

MARIA CARLA PIROVANO ET AL., PLAINTIFFS-APPELLEES, VS. THE DE LA RAMA STEAMSHIP CO., INC., DEFENDANT-APPELLANT.

G.R. No. L-5377. December 29, 1954

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Rizal declaring the donation made by the defendant in favor of the Minor children of the late Enrico Pirovano of the proceeds of the insurance policies taken on his life valid and binding, and ordering said defendant to pay the said minor children the sum of P583,813.59, with interest thereon at the rate of 5% from the date of the filing of the complaint, plus an additional amount equivalent to 20% of said sum of P583,813.59 as damages by way of attorney's fees, and the costs of action.

Plaintiffs herein are the minor children of the late Enrico Pirovano represented by their mother and judicial guardian Estefania R. Pirovano. They seek to enforce certain resolutions adopted by the Board of Directors and stockholders of the defendant company giving to said minor children the proceeds of the insurance policies taken in the life of their deceased father Enrico Pirovano with the Company as beneficiary. Defendant's main defense is: that said resolutions and the contract executed pursuant thereto are ultra vires, and, if valid, the obligation to pay the amount given is not yet due and demandable.

The trial court resolved all the issues raised by the parties in favor of the plaintiffs and, after considering the evidence, both oral and documentary, arrived at the following conclusions:

"First:—That the contract executed between the plaintiffs and the defendant is a remunerative donation.

"Second:—That said contract or donation is not ultra vires but an act executed within the powers of the defendant corporation in accordance with its articles of incorporation and by-laws, sanctioned and approved by its Board of Directors and stockholders; and subsequently ratified by other subsequent acts of the defendant company.

"Third:—That the said donation is in accordance with the trend of modern and more enlightened legislation in its treatment of questions between labor and capital.

"Fourth:—That the condition mentioned in the donation is null and void because it depends on the provisions of Article 1115 of the old Civil Code.

"Fifth:—That if the condition is valid, its non-fulfillment is due to the desistance of the defendant company from obeying and doing the wishes and mandates of the majority of the stockholders.

"Sixth:—That the non-payment in favor of the national Development Company is not due to the lack of funds, nor to lack of authority, but the desire of the President of the corporation to preserve and continue the Government participation in the company.

"Seventh:—That due demands were made by the plaintiffs and their attorneys and these demands were rejected

for no justifiable or legal grounds."

The important facts which need to be considered for purposes of this appeal may be briefly stated as follows:

Defendant is a corporation duly organized in accordance with law with an authorized capital of P500,000, divided into P5,000 shares, with a par value of P100 each share. The stockholders were: Esteban de la Rama, 1,800 shares, Leonor de la Rama, 100 shares, Estefania de la Rama, 100 shares, and Eliseo Hervas, Tomas Concepcion, Antonio G. Juanco, and Gaudencio Volasote with 5 shares each. Leonor and Estefania are daughters of Don Esteban, while the rest his employees. Estefaniade la Rama was married to the late Enrico Pirovano and to them four children were born who are the plaintiffs in this case.

Enrico Pirovano became the president of the defendant cbmpany and under his management the company grew and progressed until it became a multi-million corporation by the time Pirovano was executed by the Japanese during the occupation. On May 13, 1941, the capital stock of the corporation was increased to P2,000,000, after which a 100 stock dividend was declared. Subsequently, or before the outbreak of the war, new stock dividends of 200 and 33-1/3 per cent again declared. On December 4, 1941 the capital stock was once more increased to P5,000,000. Under Pirovano1 s management, the assets of the company grew and increased from an original paid up capital of around P2,000,000 to P15,538,0237 by September 30, 1941 (Exhibit HH).

In the meantime, Don Esteban de la Rama, who practically owned and controlled the stock of the defendant corporation, distributed his shareholding among his five daughters, namely, Leonor, Estefania, Lourdes, Lolita and Conchita and his wife Natividad Aguilar so that, at that time, or on July 10, 1946, the stockholding of the corporation stood as follows: Esteban de la Rama, 869 shares, Leonor de la Rama, 3,376 shares, Estefania de la Rama, 3,368 shares, Lourdes de la Rama, 3,368 shares, Lolita de la Rama, 3,368 shares, Conchita de la Rama, 3,376 shares, and Natividad Aguilar, 2,136 shares. The other stockholders, namely, Eliseo Hervas, Tomas Concepcion, Antonio Juanco, and Jose Aguilar, who were merely employees of Don Esiteban, were given 40 shares each, while Pio Pedrosa, Marcial P. Lichauco and Rafael Rocas, one share each, because they merely represented the National Development Company. This company was given representation in the Board of Directors off the corporation because at that time the latter had an outstanding bonded indebtedness to the National Development Company.

This bonded indebtedness was incurred on February 26, 1940 and was in the amount of P7,500,000. The bond held by the National Development Company was redeemable within a period off 20 years from March 1, 1940, bearing interest at the rate of 5% per annum. To secure said bonded indebtedness, all the assets of the De la Rama Steamship Co., Inc. and properties of Don Esteban de la Rama, as well as those of the Hijos de I. de la Rama & Co., Inc., a sister corporation owned by Don Esteban and his family, were mortgaged to the National Development Company (Annexes A, B, C, D of Exhibit 3, Deed of Trust). Payments made by the corporation under the management of Pirovano reduced this bonded indebtedness to P3,260,855.77.

Upon arrangement made with the National Development Company, the outstanding bonded indebtedness was converted into non-voting preferred stares of stock of the De la Rama Company under the express condition that they would bear a fixed cumulative dividend of 6% per annum and would be redeemable within 15 years (Exhibits 5 and 7). This conversion was carried out on September 23, 1949, when the National Development Company executed a "Deed of Termination of Trust and Release of Mortgage" in favor of the De la Rama company (Exhibit 6). The immediate effect of this conversion was the release from incumbrance of all the properties of Don Esteban and of the Hijos de I. de la Rama & Com., Inc., which was apparently favorable to the interests of the De la Rama Company, but, on the other hand, it resulted in th6 inconvenience that, asj holder of the preferred stock, the National Development Company was given the right to 40 per cent of the membership of

the Board of Directors of the De la Rama company, which meant an increase in the representation of the National Development Company from 2 to 9 of the 9 members of said Board of Directors.

The first resolution granting to the Pirovano children the proceeds of the insurance policies taken on his life by the defendant company was adopted by the Board of Directors at a meeting held on July 10, 1946 (Exhibit B). This grant was called in the resolution as "Special Payment to Minor Heirs of the late Enrico Pirovano". Because of its direct bearing on the issues involved in this case, said resolution is hereunder reproduced in toto:

"SPECIAL PAYMENT TO MINOR HEIRS OF THE LATE ENRICO PIROVANO

"The President stated that the purpose for which the meeting had been principal purpose for which the meeting had been called was to discuss the advisability of making some form of compensation to the minor heirs of the late Enrico Pirovano, former President and General Manager of the Company. As every member of the Board knows, said the President, the late Enrico Pirovano who was largely responsible for the very successful development of the activities of the Company prior to the war, was killed by the Japanese in Manila sometime in 1944 leaving as his only heirs his four minor children, Maria Carla, Esteban, Enrico and John Albert. Early in 1941 explained the President, the Company had insured the life of Mr. Pirovano for a million pesos. Following the occupation of the Philippines by Japanese forces the Company was unable to pay the premiums on those policies issued by Filipino companies and these policies had lapsed. But with regards to the policies obtained from American companies, the New York Office of the De la Rama Steamship Co., Inc. had kept up payment of the premiums from year to year. The payments made on account of these premiums, however, are very small compared to the amount which the Company will now receive as a result of Mr. Pirovano's death. The President proposed therefore that out of the proceeds of these policies the sum of P4,000,000.00 be set aside for the minor children of the deceased, said sum of money to be convertible into 4,000 shares of stock of the Company, at par, or 1,000 shares for each child. This proposal, explained the President, was being made by him upon suggestion of President Roxas, but, he added, that he himself was very much in favor of it also. On motion of Miss Leonor de la Rama duly seconded by Mrs. Lourdes de la Rama de Osmeña, the following resolution was, thereupon, unanimously Approved:

'Whereas, the late Enrico Pirovano, President and General Manager of the De la Rama Steamship Company, died in Manila sometime in November, 1944:

'Whereas, the said Enrico Pirovano was largely responsible for the rapid and very successful development of the activities of this company;

'Whereas, early in 1941 this company insured the life of said Enrico Pirovano in various Philippine and American Life Insurance companies for the total sum of P1,000,000.00;

'Whereas, the said Enrico Pirovano is survived by his widow, Estefania Pirovano and four (4) minor children, to wit: Esteban, Maria Carla, Enrico and John Albert, all surnamed Pirovano

'Whereas, the said Enrico Pirovano left practically nothing to his heirs and it is but fit and proper that this company which owes so much to the deceased should make some provision for his children;

'Whereas, this company paid premiums on Mr. Pirovano's life insurance policies for a period of only four (4) years so that it will receive from the insurance companies sums of money greatly in excess of the premiums paid by this company.

'Be it resolved, That out of the proceeds to be collected from the life insurance policies on the life of the late Enrico Pirovano, the sum of 100,000.00 be set aside for equal division among the four (4) minor children of the deceased, to wit: Esteban, Maria Carla, Enrico and John Albert, all surnamed Pirovano, which sum of money shall be convertible into shares of stock of the De la Rama Steamship Company at par and, for that

purpose, that the present registered stockholders of the corporation be requested to waive their preemptive right to 4,000 shares of the unissued stock of the company in order to enable each of the four (4) minor heirs of the deceased; to wit: Esteban, Maria Carla, Enrico and John Albert, all surnamed Pirovano, to obtain 1,000 shares at par;

'Resolved, further, that in view of the fact that under the provisions of the indenture with the National Development Company, it is necessary that the action herein proposed be confirmed by the Board of Directors of that company, the Secretary is hereby instructed to send a copy of this resolution, to the proper officers of the National Development Company for appropriate action.'" (Exhibit B)

The above resolution, which was adopted on July 10, was submitted to the stockholders of the De la Rama company at a meeting properly convened, and on that same date, July 10, 1946 the same was duly approved.

It appears that, although Don Esteban and the members of his family were agreeable to giving to the Pirovano children the amount of P4,000,000 out of the proceeds of the insurance policies taken on the life of Enrico Pirovano, they did not realize that when they provided in the above referred two resolutions that said amount should be paid in the form of shares of stock, they would be actually giving to the Pirovano children more than what they intended to give. This came about when Lourdes de la Rama, wife of Sergio Osmeña, Jr., showed to the latter copies of said resolutions and asked him to explain their import and meaning, and it was then that Osmeña explained that because the value than of the shares of stock was actually 3.6 times their par value, the donation, although purporting to be only P4000,000, would actually amount to a total of P1,440,000. He further explained that if the Pirovano children would be given shares of stock in lieu of the amount to be donated, the voting strength of the five daughters of Don Esteban in the company would be adversely affected in the sense that Mrs. Pirovano would have a voting power twice as much as that of her sisters. This caused Lourdes de la Rama to write to the secretary of the corporation, Atty. Marcial Lichauco, asking him to cancel the waiver she supposedly gave of her pre-emptive rights. Osmeña elaborated on this matter at the annual meeting of the stockholders held on December 12, 1946, but at said meeting it was decided to leave the matter in abeyance pending further action on the part of the members of the De la Rama family.

Osmeña, in the meantime, took up the matter with Don Esteban and, as a consequence, the latter, on December 30, 1946 addressed to Marcial Lichauco a letter stating, among other things, that "in view of the total lack of understanding by me and my daughters of the two Resolutions abovementioned, namely, Directors' and Stockholders' dated July 10, as finally resolved by the majority of the Stockholders and Directors present yesterday, that you consider the above-mentioned resolutions nullified." (Exhibit CC)

On January 6, 1947, the Board of Directors of the De la Rama Company, as a consequence of the change of attitude of Don Esteban, adopted a resolution changing the form of the donation to the Pirovano children from a donation of 4,000 shares of stock as originally planned into a renunciation in favor of the children of all the company's "right, title, and interest as beneficiary in and to the proceeds of the above-mentioned, life insurance policies", subject to the express condition that said proceeds should be retained by the company as a loan drawing interest at the rate of 5% per annum and payable to the Pirovano children after the company "shall have first settled in full the balance of its present remaining bonded indebtedness in the sum of approximately Five Million (P5,000,000) Pesos." (Exhibit C) This resolution was concurred in by the representatives of the National Development Company. The pertinent portion of the resolution reads as follows:

'Be it resolved, that out of gratitude to the late Enrico Pirovano this Company renounce at it hereby renounces, all of its right, title and interest as beneficiary in and to the proceeds of the above-mentioned life insurance policies in favor of Esteban, Maria Carla, Enrico and John Albert, all surnamed Pirovano, subject to the terms and conditions hereinafter provided;

"That the proceeds of said insurance policies shall be retained by the Company in the nature of a loan drawing interest at the rate of Five (5%) Per Cent per annum from the date of receipt of payment by the Company from the various insurance companies above-mentioned until the time the same amounts are paid to the minor heirs of Enrico Pirovano previously mentioned;

"That all amounts received from the above-mentioned policies shall be divided equally among the minor heirs of said Enrico Pirovano;

"That the company shall proceed to pay the proceeds of said insurance policies plus interests that may have accrued to each of the heirs of the said Enrico Pirovano or their duly appointed representatives after the Company shall have first settled in full the balance of its present remaining bonded indebtedness in the sum of approximately Five Million (P5,000,000.00) Pesos.

The above resolution was carried out by the company and Mrs. Estefania E. Pirovano, the Hatter acting as guardian of her children, by executing a Memorandum Agreement on January 10, 1947 and June 17, 1947 respectively, stating therein that the De la Rama Steamship Co., Inc. shall enter in its books as a loan the proceeds of the life insurance policies taken on the life of Pirovano totalling \$321,500, which loan would earn interest at the rate of 5% per annum. Mrs. Pirovano, in executing the agreement, acted with the express authority granted; to her by the court in an order dated March 26, 1947.

On June 24, 1947, the Board of Directors approved a resolution providing therein that instead of; the interest on the loan being payable, together with the principal, only after the company shall have first settled in full its bonded indebtedness, said interest may be paid to the Pirovano children "whenever the company is in a position to meet said obligation" (Exhibit D), and on February 26, 1948, Mrs. Pirovano executed a public document in which she formally accepted the donation (Exhibit H). The De la Rama company took "official notice" of this formal acceptance at a meeting held by its Board of Directors on February 26, 1948.

In connection with the above negotiations, the Board of Directors took up at its meeting on July 25, 1949, the proposition of Mrs. Pirovano to buy the house at New Rochelle, New York, owned by the Demwood Realty, a subsidiary of the De la Rama company at its original cost of \$75,000, which would be paid from the funds held in trust belonging to her minor children. After a brief discussion relative to the matter, the proposition was approved in a resolution adopted on the same date. The formal transfer was made in an agreement signed on September 5, 1949 by Mrs. Pirovano, as guardian of her children, and by the De la Rama company, represented by, its new General Manager, Sergio Osmeña, Jr. The transfer of this property was approved by the court in its order of September 20, 1949.

On September 13, 1949 or two years and 3 months after the donation had been approved in the various resolutions herein above mentioned, the stockholders of the De la Rama company formally ratified the donation (Exhibit E), with certain clarifying modifications, including the resolution approving the transfer of the Demwood property to the Pirovano children. The clarifying modifications are quoted hereunder:

"1. That the payment of the above-mentioned donation shall not be effected until such time as the Company shall have first duly liquidated its present bonded indebtedness in the amount of P3,260,855.77 with the National Development Company, or fully redeemed the preferred shares of stock in the amount which shall be issued to She National Development Company in lieu thereof;

"2. That any and all taxes, legal fees, and expenses in any way connected with the above transaction shall be chargeable and deducted from the proceeds of the life insurance policies mentioned in the resolutions of the Board of Directors." (Exhibit E)

Sometime in March, 1950, the President of the corporation, Sergio Osmeña, Jr., addressed an inquiry to the

Securities and Exchange Commission asking for opinion regarding the validity of the donation of the proceeds of the insurance policies to the Pirovano children. On June 20, 1950 that office rendered its opinion holding that the donation was void because the corporation could not dispose of its assets by gift and therefore the corporation acted beyond the scope of its corporate powers. This opinion was submitted to the Board of Directors at its meeting on July 12, 1950, on which occasion the president recommended that other legal ways be studied whereby the donation could be carried out. On September 12, 1950, another meeting was held to discuss the propriety of the donation. At this meeting the president expressed the view that, since the corporation was not authorized by its charter to make the donation to the Pirovano children and the majority of the stockholders was in favor of making provision for said children, the manner he believed this could be done would be to declare a cash dividend in favor of the stockholders in the exact amount of the insurance proceeds and thereafter have the stockholders make the donation to the children in their individual capacity. Notwithstanding this proposal of the president, the board took no action on the matter, and on March 8, 1951, at a stockholders' meeting convened on that date, the majority of the stockholders voted to revoke the resolution approving the donation to the Pirovano children. The pertinent portion of the resolution reads as follows:

"Be it resolved, as it is hereby resolved, that in view of the failure of compliance with the above conditions to which the above donation was made subject, and in view of the opinion of the Securities & Exchange Commissioner, the stockholders revoke, rescind and annul, as they do hereby revoke, rescind and annul, its ratification and approval on September 13, 1949 of the aforementioned resolution of the Board of Directors of January 6, 1947, as amended on June 24, 1947." (Exhibit T)

In view of the resolution declaring that the corporation failed to comply with the condition set for the effectivity of the donation and revoking at the same time the approval given to it by the corporation, and considering that the corporation can no longer set aside said donation because it had long been perfected and consummated, the minor children of the late Enrico Pirovano, represented by their mother and guardian, Estefania R. de Pirovano, demanded the payment of the credit due them as of December 31, 1951, amounting to P56,980.89, and this payment having been refused, they instituted the present action in the Court of First Instance of Rizal wherein they prayed that they be granted an alternative relief of the following tenors (1) sentencing defendant to pay to the plaintiff the sum of P56,980.89 as of December 31, 1951, with the corresponding interest thereon; (2) as an alternative relief, sentencing defendant to pay to the plaintiffs the interests on said sum of P56,980.89 at the rate of 5% per annum, and the sum of P56,980.89 after the redemption of the preferred shares of the corporation held by the National Development Company; and (3) in any event, sentencing defendant to pay the plaintiffs damages in the amount of not less than 20% of the sum that may be adjudged to the plaintiffs, and the costs of action.

The only issues which in the opinion of the court need to be determined in order to reach a decision in this appeal are: (1) Is the grant of the proceeds of the insurance policies taken on the life of the late Enrico Pirovano as embodied in the resolution of the Board of Directors of defendant corporation adopted on January 6, 1947 and June 24, 1947 a remunerative donation as found by the lower court (2) In the affirmative case, has that donation been perfected before its rescission or nullification by the stockholders of the corporation on March 8, 1951; (3) Can defendant corporation give by way of donation the proceeds of said insurance policies to the minor children of the late Enrico Pirovano under the law or its articles of incorporation, or is that donation an ultra vires act?; and (4) Has the defendant corporation, by the acts it performed subsequent to the granting of the donation, deliberately prevented the fulfillment of the condition precedent to the payment of said donation such that it can be said it has forfeited its right to demand its fulfillment and has made the donation entirely due and demandable?

We will discuss these issues separately.

1. To determine the nature of the grant made by the defendant corporation to the minor children of the late Enrico

Pirovano, we do not need to go far nor dig into the voluminous record that lies at the bottom of this case. We do not even need to inquire into the interest which has allegedly been shown by President Roxas in the welfare of the children of his good friend Enrico Pirovano. Whether President Roxas has taken the initiative in the move to give something to said children which later culminated in the donation now in dispute, is of no moment for the fact is that, from the mass of evidence on hand, such a donation has been given the full indorsement and encouraging support by Don Esteban de la Rama who was practically the owner of the corporation. We only need to fall back to accomplish this purpose on the several resolutions of the Board of Directors of the corporation containing said grant for they clearly state the reasons and purposes why the donation has been given.

Before we proceed further, it is convenient to state here in passing that, before the Board of Directors had approved its resolution of January 6, 1947 as later amended by another resolution adopted on June 21, 1947, the corporation had already decided to give to the minor children of the late Enrico Pirovano the sum of P400,000 out of the proceeds of the insurance policies taken on his life in the form of shares, and that when this form was considered objectionable because its result and effect would be to give to said children a much greater amount considering the value then of the stock of the corporation, the Board of Directors decided to amend the donation in the form and under the terms stated in the aforesaid resolutions. Thus, in the original resolution approved by the Board of Directors on July 10, 1946, wherein the reasons for granting the donation to the minor children of the late Enrico Pirovano were clearly expressed, we find the following revealing statements:

'Whereas, the late Enrico Pirovano, President and General Manager of the De la Rama Steamship Company, died in Manila sometime in November,

'Whereas, the said Enrico Pirovano was largely responsible for the rapid and very Successful development of the activities of this company;

'Whereas, early in 1941 this company insured the life of said Enrico Pirovano in various Philippine and American Life Insurance companies for the total sum of P1,000,000.00;

'Whereas, the said Enrico Pirovano is survived by his widow, Estefania Pirovano and four (4) minor children, to wits Esteban, Maria Carla, Enrico and John Albert, all surnamed Pirovano;

'Whereas, the said Enrico Pirovano left practically nothing to his heirs and it is but fit and proper that this company which owes so much to the deceased should make some provision for his children;

'Whereas, this company paid premiums on Mr. Pirovano's life insurance policies for a period of only four (4) years so that it will receive from the insurance companies sums of money greatly in excess of the premiums paid by this company.'

Again, in the resolution approved by the Board of Directors on January 6, 1947, we also find the following expressive statements which are but a reiteration of those already expressed in the original resolution:

'Whereas, the late Enrico Pirovano, President and General Manager of the De la Rama Steamship Co., Inc., died in Manila sometime during the latter part of the year 1944;

'Whereas, the said Enrico Pirovano was to a large extent responsible for the rapid and very successful development and expansion of the activities of this company;

'Whereas, early in 1941, the life of the said Enrico Pirovano was insured in various life insurance companies, to wit: * * *.'

'Whereas, the said Enrico Pirovano is survived by four (4) minor children, to wit: Esteban, Maria Carla, Enrico and John Albert, all surnamed Pirovano; and

'Whereas, the said Enrico Pirovano left practically nothing to his heirs and it is but fit and proper that this Company which owes so much to the deceased should make some provision for his children;

'Be it resolved, that out of gratitude to Enrico Pirovano this Company renounce as it hereby renounces, * * *.'

From the above it clearly appears that the corporation thought of giving the donation to the children of the late Enrico Pirovano because he "was to a large extent responsible for the rapid and very successful development and expansion of the activities of this company"; and also because he "left practically nothing to his heirs and it is but fit and proper this company which owes so much to the deceased should some provision to his children", and so the donation was given "out of gratitude to the late Enrico Pirovano," We do not need to stretch our imagination to see that a grant or donation given under these circumstances is remunerative in nature in contemplation of law.

"That which is made to a person in consideration of his merits or for services rendered to the donor, provided they do not constitute recoverable debts, or that In which a burden less than the value of the thing given is imposed upon the donee, is also a donation.¹¹ (Art. 619, old Civil Code.)

"In donations made to a person for services rendered to the donor, the donor's will is moved by acts which directly benefit him. The motivating cause is gratitude, acknowledgment of a favor, a desire to compensate. A donation made to one who saved, the donor's life, or to a lawyer who renounced his fees for services rendered to the donor, would fall under this class of donations. These donations are called remunerative donations." (Sinco & Capistrano, *The Civil Code*, Vol. 1, p. 676; Manresa, 5th ed., pp. 72-73.)

2. The next question to be determined is whether the donation has been perfected such that the corporation can no longer rescind it even if it wanted to. The answer to this question cannot but be in the affirmative considering that the same has not only been granted in several resolutions duly adopted by the Board of Directors but it has been formally ratified by the stockholders of the defendant corporation, and in all these corporate acts the concurrence of the representatives of the National Development Company, the only creditor whose interest may be affected by the donation, has been expressly given. The corporation has even gone further. It actually transferred the ownership of the credit subject of donation to the Pirovano children with the express understanding that the money would be retained by the corporation subject to the condition that the latter would pay interest thereon at the rate of 5% per annum payable whenever said corporation may be in a financial position to do so. Thus, the following acts of the corporation as reflected from the evidence bear this out:

(a) The donation was embodied in a resolution duly approved by the Board of Directors on January 6, 1947. In this resolution, the representatives of the National Development Company have given their concurrence. This is the only creditor which can. be considered as being adversely affected by the donation. The resolution of June 2h, 1947 did not modify the substance of the former resolution for it merely provided that, instead of the interest on the loan being; payable, together with the principal, only after the corporation had first settled in full its bended indebtedness, said interest would be paid "whenever the Company is in a position to meet said obligation."

(b) The resolution of January 6, 1947 was actually carried out when the company and Mrs. Estefania H. Pirovano executed a memorandum agreement stating therein that the proceeds of the insurance policies would be entered in the books of the corporation as a loan which would bear an interest at the rate of 5% per annum, and said agreement was signed by Mrs. Pirovano as judicial guardian of her children after she had been expressly authorized by the court to accept the donation in behalf of her children.

(c) Miile the donation can be considered as duly executed by the execution of the document stated in the preceding paragraph, and by the entry in the books of the corporation of the donation as a loan, a further record of said execution Was made when Mrs. Pirovano executed a public document on February 26, 1948 making a similar acceptance of the donation. And this acceptance was officially recorded by the corporation when on the

same date its Board of Directors approved a resolution taking "official notice" of said acceptance.

(d) On July 25, 1949, the Board of Directors approved the proposal of Mrs. Pirovano to buy the house at New Rochelle, New York, owned by a subsidiary of the corporation at the cost of P75,000 which would be paid from the sum held in trust belonging to her minor children. And this agreement was actually carried out in a document signed by the general manager of the corporation and by Mrs. Pirovano, who acted on the matter with the express authority of the court.

(e) And on September 30, 1949, or two years and 3 months after the donation had been executed, the stockholders of the defendant corporation formally ratified and gave approval to the donation as embodied in the resolutions above referred to, subject to certain modifications which did not materially affect the nature of the donation.

There can therefore be no doubt from the foregoing relation of facts that the donation was a corporate act carried out by the corporation not only with the sanction of its Board of Directors but also of its stockholders. It is evident that the donation has reached the stage of perfection which is valid and binding upon the corporation and as such cannot be rescinded unless there exist legal grounds for doing so. In this case, we see none. The two reasons given for the rescission of said donation in the resolution of the corporation adopted on March 8, 1951, to wit: that the corporation failed to comply with the conditions to which the above donation was made subject, and that in the opinion of the Securities and Exchange Commission said donation is ultra vires, are not, in our opinion, valid and legal as to justify the rescission of a perfected donation. These reasons, as we will discuss in the latter part of this decision, cannot be invoked by the corporation to rescind or set at naught the donation, and the only way by which this can be done is to show that the donee has been in default, or that the donation has not been validly executed, or is illegal or ultra vires, and such is not the case as we will see hereafter. We therefore declare that the resolution approved by the stockholders of the defendant corporation on March 8, 1951 did not and cannot have the effect of nullifying the donation in question.

3. The third question to be determined 1st can defendant corporation give by way of donation the proceeds of said insurance policies to the minor children of the late Enrico Pirovano under the law or its articles of incorporation, or is that donation an ultra vires act? To answer this question it is important for us to examine the articles of incorporation of the De la Rama company to see if the act of donation is outside of their scope. Paragraph second of said articles provides:

"Second.—The purposes for which said corporation is formed are:

- (a) To purchase, charter, hire, build, or otherwise acquire steam or other ships or vessels, together with equipments and furniture therefor, and to employ the same in conveyance and carriage of goods, wares and merchandise of every description, and of passengers upon the high seas.
- (b) To sell, let, charter, or otherwise dispose of the said vessels or other property of the company.
- (c) To carry on the business of carriers by water.
- (d) To carry on the business of shipowners in all of its branches.
- (e) To purchase or take on lease, lands, wharves, stores, lighters, barges, and other things which the company may deem necessary or advisable to be purchased or leased for the necessary and proper purposes of the business of the company, and from time to time to sell and dispose of the same.
- (f) To promote any company or companies for the purpose of acquiring all or any of the property or liabilities of this company, or both, or for any other purpose which may seem directly or indirectly calculated to benefit the company.

(g) To invest and deal with the moneys of the company not immediately required in such manner as from time to time may be determined.

(h) To borrow, or raise, or secure the payment of money in such manner as the company shall think fit.

(i) Generally, to do all such other things and to transact all business as may be directly or indirectly incidental or conducive to the attainment of the above object, or any of them respectively.

(j) Without in any particular limiting or restricting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations, to mortgage or pledge any stocks, bonds or other obligations or any property which may be acquired by said corporation; to secure any bonds, guarantees or other obligations by it issued or incurred to lend money or credit to and to aid in any other manner any person, association, or corporation of which any obligation or in which any interest held by this corporation or In the affairs or prosperity of which this corporation has "a lawful interest, and to do such acts and things as may be necessary to protect, preserve, improve, or enhance the value of any such obligation or interest; and, in general, to do which other acts in connection with the purposes for which this corporation has been formed which is calculated to promote the interest of the corporation or to enhance the value of its property and to exercise all the rights, powers and privileges which are now or may hereafter be conferred by the laws of the Philippines upon corporations formed under the Philippine Corporation Act to execute from time to time general or special powers of attorney to persons, firms, associations or corporations either in the Philippines, in the United States, or in any other country and to revoke the same as and when the Directors may determine and to do any and/or all of the things hereinafter set forth and to the same extent as natural persons might or could do."

After a careful perusal of the provisions above quoted we find that the corporation was given broad and almost unlimited powers to carry out the purposes for which it was organized, among them, (1) "To invest and deal with the moneys of the company not immediately required, in such manner as from time to time may be determined" and, (2) "to aid in any other manner any person, association, or corporation of which obligation or in which any interest is held by this corporation or in the affairs or prosperity of which this corporation has a lawful interest." The word deal is broad enough to include any manner of disposition, and refers to moneys not immediately repaid by the corporation, and such disposition may be made in such manner as from time to time may be determined by the corporation. The donation in question undoubtedly comes within the scope of this broad power for it is a fact appearing in the evidence that the insurance proceeds were not immediately required when they were given away. In fact, the evidence shows that the corporation declared a 100% cash dividend, or P2,000,000, and later on another 30% cash dividend. This is clear proof of the solvency of the corporation. It may be that, as insinuated, Don Esteban wanted to make use of the insurance money to rehabilitate the central owned by a sister corporation, known as Hijos de I. de la Rama & Co., Inc., situate in Bago, Negros Occidental, but this, far from reflecting against the solvency of the De la Rama company, only shows that the funds were not needed by the corporation.

Under the second broad power we have above stated, that is, to aid in any other manner any person in the affairs and prosperity of whom the corporation has a lawful interest, the record of this case is replete with instances which clearly show that the corporation knew well its scope and meaning so much so that, with the exception of the instant case, no one has lifted a finger to dispute their validity. Thus, under this broad grant of power, this corporation paid to the heirs off one Florentino Wonato, an engineer of one of the ships of the company who died in Japan, a gratuity of P7,000, equivalent to one month salary for each year of service. It also gave to Ramon Pons, a captain of one of its ships, a retirement gratuity equivalent to one month salary for every year of service, the same to be based upon his highest salary, And it contributed P2,000 to the fund raised by the Associated Steamship Lines for the widow of the late Francis Gispert, secretary of said Association, of which the De la Rama

Steamship Co., Ire . was a member along with about 30 other steamship companies. In this instance, Gispert was not even an employee of the corporation. And invoking this vast power, the corporation even went to the extent of contributing P100,000 to the Liberal Party campaign funds, apparently in the hope that by conserving its cordial relations with that party it continue to retain the patronage of the administration, these acts executed before and after the donation in question have never been questioned and were willingly and actually carried out.

We don't see much distinction between these acts of generosity or of benevolence extended to some employees of the corporation and even to some in whom the corporation was merely interested because of certain moral or political considerations, and the donation which the corporation has seen fit to give to the children of the late Enrico Pirovano from the point of view of the power of the corporation as expressed in its articles of incorporation. And if the former had been sanctioned and had been considered valid and *intra vires*, we see no plausible reason why the latter should now be deemed *ultra vires*. It may perhaps be argued that the donation given to the children of the late Enrico Pirovano is so large and disproportionate that it can hardly be considered a pension or gratuity that can be placed on a par with the instances above mentioned, but this argument overlooks one consideration the gratuity here given was not merely motivated by pure liberality or act of generosity, but by a deep sense of recognition of the valuable services rendered by the late Enrico Pirovano which made immensely contributed to the growth of the corporation to the extent that from its humble capitalization it blossomed into a multi-million corporation that it is today. In the words of the very resolutions granting the donation or gratuity, said donation was given not only because the company was so indebted to him that it saw fit and proper to make provisions for his children, but it did so out of a sense of gratitude. Another factor that we should bear in mind is that Enrico Pirovano was not only a high official of the company but was at the same time a member of the De la Rama family, and the recipient of the donation are the grandchildren of Don Esteban de la Rama. This, we may say is the motivating root cause behind the grant of this bounty.

It may be contended that a donation is different from a gratuity. While technically this may be so in substance they are the same. They are even similar to a pension. Thus, it was said that "A pension is a gratuity only when it is granted for services previously rendered, and which at the time they were rendered gave rise to no legal obligation." (Words & Phrases, Permanent Edition, p. 675; *O'Dea vs. Cook*, 169 Pac. 366, 176 Cal. 659.) Or stated in another way, a "Gratuity is a mere bounty given by the Government in consideration or recognition of meritorious services and springs from the appreciation and graciousness of the Government", (*Ilagan vs. Ilaya*, G. R. No. 33507, Dec. 20, 1930) or "A gratuity is something given freely, or without recompense, a gift something voluntarily given in return for a favor or service; a bounty; a tip." (*Wood Mercantile Co. vs. Cole*, 209 S. W. 2d. 290; *Mendoza vs. Dizon*, 43 O. G., p. 4633, Oct. 25, 1946.) We do not see much difference between this definition of gratuity and a remunerative donation contemplated in the Civil Code. In essence they are the same. Such being the case, it may be said that this donation is gratuity in a large sense for it was given for valuable services rendered, and in this sense the same cannot be considered an *ultra vires* act in the light of the following authorities:

"Indeed, some American cases seem to hold that the giving of a pure gratuity to directors is *ultra vires* of the corporation, so that it could not be legalized even by the approval of the share-holders; but this position has no sound reason to support it, and is opposed to the weight of authority (*Huffaker vs. Krieger's Assignee*, 53 S.W. Rep. 288; 107 Ky. 200; 46 L.R.A. 384.)"

"But although business corporations cannot contribute to charity or benevolence, yet they are not required always to insist on the full extent of their legal rights. They are not forbidden from recognizing moral obligations of which strict law takes no cognizance. They are not prohibited from establishing a reputation for broad, liberal, equitable dealing which may stand them in good stead in competition with less fair rivals. Thus, an incorporated fire insurance company whose policies except losses from explosions may nevertheless pay a

loss from that cause when other companies are accustomed to do so, such liberal dealing being deemed conducive to the prosperity of the corporation." (Modern Law of Corporations, Machen, Vol. 1, p. 81.)

"So, a bank may grant a five years' pension to the family of one of its officers. In all cases of these sorts, the amount of the gratuity rests entirely within the discretion of the company, unless indeed it be altogether out of reason and fitness. But where the company has ceased to be a going concern, this power to make gifts or presents is at an end." (Modern Law of Corporations, Machen, Vol. 1, P. 82.)

"Payment of Gratuities out of Capital.—There seems on principle no reason to doubt that gifts or gratuities wherever they are lawful may be paid out of capital as well as out of profits." (Modern Law of Corporations, Mechen, Vol. 1, p. 83.)

"Whether desirable to supplement implied powers of this kind by express provisions.—Enough has been said to show that the implied powers of a corporation to give gratuities to its servants and officers, as well as to strangers, are ample, so that there is therefore no need to supplement them by express provisions." (Modern Law of Corporations, Machen, Vol. 1, p. 83.)[1]

Granting arguendo that the donation given to the Pirovano children is outside the scope of the powers of the defendant corporation, or the scope of the powers that it may exercise under the law, or it is an ultra vires act, still it may be said that the same cannot be invalidated, or declared legally ineffective for that reason alone, it appearing that the donation represents not only the act of the Board of Directors but of the stockholders themselves as shown by the fact that the same has been expressly ratified in a resolution duly approved by the latter. By this ratification, the infirmity of the corporate act, if any, has been obliterated thereby making the act perfectly valid and enforceable. This is specially so if the donation is not merely executory but executed and consummated and no creditors are prejudiced, or if there are creditors affected, the latter have expressly given their conformity.

In making this pronouncement, advertence should be made of the nature of the ultra vires act that is in question. A little digression needs be made on this matter to show the different legal effects that may result consequent upon the performance of a particular ultra vires act on the part of the corporation. Many authorities may be cited interpreting or defining the meaning, extent, and scope of an ultra vires act, but all of them are uniform and unanimous that the same may be either an act performed merely outside the scope of the powers granted to it by its articles of incorporation, or one which is contrary to law or violative of any principle which would void any contract whether done individually or collectively. In other words, a distinction should be made between corporate acts or contracts which are illegal and those which are merely ultra vires. The former contemplates the doing of an act which is contrary to law, morals, or public order, or contravene some rules of public policy or public duty, and are, like similar transactions between individuals, void. They can not serve as basis of a court action, nor acquire validity by performance, ratification, or estoppel. Mere ultra vires acts, on the other hand, or those which are not illegal and void ab initio but are not merely within the scope of the articles of incorporation, are merely voidable and may become binding and enforceable when ratified by the stockholders.

"Strictly speaking, an ultra vires act is one outside the scope of the powers conferred by the legislature, and although the term has been used indiscriminately, it is properly distinguishable from acts which are illegal, in excess or abuse of power, or executed in an unauthorized manner, or acts within corporate powers but outside the authority of particular officers or agents." (19 C.J.S. 419)

"Corporate transactions which are illegal because prohibited by statute or against public policy are ordinarily void and unenforceable regardless of part performance, ratification, or estoppel; but general prohibitions against exceeding corporate powers and prohibitions intended to protect a particular Class or specifying the consequences of violation may not preclude enforcement of the transaction and an action may be had for the part unaffected by the illegality or for equitable restitution." (19 C.J.S. 421.)

"Generally, a transaction within corporate powers but executed in an irregular or unauthorized manner is voidable only, and may become enforceable by reason of ratification or express or implied assent by the stockholders or by reason of estoppel of the corporation or the other party to the transaction to raise the objection, particularly where the benefits are retained.

"As appears in par. 960-964 supra. the general rule is that a corporation must act in the manner and with the formalities, if any, prescribed by its charter or by the general law. However, a corporation transaction or contract which is within the corporation powers, which is neither wrong in itself nor against public policy, but which is defective from a failure to observe in its execution a requirement of law enacted for the benefit or protection of a certain class, is voidable only and is valid until avoided, not void until validated; the parties for whose benefit the requirement was enacted may ratify it or be estopped to assert its invalidity, and third persons acting in good faith are not usually affected by an irregularity on the part of the corporation in the exercise of its granted powers." (19 C.J.S. 423-424)

It is true that there are authorities which hold that ultra vires acts, or those performed beyond the powers conferred upon the corporation either by law or by its articles of incorporation, are not only voidable, but wholly void and of no legal effect, and that such acts cannot be validated by ratification or be the basis of any action in court; but such ruling does not constitute the weight of authority, the reason being that they fail to make the important distinction we have above adverted to. Because of the failure to consider such important distinction, such rule has been rejected by most of the state courts and even by the modern treatises on corporations (7 Fletcher, Cyc. Corps. 563-564). And now it can be said that the Majority of the cases hold that acts which are merely ultra vires, or acts which are not illegal, may be ratified by the stockholders of a corporation (Brooklyn Heights R. Co., v, Brooklyn City R. Co., 135 N.Y. Supp. 1001).

"Strictly speaking, an act of a corporation outside of its charter powers is just as much ultra vires where all the stockholders consent thereto as in a case where none of the stockholders expressly or impliedly consent, and it is generally held that an ultra vires act cannot be ratified so as to make it valid, even though all the stockholders consent thereto; but inasmuch as the stockholders in reality constitute the corporation, it should, it would seem, be estopped to allege ultra vires, and it is generally so held where there are no creditors' or the creditors are; not; injured thereby, and where the rights of the state or the public are not involved, unless the act is not only ultra vires but in addition illegal and void. Of course, such consent of all the stockholders cannot adversely affect creditors of the corporation nor preclude a proper attack by the state because of such ultra vires act." (7 Fletcher, Corp., Sec. 3432, p. 585.)

Since it is not contended that the donation under consideration is illegal, or contrary to any of the express provisions of the articles of incorporation, nor prejudicial to the creditors of the defendant corporation, we cannot but logically conclude, on the strength of the authorities we have quoted above, that said donation, even if ultra vires in the supposition we have adverted to, is not void, and if voidable, its infirmity has been cured by ratification and subsequent acts of the defendant corporation. The defendant corporation, therefore, is now prevented or estopped from contesting the validity of the donation. This is specially so in this case! when the very directors who conceived the idea of granting said donation are practically the stockholders themselves, with few nominal exceptions. This applies to the new stockholder Jose Cojuangco who acquired his interest after the donation has been made because of the rule that a "purchaser of shares of stock cannot avoid ultra vires acts of the corporation authorized by its vendor, except those done after the purchase" (7 Fletcher, Cyc. Corps. Section 3456, p. 603; Pascual vs. Del Sa. Orozco, 19 Phil., 82.) Indeed, how can the stockholders now pretend to revoke the donation which has been partly consummated? How can the corporation now set at naught the transfer made to Mrs. Pirovano of the property in New York, U.S.A., the price of which was paid by her out of the proceeds of the insurance policies given as a donation. To allow the corporation to undo what it has done would not only be most unfair but would contravene the well-settled doctrine that the defense of ultra vires cannot be set up or availed of

in completed transactions (7 Fletther, Cyc. Corps. Section 3497, p. 652; 19 C.J.S. 431).

4. We now come to the fourth and last question that the defendant corporation, by the acts it has performed subsequent to the granting of the donation, deliberately prevented the fulfillment¹ of the condition precedent¹ to the payment of said donation such that it can be said it has forfeited its right to demand its fulfillment and has made the donation entirely due and demandable.

It should be recalled that the original resolution of the Board of Directors adopted on July 10, 1946 which provided for the donation of P400,000 out of the proceeds which the De la Bama company would collect on the insurance policies taken on the life of the late Enrico Pirovano was, as already stated above, amended on January 6, 1947 to include, among the conditions therein provided, that the corporation shall proceed to pay said amount, as well as the interest due thereon, after it shall have settled in full the balance of its bonded indebtedness in the sum of P5,000,000. It should also be recalled that on September 13, 1949, or more than 2 years after the last amendment referred to above, the stockholders adopted another resolution whereby they formally ratified said donation but subject to the following clarifications: (1) that the amount of the donation shall not be effected until such time as the company shall have first duly liquidated its present bonded indebtedness in the amount of P3,260,855.77 to the National Development Company, or shall have first fully redeemed the preferred shares of stock in the amount to be issued to said company in lieu thereof, and (2) that any and all taxes, legal fees, and expenses connected with the transaction shall be chargeable from the proceeds of said insurance policies.

The trial court, in considering these conditions in the light of the acts subsequently performed by the corporation in connection with the proceeds of the insurance policies, considered said conditions null and void, or at most not written because in its opinion their non-fulfillment was due to a deliberate desistance of the corporation and not to lack of funds to redeem the preferred shares of the National Development Company. The conclusions arrived at by the trial court on this point are as follows:

"Fourth:—That the condition mentioned in the donation is null and void because it depends on the exclusive will of the donor, in accordance with the provisions of Article 1115 of the old Civil Code.

"Fifth:—That if the condition is valid, its nonfulfillment is due to the desistance of the defendant company from obeying and doing the wishes and mandate of the majority of the stockholders.

"Sixth:—That the non-payment of the debt in favor of the National Development Company is not due to the lack of funds, nor to lack of authority, but to the desire of the President of the corporation to preserve and continue the Government participation in the company."

To these views of the trial court, we fail to agree. There are many factors we can consider why the failure to immediately redeem the preferred shares issued to the National Development Company as desired by the minor children of the late Enrico Pirovano cannot or should not be attributed to a mere desire on the part of the corporation to delay the redemption, or to prejudice the interest of the minors, but rather to protect the interest of the corporation itself. One of them is the text of the very resolution approved by the National Development Company on February 18, 1949 which prescribes the terms and conditions under which it expressed its conformity to the conversion of the bonded indebtedness into preferred shares of stock. The text of the resolution above mentioned reads:

"Resolved: That the outstanding bonded indebtedness of the De La Hama Steamship Co., Inc. in the approximate amount of P3,260,855.77 be converted into non-voting preferred shares of stock of said company, said shares to bear a fixed dividend of 6% per annum which shall be cumulative and redeemable within 15 years. Said shares shall be preferred as to assets in the event of liquidation or dissolution of said Company but shall be non-participating."

It is plain from the text of the above resolution that the defendant corporation had 15 years from February 18, 1949, of until 1961, within which to effect the redemption of the preferred shares issued to the National Development Company. This condition cannot but be binding and obligatory upon the donees, if they desire to maintain the validity of the donation, for it is not only the basis upon which the stockholders of the defendant corporation expressed their willingness to ratify the donation, but it is also the way by which its creditor, the National Development Company, would want it to be. If the defendant corporation is given 15 years within which to redeem the preferred shares, and! that period would expire in 1964, one cannot blame the corporation for availing itself of this period if in its opinion it would redound to its best interest. It cannot therefore be said that the fulfillment of the condition for the payment of the donation is one that wholly depends on the exclusive will of the donor, as the lower court has concluded, simply because it failed to meet the redemption of said shares in the manner desired by the donees. While it may be admitted that because of the disposition of the assets of the corporation upon the suggestion of its general manager more than enough funds had been raised to effect the immediate redemption of the above shares, it is not correct to say that the management has completely failed in its duty to pay its obligations for, according to the evidence, a substantial portion of the indebtedness has been paid and only a balance of about P1,805,169.98 was outstanding when the stockholders of the corporation decided to revoke or cancel the donation. (Exhibit P)

But there are other good reasons why all the available funds have not been actually applied to the redemption of the preferred shares, one of them being the "desire of the president of the corporation to preserve and continue the government participation in the company" which even the lower court found it to be meritorious, which is one way by which it could continue receiving the patronage and protection of the government. Another reason is that the redemption of the shares does not depend on the will of the corporation alone but to a great extent on the will of a third party, the National Development Company. In fact, as the evidence shows, this Company had pledged these shares to the Philippine National Bank and the Rehabilitation Finance Corporation as a security to obtain certain loans to finance the purchase of certain ships to be built for the use of the company under a management contract entered into between the corporation and the National Development Company, and this was what prevented the corporation from carrying out its offer to pay the sum of P1,956,513.07 on April 5, 1951. Had this offer been accepted, or favorably acted upon by the National Development Company, the indebtedness would have been practically liquidated, leaving outstanding only one certificate worth P217,390.45. Of course, the corporation could have insisted in redeeming the shares if it wanted to even to the extent of taking a court action if necessary to force its creditor to relinquish the shares that may be necessary to accomplish the redemption, but such would be a drastic step which would have not been advisable considering the policy right along maintained by the corporation to preserve its cordial and smooth relation with the government. At any rate, whether such attitude be considered as a mere excuse to justify the delay in effecting the redemption of the shares, or a mere desire on the part of the corporation to retain in its possession more funds available to attend to other pressing needs as demanded by the interest of the corporation, we fail to see in such an attitude an improper motive to circumvent the early realization of the desire of the minors to obtain the immediate payment of the donation which was made dependent upon the redemption of said shares there being no clear evidence that may justify such design. Anyway, a great portion of the funds went to the stockholders themselves by way of dividends to offset, so it appears, the huge advances that the corporation had made to them which were entered in the books of the corporation as loans and, therefore, they were invested for their own benefit. As General Manager Osmeña said, "we were first confronted with the problem of the withdrawals of the family which had to be repaid back to the National Development Company and one of the most practical solutions to that was to declare dividends and reduce the amounts of their withdrawals", which then totaled about P3,000,000.

All things considered, we are of the opinion that the finding of the lower court that the failure of the defendant

corporation to: comply with the condition of the donation is merely due to its desistance from obeying the mandate of the majority of the stockholders and not to lack of funds, or to lack of authority, has no foundation in law or in fact, aid, therefore, its conclusion that because of such desistance that condition should be deemed as fulfilled and the payment of the donation due and demandable, is not justified. In this respect, the decision of the lower court should be reversed.

Having reached the foregoing conclusion, we deem it unnecessary to discuss the other issues raised by the parties in their briefs.

The lower court adjudicated to plaintiffs an additional amount equivalent to 20\$ of the amount claimed as damages by way of attorney's fees, and in our opinion, this award can be justified under Article 2208, paragraph 2, of the new Civil Code, which provides: "When the defendant's act or omission his compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest", attorney's fees may be awarded as damages. However, the majority believes that this award should be reduced to 10%.

Wherefore, the decision appealed from should be modified as follows: (a) that the donation made in favor of the children of the late Enrico Pirovano of the proceeds of the insurance policies taken on his life is valid and binding on the defendant corporations (b) that said donation, which amounts to a capital of P583,813.59, including interest, as it appears in books of the corporation as of August 31, 1951, plus interest thereon at the rate of 5% per annum from the filing of the complaint, should be paid to the plaintiff after the defendant corporation shall have fully redeemed the preferred shares issued to the National Development Company under the terms and conditions stated in the resolutions of the Board of Directors of January 6, 1947 and June 24, 1947, as amended by the resolution of the stockholders adopted on September 13, 1949; and (c) defendant shall pay to plaintiffs an additional amount equivalent to 10% of said amount of P583,813.59 as damages by way of attorney's fees, and to pay the costs of action.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ. concur.

Reyes A., concurs in the result.

[1] Specific cases holding the same view may be cited, such as *Gray & Farr vs. Carlile*, 2 West Week Rep. 526; *Wiseman vs. Musgrane*, 309 Mich. 523; *Anglo-American Equities Co. vs. E. H. Rollins & Sons*, 258 App. Divs. 878, 282 NY 782.J *Koplar vs. Warnes Bros. Pictures*, 9 F Supp. 173; *Heinz vs. National Bank*, 237 Fed. 942; *Henderson vs. Bank of Australasia*, L.R. 40 Ch. Divs. (Eng.) 170.

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