or that particular "General Agent" or "Managing Agent" or "Agent" is not classified as an officer of the corporation, in view of his powers or responsibilities.

There is no decision declaring that "all agents (in general) of the corporation are not its officers"; because it would not be correct, the President of a corporation being admittedly its officer, and also its agent (not capital letter), since he acts for and on behalf of the corporation. Following the majority's reasoning it may be argued: the president of a corporation is agent thereof, Agents of the corporation are not officers thereof; hence, the president is not officer. Absurd, no? "Equivocation" again. Second fallacy.—Disputing my position that eight states consider managers as officers, the majority come out with "only six states adopt the view that managers are considered principal officers of the corporation." The issue may I remind them, is whether managers are officers.

Whether principal or not, is immaterial. One abundant source . of fallacies consists in ignoring or evading the issue. Aristotle called it ignoratio elenchi.

Twelve states support dissent.—Let me now seek to reinforce the ranks of the opposition. Four states, in addition to those already mentioned in my above dissent, may be counted in the managers-are-officers column.[4] That makes twelve states on my side, which should be held to be the right side if only in deference to the Congressional viewpoint clearly implied in the statutes I have indicated.

LABRADOR, *J.,* concurring in the dissenting opinion of Justice Bengzon:

I concur in the above dissent of Mr. Justice Bengzon. As by Act 13 of the By-Laws the manager is made an officer of the corporation, he may not be removed or suspended except by the affirmative vote of 2/3 of the paid-up shares, as provided in the By-Laws. (Exh. A).

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[1] They couldn't rebut it.

[2] Such is the dissenter's unwelcome task. The majority may rely on the authority of its greater number to issue a ruling without convincing explanations. It can afford to be dogmatic. Caution, dignity, I agree. Strategy too: the shorter its pronouncements, the fewer the vulnerable points it will reveal. On the contrary, the dissenter is compelled to elaborate, to marshall all his forces gathered from every source,—facts, statutes, eases, statistics, logic, even history—to surround, to assault on all sides, and to overwhelm, if he can, the citadel of error wherein he thinks the majority abides.

[3] I forego the process of verification.

[4] Hodges *vs.* Bankers Surety 152 III, App. S. H. Kress & Co. *vs.* Powell 132 Fla. 471; 180 So. 757; Carrigan vs. Pot Crescent 6 Wash. 590; 34 Pae. 148; Bush *vs.* Atlas Automobile 129 Pa. Super 459; 195 Atl. 767.

D I S S E N T I N G :

REYES, A., *J.,*

The by-laws of this corporation provide that with the exception of the president, the officers of the corporation may be removed or suspended by the affirmative vote of two-thirds of the paid-up shares of the corporation.

The majority opinion holds that this provision of the by-laws does not apply to the manager because he is not an officer of the corporation.

But the claim that the manager is not an officer of the corporation is neither based on a correct premise nor is it the result of sound reasoning.

Says the majority:

> "Section 33 of the Corporation Law provides: 'Immediately after the election, the directors of a corporation must organize by the election of a president, who must be one of their number, a secretary or clerk who shall be a resident of the Philippines * ** and such other officers as may be provided for in the by-laws.' The by-laws of the instant corporation in turn provide that in tile board of directors there shall be a president, a vice-president, a secretary and a treasurer. These are the only ones mentioned therein as officers of the corporation. The manager is not included although the latter is mentioned as the person in whom the administration of the corporation is vested * **."

In the first place, I don't think it is correct to say that the president, the vice-president, the secretary and the treasurer are the only ones mentioned in the by-laws as officers of the corporation. For in truth, the by-laws do not say who shall be regarded as officers of the corporation. Moreover, the above quoted portion of the majority opinion itself says that (I quote) 'the manager * * * is mentioned as the person in whom the administration of the corporation is vested * * *." Administering a corporation involves the exercise of both authority and trust, so that one invested with such function should be classified as an officer.

There are, for sure, in the by-laws several articles under the heading "Funcionarios". One would expect from this heading that those articles would enumerate the *funcionarios* or officers of the corporation. Actually, however, they do not, for they merely define the duties or functions of certain officers: the president, the vice-president, the secretary and the treasurer. If the duties of the manager are not defined in those articles, it must he

because it is already stated elsewhere in the by-laws that the corporation is to be administered by the general meeting of stockholders, the Board of Directors and the manager. It is not, therefore, correct to say that the manager is not an officer just because his duties are not defined in those articles. Indeed, as Mr. Justice Bengzon points out in his dissent, neither are the duties of the directors enumerated therein and yet there is no denying that the directors are also officers of the corporation.

I must take exception to the theory of the majority that as the manager is appointed by the Board of Directors he may be suspended or removed by the Board "under such terms as it may see fit and not as may be provided by the by-laws." Under what principle of the corporation law could the pretense be justified that the board of directors may disregard the by-laws, when the validity of these are not questioned?

On the other hand, there is good reason for believing that the by-laws requiring a two-third vote of the paid-up stocks for the removal of an officer of this corporation was meant precisely to prevent the removal of the manager by the Board of Directors alone. This is made clear in the following portion of Mr. Justice Bengzon's dissenting opinion:

> "VI. Stockholders intended security for manager. It would be interesting to inquire whether in approving the two-thirds requirement in the by-laws, the stockholders *intended* to apply it only to the Vice-President, the Secretary and the Treasurer—excluding the manager—as the majority opinion declares.
>
> " It must be remembeyed that since the beginning, Gurrea's family owned or controlled one-half of the shares and Manuel Lezaroa's family the other half. Evidently, because Gurrea voted for them, Lezama and two others of his family became directors in the five man board of directors. In reciprocity for such vote or concession, Gurrea was named manager. As owner of one-half of the shares Gurrea could effectively block approval of any by-laws that did not protect his interests. Therefore, he would not have approved the by-laws in question if they did not protect his position as manager, knowing that being in the minority in the board of directors his position would be at the mercy of the Lezama family. The bargain between the Lezama and Gurrea families must have been this: Majority of directors of Lezama; minority for Gurrea plus the position of manager; the Lezama directors cannot be changed by Gurrea alone (he owns one-half only); and Gurrea may not be changed by the Lezama directors (they

have one-half shares only).”

With the above clarification of the situation that led to the approval of the by-law on the removal of officers, I think this Court would do well to rely, less on the technicalities of definition and adhere more to its function of giving effect to the by-law in accordance with its purpose.

Date created: January 26, 2015