

JOSEPH COCHINGYAN, JR., PETITIONER, VS. HON. GAUDENCIO CLORIBEL, PRESIDING JUDGE OF BRANCH VI, COURT OF FIRST INSTANCE OF MANILA, LEGIONNAIRES ENTERPRISES, INC., IRENEO R. CLAPA...

G.R. Nos. L-27070-71. April 22, 1977

Ponente: CASTRO, C.J.

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CASTRO, C.J.:

Petition for certiorari to review the orders of the respondent Court of First Instance of Manila (in civil cases 54912 and 55250) dated November 2, 1966, November 11, 1966, December 19, 1966, December 28, 1966 and January 3, 1967.

By mandate of Republic Act 1789, otherwise known as the Reparations Law, which took effect on June 21, 1957, the amount of US\$20 million was set aside to form a "Trust Fund" to be used exclusively for the benefit and rehabilitation of veterans of the Philippines of World War II and their widows and orphans (sec. 2 (d), R.A. 1789). This amount is to be generated from cash sales of reparations goods to be procured from Japan.

On May 18, 1958, Resolution 24 was adopted at the 13th Convention of the Philippine Veterans Legion (hereinafter referred to as the PVL) held in Bacolod City, the resolutory part of which is as follows:

"NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, that the Philippine Veterans Legion, being the biggest veterans organi-zation, with members thru out the Philippines, thus the group most greatly affected by the Reparation Law specifically Sec. 2, Subsection (d), Rep. Act 1789, create through the initiative of the National Commander, a private enterprise to undertake the generation of the Trust Fund for the veterans, war widows and orphans as embodied in the above-entitled law, and hereby CONFIRMING AND RATIFYING ALL that the National Commander shall do, or cause to be done, under and by virtue of this Resolution."

Pursuant to the above-mentioned resolution, Legion-naire Francisco B. Offemaria formed and organized on June 10, 1958 the Legionnaires Enterprises, Inc. (hereinafter referred to as the LEI), and registered the same with the Securities and Exchange Commission with an authorized capital of P110,000 and a paid-up capital of P25,000, with himself as president and concurrently chairman of the board of directors.

On November 21, 1958, the LEI signed a contract with Filipinas Merchandising Corporation (hereinafter referred to as the Filipinas) whereby the former agreed to sell to the latter all reparations consumer goods that were to be procured by the LEI under such grant or award as may be approved by the Reparations Commission (hereinafter referred to as the Repacom).

On December 3, 1958, in Tokyo, Japan, the PVL and four other veterans organizations, to wit, the Philippine Association of War Widows, Parents, and Orphans (hereinafter referred to as the War Widows), the President Quezon's Own Guerillas (here-inafter referred to as the PQOG), the Veterans Organization of the Philippines

(hereinafter referred to as the VOP), and the Defenders of Bataan and Corregidor (hereinafter referred to as the DBC) entered into an agreement essentially to the effect "that any award granted to one of us shall ipso facto confer upon the Commission the authority to consider all other applications submitted by any member as automatically withdrawn in favor of the awardee," stipulating to observe the following sharing in profit percentages:

(a) A sum equal to 15% of the invoice value of the goods to be procured, or thirty centavos (P0.30) to the PVL; and

(b) A sum equal to 3% of the invoice value of the goods to be procured, or six centavos (P0.06) each to the War Widows, PQOG, VOP, and DBC.

On February 3, 1959, the PVL succeeded in getting an allocation of US\$4 million from the Repacom which was embodied in the latter's Resolution 88.

On March 12, 1959, the Repacom, by virtue of its Resolution 91, recognized the right of the LEI to act as the business arm of the PVL in the implementation of the said award.

The board of directors of the PVL, on August 8, 1959, approved a resolution accepting the 15% guarantee payment offered in writing by the LEI to the PVL per US\$1.00 invoice value of the goods which may be generated into cash under the grant authorized by the Repacom in its Resolution 88. Following the acceptance of the 15% guarantee payment, the board of directors of the PVL, in a meeting on December 12, 1959, approved a resolution authorizing its national commander to enter into a contract with the LEI and to sign on behalf of the PVL.

On January 5, 1960, the LEI, by and through Offemaria and/or Cesar P. Roces, its president and attorney-in-fact, respectively, sold to the Panay Legionnaires Enterprises (hereinafter referred to as the Panay) US\$200,000 worth of reparations rights. On January 10, 1960, it sold US\$600,000 worth of reparations rights to Vicente Magno (hereinafter referred to as Magno).

At the 15th PVL national convention in Iloilo City, the PVL split into two splinter groups, one body headed by Offemaria and the other by Jaime Piopongco, each operating independently for a period of two years -- from the last half of 1960 to the first half of 1962.

On October 7, 1960, the PVL (Piopongco faction) executed an agreement with Joseph Cochingyan, Jr. (hereinafter referred to as Cochingyan) by virtue of which the implementation of the allocation of US\$4 million approved by the Repacom under Resolution 88 was to be undertaken jointly by Cochingyan and the management board formed by the PVL.

On February 1, 1961, the LEI sold US\$150,000 worth of reparations rights to Joaquin So.

On March 13, 1961, the Repacom approved Resolution 396 making available to the LEI US\$1 million of the US\$4 million award for implementation under the fifth reparations year schedule. The corresponding procurement order was issued on June 16, 1961 by Repacom for the procurement of reparations consumer goods for the end-use of the LEI in the amount of US\$1 million.

On August 21, 1961, the LEI sold to Tomas Sy US\$200,000 worth of reparations rights, a contract acquired through assignment by Cesar Eguia (hereinafter referred to as Eguia).

On September 15, 1961, the LEI sold to Roman Baldovino US\$350,000 worth of reparations rights. This contract was subsequently assigned by Baldovino to Joaquin So on August 30, 1963.

On August 31, 1961, the LEI sold to World-wide Trading and Development Corporation (herein-after referred to as the Worldwide) US\$500,000 worth of reparations rights. This was also subsequently assigned by Worldwide to Joaquin So.

On March 12, 1963, a formal contract was executed by and between the PVL and LEI for the implementation of the PVL US\$1 million award, which contract stipulated, inter alia:

"NINTH. That this contract shall be considered terminated and declared with no force and effect upon the final payment by the LEGIONNAIRES to the VETERANS in the total sum of THREE HUNDRED THOUSAND PESOS (P300,000.00) without making any further release by the VETERANS to the LEGIONNAIRES."

The "LEGIONNAIRES" represent the LEI, the "VETERANS" the PVL, and the sum of P300,000 is the 15% the LEI stipulated to pay the PVL for the generation of the US\$1 million award (at the agreed exchange rate of P2 to every US\$1) or P0.30 for each \$1.00.

On March 15, 1963, by virtue of a contract of advance sales, the LEI sold to the Keyser Mercantile Co., Inc. (hereinafter referred to as Keyser) \$120,000 worth of the \$1 million allocation of the LEI per the Repacom Resolution 396. Subject-matter of this \$120,000 allocation consisted of photo-graphic supplies which were to be procured from Japanese suppliers.

In the latter part of August 1963, the first shipment of reparations goods procured under the Repacom Resolution 396, consisting of photographic supplies and materials with an invoice value of US\$37,016, left Japan.

On October 16, 1963, Joaquin So filed on his behalf and as assignee of Worldwide and Baldovino, an action against the LEI, Cesar Roces, vice-president and director of the LEI, and the Repacom for specific performance of his contract of \$150,000 executed on September 6, 1961 and the contracts executed by the LEI with Worldwide on August 31, 1961 for \$500,000 and with Baldovino on September 15, 1961 for \$350,000 which he claimed were both assigned to him. The said action was premised upon Joaquin So's claim that inasmuch as the said contracts totalled US\$1 million, all reparations goods procured under the allocation of the LEI under Resolution 396 for US\$1 million were covered by the aforesaid three contracts and, consequently, the shipment of photographic materials about to arrive from Japan should be delivered by the defendants to him. The said case was docketed as Civil Case 54912 and was assigned to Branch VI of the Court of First Instance of Manila. All claiming to have a right to the incoming shipment of photographic supplies by virtue of contracts executed and/or assigned in their favor, Eguia, Worldwide, and Magno filed motions to intervene which were all granted. Keyser also filed a similar motion, but before its motion could be acted upon, it withdrew the same and filed a new action against the LEI which was docketed as Civil Case 55250 and was assigned to Branch I of the Court of First Instance of Manila. Eguia, Magno and Worldwide also filed their respective motions to intervene in the said Civil Case 55250 for the enforcement of their respective rights.

On November 7, 1963, the court issued in Civil Case 54912, pending before Branch VI, a mandatory preliminary injunction ordering the Repacom to release the shipment of photographic materials which had already arrived worth US\$37,016 to the plaintiff in the said case, Joaquin So. On the other hand, in Civil Case 55250 pending before Branch I, the court issued on November 27, 1963 a restraining order enjoining the release of the goods until further orders of the said court.

On February 7, 1964, Cochingyan entered into an agreement with the LEI wherein he assumed, among others, the following obligations:

- (a) To buy all reparations consumer goods procured or to be procured by the PVL/LEI under Resolutions 88, 91 and 396, and such other allocations as may be awarded to PVL/LEI;

(b) To pay unto the LEI for all goods actually procured the sum of 20 centavos per dollar if the exchange rate is computed at P2 per US\$1.00, or 10 centavos if the exchange rate shall be the free market rate;

(c) To assume the obligations of the LEI to the veterans organizations in the amount of 30 centavos per every dollar to the PVL, and 6 centavos per every dollar to each of the War Widows, the VOP, the DBC and the PQOG;

(d) To assume all expenses necessary for the implementation of this agreement, and those incurred for suits involving the PVL and/or LEI respecting said allocations.

The LEI, on the other hand, specifically declined to issue any warranty at all, in general, and of its right to still sell or dispose of the same, in particular. On the basis of the above-mentioned agreement, Cochingyan filed motions and was allowed to intervene in both cases, alleging as his the entire US\$4 million allocation.

On March 12, 1964, Branch I of the Court of First Instance of Manila, in Civil Case 55250, issued an order restraining the Bureau of Customs from releasing the goods until further orders of the said court.

In Civil Case 55250, Panay filed a motion to intervene and also a petition for the appointment of a Receiver for the LEI on the grounds first, that a Receiver was necessary to protect the interests of all the parties claiming the same goods procured under the allocation of the LEI, and second, that the said corporation was insolvent or in imminent danger of insolvency due to the gross mismanagement of its officers. On April 6, 1964, Judge Francisco Arca of Branch I granted the motion of the intervenor Panay for the appointment of a Receiver for the LEI and required the parties to agree on a common receiver. The court (Branch I) appointed Atty. Ramon M. Velayo as the LEI Receiver on April 22, 1964.

Because of the stalemate arising from the conflicting orders of two branches of the Court of First Instance of Manila, the parties in both cases who were claiming the same goods went into serious negotiations, and, as a result, a compromise agreement was executed on May 13, 1964 between Cochingyan, on one hand, and Worldwide, Eguia, Keyser, Magno, Panay and the LEI, on the other, in which it was specifically provided that the latter (except the LEI), in consideration of the various undertakings and other obligations assumed by the former -?

"x x x agree to defer the enforcement of their respective contracts with LEI on condition that their respective contracts shall be charged and enforced on the additional allocation that would be made available to the LEI and/or PVL in implementation of the balance of said PVL and/or LEI allocation approved by the Commission under its Resolution No. 88, as amended by its Resolution No. 91 and any other allocation that the LEI and/or the PVL may secure either as new, or additional allocation or allocation in substitution, in order that all the reparations consumer goods procured under Resolution No. 396 can be delivered to Cochingyan, in implementation of his contract with LEI of February 7, 1964, which contract was duly ratified and confirmed by the Board of Directors of LEI and its stockholders; x x x".

Joaquin So refused to join the compromise agreement; thus, a proviso was included therein requiring Cochingyan to file an appropriate bond in favor of the LEI, its Receiver, or Joaquin So to answer for damages that might be awarded to the latter.

Atty. Velayo, the LEI Receiver, submitted the Compromise Agreement on May 13, 1964 to both Branch VI and Branch I in Civil Cases 54912 and 55250, respectively, which, in separate orders both dated June 1, 1964, approved the same.

After the approval of the aforementioned compromise agreement in Civil Cases 54912 and 55250, and after the said approval was virtually confirmed by this Court when we denied the petition for pre-liminary injunction filed by Joaquin So in certiorari proceedings docketed as G.R. No. L-23026 and L-23027, * Filipinas, which had also

entered into a contract with the LEI covering all goods under the LEI allocation (totalling an invoice value of US\$4 million), filed, on July 18, 1964, a motion to intervene in Civil Case 55250, seeking the enforcement of its contract with LEI and further praying that all other contracts executed by the LEI with other parties in the case be declared null and void. However, seeing the futility of a continued court litigation, Filipinas, on September 30, 1965 and October 8, 1965, respectively, executed an agreement and supplemental agreement with Cochingyan, assigning and transferring to the latter all its rights, obligations and interests of whatsoever nature. The agreement dated September 30, 1965 provides, among other things, that:

"4. FILIPINAS hereby agrees to respect the Compromise Agreement entered into among COCHINGYAN and other claimant buyers of PVL and LEI duly approved by the Court of First Instance of Manila in Civil Case No. 55250 (Branch I) and Civil Case No. 54912 (Branch VI), and therefore, shall refrain from taking any action judicial or otherwise which may directly or indirectly impede or prevent the expeditious implementation of the aforesaid compromise agreement."

x x x x x x x x

"d. Provided, however, that if COCHINGYAN shall fail to pay the sum due FILIPINAS on any particular shipment, the same shall constitute a lien on the next shipment and said shipment shall not be released until the amount in arrears and the amount due on said shipment be first paid by COCHINGYAN.

"5. This compromise agreement shall be submitted to the Court for approval so that the same can be implemented in relation to and harmoniously with the compromise agreement between COCHINGYAN and other buyer-claimants of PVL/LEI."

On November 15, 1965, Atty. Velayo, then the LEI Receiver, submitted to Branch I the compromise agreement between Filipinas and Cochingyan in Civil Case 55250, and on December 9, 1965, the said court approved said compromise agreement and its supplement, and in approving said compromise agreement ordered the Receiver of the LEI:

"To implement the contract of LEI and Cochingyan dated February 7, 1964, pursuant to the Compromise Agreement of May 13, 1964 approved by this Court in its Order of June 1, 1964 and the Compromise Agreement of Cochingyan and Filipinas of September 30, 1965, and finally the parties to said compromise agreements are hereby enjoined to comply with the terms and conditions thereof."

On October 13, 1964, Resolution 522 was passed by the Repacom approving the procurement of goods worth US\$1.5 million, but under this no implementation has started as yet.

In addition to \$120,000 worth of photographic films and supplies covered by Reparations Contracts Nos. 439 and 448, Cochingyan agreed on January 8, 1965 to sell to Keyser \$300,000 worth of photographic films and supplies at P7.00 to every US\$1.00 f.o.b. Japan instead of \$200,000 at P7.10 to every US\$1.00. To secure full compliance by the parties to this agreement, the PVL and LEI gave their conformity to it, the former by Resolution 13 approved on October 2, 1965 and the latter by a resolution approved on the same date.

Because of the series of amicable settlements mentioned above, the parties thought that implementation of the allocation of the LEI could be made without the need of a Receiver. Thus, on December 31, 1965, the LEI filed in Civil Case 55250 a motion for the dissolution of the receivership of the LEI, which motion was granted by the court on February 21, 1966.

On the very same day when the receivership of the LEI was dissolved, Cochingyan filed an urgent ex-parte motion, dated February 21, 1966, alleging that as the attorney-in-fact of the LEI to implement the US\$4 million PVL/LEI allocation and because the receivership was already dissolved, his power of attorney be exclusively recognized as it was "necessary for the purpose of implementing the Compromise Agreements entered into by the

parties to this case on May 13, 1964, September 30, 1965 and February 17, 1966." The court, on February 23, 1966, granted said motion.

On February 12, 1966, Judge Arca, before whom Civil Case 55250 was pending, indorsed said case to Branch VI for consolidation with Civil Case 54912, which indorsement was accepted by Judge Cloribel, Presiding Judge of Branch VI.

Realizing also the uselessness of a continued court litigation, Joaquin So, who refused to join the Compromise Agreement of May 13, 1964, executed on February 17, 1966 with Cochingyan a compromise agreement under which he, Worldwide and Tomas Torrefranca, as assignee of Cesar P. Roces, in consideration of the sum of P1 million payable pro rata upon the arrival of the goods procured under the allocation of the LEI, renounced their respective claims against the allocations of the LEI, and assigned to Cochingyan the contracts executed in their favor. More particularly, Joaquin So, on his behalf and as assignee of Baldovino, renounced all his claims against PVL and the LEI and assigned in favor of Cochingyan all the contracts in his favor and his claim for advances made by him to the LEI; Torrefranca, as assignee of Roces, renounced all his claims against the LEI and waived all his rights under the various powers of attorney executed in his favor and that of Cesar Roces, and Worldwide assigned to Cochingyan its contract of US\$340,000 worth of porcelain wares, renounced all its claims to the balance of US\$3 million, and assigned to intervenor all contracts and powers of attorney in its favor. The amount of P1 million to be paid by Cochingyan to Worldwide, Joaquin So and Torrefranca was to be paid to them at the rate of P1.10 for every US\$1.00 of the goods procured under Resolution 396 up to US\$600,000 value of said goods, or P660,000, while the balance of P340,000 was to be paid at the rate of P0.75 for every US\$1.00 from the goods procured under the Ninth Reparations Schedule. The aforesaid amounts were to be paid by Cochingyan within thirty (30) days from the release of said goods to him. The agree-ments also provided, inter alia, that:

"4. In the event that Cochingyan shall fail to pay any amount due Worldwide, Joaquin So and Torrefranca, for any ship-ment that would have arrived, then said amount shall constitute a lien on all subsequent shipments and the same shall not be released to Cochingyan until all unpaid arrears shall have been paid. Provided, however, that the last shipment of the goods procured under Resolution No. 396, shall not be released to Cochingyan but that a portion thereof sufficient to pay the amount due Worldwide, Joaquin So and Torrefranca for said last shipment and any amount on arrears shall be retained and at the option of the latter the goods thus retained may be deli-vered to them in full payment of their unpaid claims or that they may demand payment in cash of the value thereof."

On the same day, i.e., February 17, 1966, World-wide, Joaquin So and Torrefranca executed a supple-mental agreement among themselves apportioning the payment of the P1.10 due them at P0.85 to Worldwide and Torrefranca, and P0.25 to Joaquin So. With respect to the balance of P340,000 which was pay-able at P0.75 per US\$1.00, Joaquin So was to receive P0.25, and Worldwide and Torrefranca, P0.50.

Parenthetically, the parties-payees to the foregoing agreement have not been fully paid by Cochingyan up to the present.

Even before the dissolution of the LEI receivership was actually ordered and during the period from February 22, 1966 to October 13, 1966, when the LEI was no longer under receivership, reparations consumer goods procured under the PVL/LEI allocation had arrived in the Philippines, and Cochingyan took delivery of the same in various shipments from the Repacom.

After all the goods were delivered to Coching-yan, the parties who were entitled to share in the proceeds of the goods, as well as the Veterans, the PVL and LEI and four other veterans organizations, as agreed upon in the various amicable settlements, requested Cochingyan, on various instances, to pay them their respective shares as the goods delivered to him were all fully paid by the buyers, but to no avail.

On July 6, 1966, by reason of Cochingyan's alleged unreasonable refusal to pay the parties-payees and the veterans, a motion for payment and to compel payment was, for the first time, filed against Cochingyan, which was granted by the court in its order dated July 9, 1966.

On August 12, 1966, the PVL also filed a motion against Cochingyan for the payment of its shares in accordance with the agreements, and the respondent court granted the same in its order dated August 24, 1966.

On August 24, 1966, Worldwide and Torre Franca filed an "urgent motion for a definite order for Joseph Cochingyan, Jr. to pay parties the agreed consideration," stating therein, among others, unsavory but proper averments for compliance and payment of parties-payees' shares. In view of Cochingyan's failure to file an opposition to said motion, it was granted by the court by order dated September 1, 1966. However, the said order was, after a motion was filed, clarified and Cochingyan was directed to effect immediately payment of all that are due and payable to the parties-payees.

Due to several motions filed by parties-payees for the payment of dues by Cochingyan, the court on November 19, 1966, finally admonished him to pay the said parties immediately "otherwise disciplinary action would be taken against him."

By reason of the serious disagreements and the renewed conflicts of the parties in these cases, Cochingyan filed on October 12, 1966, an urgent ex-parte unverified motion to reinstate the receivership of the LEI and recommended Atty. Mariano L. Mercado for appointment as Receiver. The LEI filed an opposition to the said motion but the court, overruling the said opposition, on October 14, 1966 reinstated the receivership of the LEI and appointed Cochingyan's nominee, Atty. Mercado, as the LEI Receiver, on a bond of P10,000 which the court required Cochingyan to file, to answer for damages in the event that the appointment of a receiver be later adjudged as not justified.

On October 31, 1966, Attys. Dolorfino and Casiano Villanueva, representing PVL and four other veterans organizations, filed a motion for recon-sideration of the order of October 14, 1966 reinstating the LEI receivership and appointing Atty. Mercado as the LEI receiver. However, before the court could finally resolve said motion for reconsideration, it issued an order dated November 17, 1966 requiring all parties to the Compromise Agreement of May 13, 1964, namely, Cochingyan, Eguia, Magno, Panay, Worldwide and Keyser, to give their comments and stand on the said motion and to submit their common choice of receiver five (5) days from December 10, 1966. In compliance with the said order, the parties submitted different names as their nominees for LEI receiver. The LEI submitted the names of Juan Q. Miranda, Tomas G. Mapa and Ireneo R. Clapano, Jr.; Magno and Eguia submitted the names of Atty. Iturralde, Tomas G. Mapa, and Ireneo R. Clapano, Jr.; Cochingyan submitted the name of Atty. Mercado but did not oppose the nomination of his former counsel, Atty. Ireneo R. Clapano, Jr.; Worldwide nominated Natalio R. Castillo; and Panay submitted the names of Attys. Ireneo R. Clapano, Jr. and Ernesto P. Golez. On December 6, 1966, the court finally set the hearing of Attys. Dolorfino and Villanueva's motion for reconsideration and the various manifes-tations of the parties on December 10, 1966 in order that all could be fully heard on their respective stands on the incident.

Prior to the hearing on December 10, 1966, i.e., on December 7, 1966, other parties who were interested but were not required to file their comments on the motion for reconsideration of Attys. Dolorfino and Villanueva, also submitted their nominees for LEI Receiver. The PVL and Cesar P. Roces, assignor of Torre Franca, submitted the names of Natalio R. Castillo and Zosimo C. Soria, while the four veterans organizations, namely, VOP, PQOG, DBC, and the War Widows nominated Castillo or Soria.

At the hearing of December 10, 1966, where all the parties were fully heard and represented, the propriety of again placing the LEI under receiver-ship was fully discussed and deliberated upon. However, as the parties could

not agree, or sit down with Cochingyan, although the other parties themselves had their conferences on who would be submitted as the common nominee, majority of the parties to the Compromise Agreement (Keyser, LEI, Magno, Panay and Eguia), including PVL which now changed its stand, submitted, in a joint manifestation dated December 12, 1966, the name of Atty. Ireneo R. Clapano, Jr. to replace Atty. Mercado.

On December 13, 1966, Cochingyan filed a manifestation praying that Atty. Mercado be retained as the LEI Receiver, reiterating his manifestation of November 29, 1966.

On December 19, 1966, the Court issued an order denying the PVL's motion dated October 31, 1966, relieving Atty. Mercado as the LEI Receiver, and appointing, in his stead, Atty. Ireneo R. Clapano, Jr.

On December 21, 1966, Cochingyan filed a motion for reconsideration of the order of December 19, 1966, which was set for hearing by him on December 24, 1966. However, on the day of the hearing, an urgent motion was filed by the counsel of Magno and Eguia for the postponement and resetting of the hearing of Cochingyan's motion to January 7, 1967. In the early morning prior to hearing time of January 7, 1967, the branch clerk of court informed all the parties and those who had other cases on that motion day that the presiding Judge was invited to the Malacañang Open House by the President of the Philippines. All the parties in these cases were also informed about the two telegrams from Iloilo City requesting the postponement of the incidents of the case, one from the counsel of the LEI and the other from the counsel of Panay, protesting that they did not receive or were not furnished copies of the motions to be heard on that day. Thus, the lower court re-set the said motion for January 28, 1967 to be heard together with other motions in both cases.

On October 18, 1966, the Executive Secretary wrote a letter to the Chairman of the Repacom stating that "The President desires that you suspend all reparations awards to the Philippine Veterans Legion until further investigation by you and submit your recommendation on this matter."

Since the contract for the procurement of goods that would complete Cochingyan's allocation of US\$1 million had long been signed, the Repacom approved a second release of allocation to the PVL/LEI in the amount of \$789,600 under Resolution 199 (66) dated September 8, 1966, and on the same date, issued the corresponding purchase order.

In the meantime, Panay, Keyser, Eguia and Magno learned that Cochingyan had left for Japan in October 1966 and had entered into contracts with various Japanese firms whereby he committed \$710,000 of the \$789,600 for items that were never ordered by Panay, Keyser, Eguia or Magno.

On October 19, 1966, Panay filed an urgent motion praying that its contract with the LEI for US\$200,000 be implemented according to the terms and conditions of the Compromise Agreement of May 13, 1964. This motion was not objected to by the other parties to the said agreement. Panay's motion was set for hearing on October 22, 1966 and Cochingyan was given five days to file his opposition thereto. Alleging that Cochingyan was in Tokyo following up procurements on the LEI allocation, despite the appointment and existence of a Receiver at that time, his counsel filed an urgent ex-parte motion for extension to file an opposition, and he was granted until October 29, 1966 within which to do so. However, without verifying whether his motion was granted or not, Cochingyan's counsel filed his opposition on November 2, 1966 at 3:30 in the afternoon, which was clearly out of time. The respondent court, therefore, issued on November 2, 1966 an order granting the motion of Panay because the same was non-controversial and was asking only what was due it under the Compromise Agreement, and ordering the LEI Receiver, then Atty. Mercado, to comply with the LEI's obligation to Panay. Cochingyan filed on November 7, 1966 a motion for reconsideration of the aforesaid order, while the LEI filed on November 23, 1966 a reply to the opposition contained in Cochingyan's motion for reconsideration.

On November 4, 1966, Keyser filed an urgent ex-parte motion for the enforcement of its contract with the LEI of US\$120,000 according to the terms and conditions of the Compromise Agreement of May 13, 1964. After hearing, and after the LEI, Cochingyan's principal, had filed its conformity to the same, the court granted the said motion by its order of November 11, 1966. Cochingyan also moved on November 14, 1966 to reconsider the said order, but the LEI on November 24, 1966 and Keyser on November 25, 1966 filed their respective oppositions thereto.

Eguia and Magno, on November 23, 1966, also filed a motion for the enforcement of their respective rights and contracts under the Compromise Agreement of May 13, 1964. On November 24, 1966, the LEI, Cochingyan's principal, filed a manifestation signifying its conformity to this motion.

On December 20, 1966, the counsel of the LEI filed a motion praying the court that in accordance with the Agreement of February 7, 1964 executed by the LEI and Cochingyan, the latter, as attorney-in-fact of the former, must be made to comply with the conditions thereof and pay the dues in favor of the veterans in the amount of more than P112,000, which had been long overdue, from goods already released to Cochingyan.

On December 27, 1966, the LEI Receiver, in compliance with the order of December 19, 1966 "to religiously and faithfully implement the Com-promise Agreement of May 13, 1964," filed an ex--parte motion, with the conformity of all the parties affected, asking the respondent court that in compliance with its order of December 19, 1966, the Receiver be allowed to submit firm offers on behalf of Panay for US\$200,000, Keyser for US\$120,000, Eguia for US\$200,000, Magno for US\$134,600, Worldwide for US\$135,000, or a total of US\$789,600 which is equivalent to the amount authorized to be procured by the Repacom for the LEI under the 9th Reparations Schedule in partial implementation of the allocation of the PVL/LEI for US\$3 million. On January 3, 1967, the court granted the aforesaid motion of the Receiver.

Worldwide filed also on December 27, 1966 an urgent ex-parte motion asking the LEI Receiver to pay to it directly upon the release of each ship-ment the sum of P0.85 (which includes that due to Torrefranca) per US\$1.00, by reason of the fact that until that date, Cochingyan had failed to pay them their share in the proceeds of the goods pursuant to the Agreement of February 17, 1966. On December 28, 1967, the court granted the said motion and ordered the LEI Receiver to pay directly to World-wide on the date of the release of reparations goods its claim of P0.85 for every US\$1.00. Cochingyan did not move to reconsider this order.

When the LEI Receiver assumed office, he received a letter dated December 21, 1966 from the LEI's legal counsel, informing the former that Cochingyan had been negotiating in Tokyo, Japan, for the procurement of reparations goods not ordered by the other parties to the Compromise Agreement of May 13, 1964 to promote his personal business interests; that he did not pay on time the veterans' share corresponding to the goods already released to him; that there were arrears due the veterans; and that other parties who had dues from Cochingyan corresponding to goods already released to him had also been complaining that payments in their favor had not been made, or, if at all made, were paid in postdated checks and in small amounts.

Immediately after the Receiver had qualified as such, Cochingyan, through counsel, filed an urgent ex-parte motion and manifestation dated December 22, 1966 praying therein that the Receiver be ordered to "deliver to the Intervenor (Cochingyan) all said goods upon release thereof to him by the Commission." At the hearing of the aforesaid motion, the LEI Receiver unqualifiedly informed the court and Cochingyan's counsel "that the Receiver is glad to deliver the goods to Intervenor" provided that the taxes due thereon be paid. Cochingyan's counsel manifested that they were ready to pay the Receiver.

The Chairman of the Board of Directors of the LEI, Col. Cirilo B. Garcia, on January 4, 1967 again informed the LEI Receiver about Cochingyan's failure to comply with the agreements he had signed with the other parties to

the case, tabulating in figures the arrears due in favor of the said parties and the veterans, despite the fact that Cochingyan had already been fully paid P2,900,000 by the buyers of the reparations goods delivered to Cochingyan by the Repacom.

On January 6, 1967, the LEI Receiver received another letter from the officers of the LEI inform-ing him that Cochingyan had signed proposed contracts with several Japanese suppliers for the procurement of goods through reparations on the basis of allocations allotted to other parties in the Compromise Agreement of May 13, 1964, inspite of the presence of a Receiver appointed to manage the procurement of goods intended for the LEI.

Pursuant to the order of the court dated January 3, 1967 granting the LEI Receiver's motion to submit firm offers for some parties to the Compromise Agreement of May 13, 1964, the LEI Receiver wrote Cochingyan a letter dated January 10, 1967 requesting the latter to submit firm offers of goods to be procured by him in accord-ance with existing agreements with other parties in the case in order to hasten the immediate implementation of the veterans' allocations which had already been delayed for almost six years.

However, without waiting for January 28, 1967 when his motions for reconsideration of some orders of the Court and other related motions were to be heard, Cochingyan (hereinafter referred to as the petitioner) filed on January 14, 1967 the instant petition for certiorari with preliminary injunction and restraining order, praying that a restraining order be issued enjoining the presiding Judge of Branch VI of the Court of First Instance of Manila (hereinafter referred to as the respondent court or Judge) and the other respondents (e.g., the LEI, Ireneo R. Clapano, Jr. [hereinafter referred to as the respondent Receiver], Keyser, Panay, Magno, Eguia, the PVL, Worldwide, Filipinas, Joaquin So, Torrefranca and the Repacom), their agents, representatives, attorneys-in-fact and other persons acting on their behalf, from enforcing, during the proceedings, the orders of the respondent Judge dated November 2, 1966, November 11, 1966, December 19 and 28, 1966 and January 3, 1967, respectively; that a writ of preliminary injunction issue enjoin-ing the respondents, their agents, attorneys-in-fact, representatives and other persons acting on their behalf from enforcing the above orders; that pending the proceedings, Atty. Mariano. L. Mercado be reinstated as the LEI Receiver under the bond filed by him with the respondent court; and that after hearing, the above-enumerated orders be declared null and void.

On January 16, 1966, the petitioner filed a supplemental petition bringing to the attention of this Court and asking to be enjoined, an order of the respondent Judge issued on January 14, 1967 granting a motion of the LEI Receiver praying the court a quo to allow him "to withdraw part of the goods which are perishable and dispose of the same to qualified and interested persons for expenses and maintenance of the corporation under receiver-ship and for the payment of veterans and other parties in these cases of their dues."

This Court, on January 17, 1967, issued a resolution requiring the respondents to file, not later than January 25, 1967, their answer to the petition and supplemental petition for certiorari, and issuing a temporary restraining order effective immediately until further orders from the Court.

On January 25, 1967, the respondents filed their respective answers, and, on various dates in February and April 1967, their respective memoranda.

On May 16, 1967, the petitioner filed a petition for the withdrawal of his supplemental petition of January 16, 1967, to enable the res-pondent court to take cognizance of a joint urgent motion dated May 7, 1967 filed with the said court by the parties concerned for the release of the goods which had arrived and were at the customs area or in customs bonded warehouses. Manifestations were filed by Filipinas and Repacom on June 3, 1967, by Panay on June 10, 1967 and by the LEI Receiver on June 13, 1967, all interposing no objection to the petitioner's petition, except that the respondent Receiver moved that he be allowed to participate in the deliberations of the court below regarding the release of the goods involved in the case. The PVL, through Atty. Lacanienta, filed an

opposition on June 5, 1967, and the petitioner filed a reply thereto. Representations were made that further delay in the release of the goods involved would result in mounting storage fees and losses from pilferage and deterioration of the goods, part of which were photographic films and papers which had actually lost their value because of the lapse of their expiry date.

On July 15, 1967, this Court resolved to grant the aforementioned petition for withdrawal of the petitioner's supplemental petition which prayed for the annulment of the order of the respondent Court of January 14, 1967; to lift partially the restraining order of January 17, 1967 insofar as it refers to said order of January 14, 1967; and to deny the LEI Receiver's motion which should be addressed to the sound discretion of the respondent court. By virtue of this Court's resolution, reparations goods worth US\$504,170.12 have been duly received and taken away by the petitioner. Thus, the reparations goods still in issue in this case are worth US\$307,578.67; and the remaining and unimplemented balance of the initial US\$1 million PVL-LEI allocation is \$188,251.21.

On November 7, 1967, this Court resolved to refer to Mr. Justice Martin of the Court of Appeals, for investigation, report and recommendation, (a) the charge of bribery against the respondent Judge Cloribel; (b) the charges of contempt against Atty. Clapano, Atty. Patajo and the petitioner; and (c) the complaint for disciplinary action against Atty. Lacanienta. The foregoing charges arose from certain incidents in the case at bar.

On November 13, 1968, the Repacom issued Resolution 243 (68) permanently disqualifying the petitioner from further dealing or transacting with the Repacom relative to the procurement of reparations goods for the end-users World War II Veterans Enterprises, Inc. (WARVETS), the PVL, the LEI, and the United Disabled Veterans Association of the Philippines (UDVAP) and/or any other end-user for whom/which he may be the attorney-in-fact, or with whom/which he may be connected in any capacity whatsoever, because of his failure to replace the performance bonds issued by the Consolacion Insurance Co., Inc., a bonding company which he admitted to be bankrupt and in the process of liquidation, guaranteeing the payment to the Repacom of the difference between the free market rate of exchange and the old rate of exchange of P2.00 to \$1.00 relative to the f.o.b. value of the reparations goods procured for the said end-users, with other performance bonds issued by qualified bonding companies acceptable to the Repacom pursuant to Resolution 113 (68), despite having been given notice of the said resolution and sufficient time to comply therewith and notwithstanding the orders dated August 15, 1968 and September 27, 1968 of the respondent court in Civil Cases 54912 and 55250 stopping the release to the petitioner of the reparations goods subject of the said cases unless such requirement on replacement is first complied with -- it being the opinion of the Repacom that his failure to replace the said bonds is a clear proof that he is not financially qualified according to the Reparations Law to have any further dealing or transaction with the Repacom.

On February 14, 1969, the Repacom issued Resolution 43 (69), (a) accepting the proposal of the petitioner to replace the useless and worth-less judicial bonds in the aggregate amount of P670,300.20 issued by the Consolacion Insurance Co., Inc., as follows: (1) replacements of as many of the said judicial bonds as shall aggregate P150,000 immediately upon acceptance of the proposal; and (2) replacements of the remainder of the said judicial bonds at the rate of P100,000 per month thereafter until all the said judicial bonds are fully replaced; provided that the said replacement bonds shall be issued by qualified bonding companies acceptable to the Repacom and shall further be subject to the approval by the proper court; and (b) temporarily lifting the permanent disqualification of the petitioner imposed in Resolution 243 (68) dated November 13, 1968, effective upon his filing of the replacement judicial bond and/or bonds in the aggregate amount of P150,000 that is/are in accordance with the foregoing conditions and/or acceptable to the Repacom, provided that any failure of the petitioner to replace any of the remainder of the said useless and worthless judicial bonds in the manner and within the period specified above, and/or comply with the foregoing conditions, shall automatically revoke and

render ineffective the said resolution and automatically restore his permanent disqualification imposed by Resolution 243 (68) without need of any further action and/or resolution of the Repacom to that effect.

On March 12, 1969, the petitioner filed with the respondent Court a motion for replacement and substitution of bonds wherein he offered to submit a bond executed by the Traveller's Multi-Indemnity Corporation (Bond No. G-(16) 239/69) in the amount of P150,150.32 to substitute for Bond No. G-8556 -P67,341.30, Bond No. G-8575 - P65,405.34, and Bond No. G-8667 - P16,403.68 all issued by Consolacion Insurance and Surety Co., Inc. However, the Repacom filed an opposition, dated March 14, 1969, to the said motion of the petitioner, on the grounds (1) that in Civil Case 255-M (11611) of Branch XIV of the Court of First Instance of Rizal, entitled "United Disabled Veterans Association of the Philippines (Reformist Block) v. The Reparations Commission, et al.," an order dated March 11, 1969 was issued enjoining the implementation of Repacom Resolution 43 (69) until further orders from the said court; (2) that because of the said restraining order, the petitioner had no right to propose the substitution and replacement of the bonds because Resolution 43 (69) which was the source of his right or authority had been temporarily rendered ineffective by the said restraining order; and (3) that there was no allegation, much less any showing that the said bonds, assuming they could properly be considered, had been previously found acceptable by the Repacom per the conditions of Resolution 43 (69).

On March 24, 1969, the respondent Receiver filed a motion praying, upon the grounds stated therein, that pending the determination of the questioned order appointing him as the LEI Receiver, and in view of the oppository stand of the petitioner that the Receiver is still restrained to act as such despite this Court's resolution of July 15, 1968, an order be issued categorically authorizing the LEI Receiver to sell the goods now at the piers and different bonded warehouses worth US\$307,578.67 and allowing him to fully implement the balance of the US\$1 million PVL-LEI reparations allocation in the amount of \$188,251.21, subject in all cases to the approval of the respondent Court. The Receiver cited, among others, Repacom Resolution 243 (68) dated November 13, 1968 permanently disqualifying the petitioner from any further dealing or transaction with the Repacom relative to the procurement of reparations goods.

The petitioner, on June 2, 1969, filed his comments and opposition to the respondent Receiver's motion, dated March 21, 1969, and prayed, upon the grounds stated therein, that the said motion be denied.

On July 28, 1969, the respondent Receiver filed a supplemental motion praying that he be allowed to immediately conduct a detailed inventory and examination of the goods in question in the presence of all the parties and/or their duly authorized representatives, with authority to incur expenses to be later on reimbursed him; that the sale of the goods be by negotiated sale to third persons not parties to the case who are willing and qualified to take the goods as a whole under a "no selective release scheme" and as defined by the rules and regulations of the Repacom; that the Repacom, being the owner and consignee of the goods sought to be sold, be ordered to make available to the Receiver all records involving the goods, and extend full cooperation to the Receiver by clearing all the goods after payment of costs and other procurement expenses, from the Customs area and custody, ready for sale, under the supervision of the respondent Court.

On September 5, 1970, the petitioner filed his comments on the Receiver's supplemental motion, and a motion to hold the Receiver in contempt of court, praying that the Receiver's motion dated March 21, 1969 and his supplemental motion dated July 25, 1970, among others, be denied and that the LEI Receiver, Atty. Clapano, be severely censured, disciplined and punished for contempt of court. In this particular pleading, the petitioner made the claim that by virtue of this Court's resolution dated July 15, 1968 granting his petition for withdrawal of his supplemental petition for certiorari, the reparations goods in question ceased to be the subject of any action pending before this Court.

The respondent Receiver, on September 24, 1970, filed his reply to the petitioner's comment, an answer and opposition to the motion to hold him in contempt, and a counter-petition to punish the petitioner for contempt of court -- all embodied in one pleading. It reiterated the respondent Receiver's prayer that his motion dated March 21, 1969 and its supplement, dated July 25, 1970, be granted.

A panoramic appraisal of the facts of this case will show that two issues are primarily involved, to wit:

- (1) Did the respondent Court issue the questioned orders without or in excess of jurisdiction or with grave abuse of discretion?
- (2) Has this Court lost jurisdiction over the reparations goods by virtue of its resolution dated July 15, 1968 granting the petitioner's petition to withdraw his supplemental petition for certiorari?

1. Pursuant to Section 1, Rule 65 of the Rules of Court, the writ of certiorari lies if the following requisites concur: (a) that it is directed against a tribunal, board or officer exercising judicial functions; and (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law. Not all the foregoing requisites are present in the case at bar.

There is no gainsaying as to the presence of the first requisite -- the respondent court being a tribunal exercising judicial functions. Regarding the second requisite, it is not disputed that the respondent court has jurisdiction over the civil cases in question. It had acquired jurisdiction over the parties-signatories to the Compromise Agreement of May 13, 1964 and the other agreements and the subject-matter thereof. Thus, even assuming arguendo that the respondent Judge committed errors in issuing the questioned orders, they are merely errors of judgment and not errors of jurisdiction. A line must be drawn between errors of judgment and errors of jurisdiction. An error of judgment is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction renders an order or judgment void or voidable. Errors of jurisdiction are reviewable on certiorari; errors of judgment, only by appeal.[1] Errors of judgment or of procedure, not relating to the court's jurisdiction or amounting to grave abuse of discretion, are not reviewable by certiorari.[2] Where the issue or question involved affects the wisdom or soundness of the decision, not the jurisdiction of the court to render said decision or its validity, the same is beyond the province of the special civil action for certiorari.[3] Indeed, when the court has jurisdiction over the subject-matter, the orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction, and however irregular or erroneous they may be, they cannot be corrected by certiorari.[4] Whether or not the respondent Judge abused his discretion in issuing the said orders, will be discussed later.

The third requisite, i.e., the absence of appeal or any speedy and adequate remedy in the ordinary course of law, cannot likewise be said to be present in the instant case. No motions for reconsideration were filed in the case of the orders dated December 28, 1966 and January 3, 1967, respectively. The motions for reconsideration filed in the case of the orders dated November 2, 1966, November 11, 1966 and December 19, 1966, respectively, were not yet resolved before the petitioner filed the instant petition for certiorari.

Well settled in this jurisdiction is the rule that before filing a petition for certiorari, the petitioner should first call the attention of the respondent judge and afford him a chance or opportunity to correct his error, if any, in an appropriate motion for reconsideration. An omission to comply with this procedural requirement justifies a denial of the writ of certiorari applied for.[5] The reason for this rule is that issues, which courts of first instance are bound to decide, should not be taken summarily from them and submitted to an appellate court, without first giving the lower courts an opportunity to dispose of the same with due deliberation.[6]

To be sure, there are well-defined exceptions to the foregoing rule, e.g. (a) where the question of jurisdiction has

been squarely raised, argued before, submitted to, and met and decided by the respondent court; (b) where the questioned order is a patent nullity; and (c) where there is a deprivation of the petitioner's fundamental right to due process.[7] Not one of these exceptions, however, obtains in the instant case, as will be shown later.

This Court has held, likewise, that where the petitioner filed his petition for certiorari, without waiting for the resolution of his motion for reconsideration in the lower court, the writ cannot be granted. For, if there is an appeal or other adequate remedy, like a motion for reconsideration, which is still pending in the court below, the petition for certiorari should be denied.[8]

The respondent Judge did not commit a grave abuse of discretion when he issued the questioned orders. Grave abuse of discretion, another requirement in order that the instant petition for certiorari may prosper, "implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." [9] But the respondent Judge's orders are not claimed to have been motivated by passion and personal hostility. They are not despotic or arbitrary but were prompted by justifiable grounds. A perusal of the questioned orders and the circumstances under which they were issued will show that the respondent Judge did not gravely abuse his discretion in issuing them.

Let us take the orders dated November 2, 1966, November 11, 1966, and January 3, 1967, respectively. The first granted the motion of Panay that its contract for US\$200,000 with the LEI be implemented by the respondent Receiver. The second allowed the urgent ex-parte motion of Keyser (filed on November 4, 1966) praying for an order directing the implementation of its contract with the LEI for US\$120,000. The third also sanctioned the ex-parte motion filed by the LEI Receiver asking for authority to submit firm offers on behalf of Panay for US\$200,000, Keyser for US\$120,000, Eguia for US\$200,000, Magno for US\$134,600, and Worldwide for US\$135,000, or a total of US\$789,600 which is equivalent to the amount authorized to be procured by the Repacom for the LEI under the 9th Reparations Schedule in partial implementation of the balance of the PVL-LEI allocation of US\$3 million.

It must be recalled that under the Compromise Agreement of May 13, 1964 by and between the petitioner, on the one hand, and Worldwide, Eguia, Keyser, Magno, Panay and the LEI, on the other, the latter (except the LEI), in consideration of the various undertakings and other obligations assumed by the former, agreed to defer the enforcement of their respective contracts with the LEI on condition that the said contracts shall be charged and enforced on the additional allocation that would be made available to the LEI and/or PVL in implementation of the balance of the said PVL-LEI allocation; and that this same agreement was submitted to and simultaneously approved in separate orders both dated June 1, 1964 by Branches VI and I of the Court of First Instance of Manila in Civil Cases Nos. 54912 and 55250, respectively.

Pursuant to Article 2037 of the Civil Code, "A compromise has upon the parties the effect and authority of res judicata; x x x," and this is true even if the compromise is not judicially approved.[10] Since the above compromise agreement possesses judicial imprimatur, a fortiori, it stands on a similar if not better footing than one which does not carry judicial sanction. The basis, therefore, for the issuance of the orders for the enforcement and implementation of the contracts of sale and/or instructions to the LEI Receiver to implement and enforce the sales agreement, is the abovequoted provision of the Compromise Agreement of May 13, 1964 which has been properly approved by the respondent court. In issuing the said orders, the respondent court only implemented a covenant which had been long agreed and approved by the said court. The petitioner has no cause to complain in the implementation of the rights of other parties to the Compromise Agreement. The parties thereto (except the LEI) had agreed to allow the petitioner to implement the entire US\$1 million. This allocation, except for the

remaining and unimplemented balance of \$188,251.21, had already been exhausted. It is now their turn to implement their contracts. Thus, when the Repacom approved Resolution 199 (66), the LEI notified the said parties that the Repacom had already set aside US\$789,600, made available under the 9th and 10th year reparations schedule. Knowing that the petitioner had no more allocation to implement except the amount of \$188,251.21, the parties filed their motions for implementation ex--parte. No notice was given to the petitioner because he was not going to be affected by any ruling on the matter. Indeed, the motions for implementation were not necessary since all that Panay, Keyser, Magno and Eguia had to do was to exercise their rights under the said Compromise Agreement of May 13, 1964 by making their demands for implementation directly with the LEI. Thus, since the orders partake of the nature of (or are technically) motions for execution based on a compromise agreement which had been judicially approved, the respondent court did not act with grave abuse of discretion in issuing the same. After all, the petitioner himself stated in his petition that the Compromise Agreement of May 13, 1964 is res judicata and is the law between the parties.

Parenthetically, the petitioner's right is also being implemented by the LEI Receiver as could be gleaned from the letter of the latter to the former dated January 10, 1967 requesting the petitioner to submit firm offers of goods to be procured by him in accordance with the existing agreements with other parties.

The petitioner cannot complain that he was not given the right to be heard on the foregoing motions for implementation because the same were filed ex-parte. Section 6, Rule 15 of the Rules of Court, provides:

"Sec. 6. Proof of service to be filed with motion. No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected." (Under-scoring supplied)

It is clear from the abovequoted rule that if the court is satisfied that the adverse party's rights will not be affected, it may act upon a motion even without proof of service thereof on the said adverse party. This particular circumstance obtains here. Since the petitioner is a signatory to the Compromise Agreement of May 13, 1964, the provisions of which are sought to be implemented, he cannot now allege that any of his rights is being violated. Indeed, the petitioner is bound to comply with his obligation to allow the enforcement of the contracts of the other parties concerned, and his opposition to the enforcement of the said contracts as well as his act of questioning the orders allowing the enforcement thereof and authorizing the LEI Receiver to submit firm offers therefor, are gross violations of his obligations and in derogation of the respondents' rights in whose favor the orders were issued. Being himself the wrongdoer, this Court has the authority not only to dismiss his petition but also to grant to the respondents further reliefs just and equitable in the premises.

"Where plaintiff in an injunction suit is himself the wrongdoer in first invading the rights of defendant whom he seeks to enjoin, and should therefore be denied all equitable relief on that account, he cannot complain that, instead of dis-missing his complaint, as demanded in defendant's answer, the court grants a further relief to defendant by enjoin-ing plaintiff and thus adjudi-cating all the equities between the parties growing out of the facts alleged or litigated." [11]

Moreover, during the hearing of Panay's motion on October 22, 1966, the respondent court granted the request of the petitioner's counsel that he be given five days to file his opposition to the motion and the court made it clear, and it was agreed in open court, that after the expiration of the said period, the incident would be deemed submitted for resolution. Consequently, the respondent court acted correctly when it resolved the motion after the expiration of the five-day period. And as earlier stated, his motion for reconsideration of the order of November 2, 1966 is still pending because the petitioner came up to this Court on a petition for certiorari before his motion could be resolved.

With reference to the order of November 11, 1966, the petitioner was given ample opportunity to be heard on the

propriety of the said order when his motion for reconsideration which he filed on November 14, 1966 was given due course by the respondent court, and which, together with the oppositions thereto filed by the LEI on November 24, 1966 and by Keyser on November 25, 1966, was properly heard and ventilated on November 26, 1966. However, before the respondent court could resolve his motion, the petitioner brought up the instant petition for certiorari.

The petitioner claims that Keyser has no more contract to be implemented because under an agreement executed by them on January 8, 1965, the petitioner sold an additional \$300,000 worth of photographic supplies to Keyser in consideration of which Keyser had in effect agreed to release the petitioner from any obligation under the Compromise Agreement of May 13, 1964 to recognize Keyser's contract of \$120,000 with the LEI. This is not correct. Paragraph 7 of the contract of January 8, 1965, cited by the petitioner to support his allegation that Keyser had revoked its \$120,000 contract with the LEI, provides:

"7. Keyser and Cochingyan (the petitioner) agree that this agreement even (sic) not approved by the court, revokes and supercedes any and all agreements, undertakings and arrangements heretofore made and entered into between them."

A cursory perusal of the above paragraph will show that there is nothing therein which suggests a renunciation by Keyser of its \$120,000 contract with the LEI. The contract of January 8, 1965 is an agreement of Keyser with the petitioner, and not with the LEI; therefore, it has no application whatsoever to the enforcement of the agreement between the LEI and Keyser. It is clearly mis-leading to allege that by virtue of the said contract, the agreement between the LEI and Keyser is no longer enforceable. Keyser, therefore, has all the right to have its \$120,000 contract with the LEI implemented. This was the basis of the order of November 11, 1966.

The petitioner claims that he has a right to be heard in any motion which any of the respondents may file by reason of the fact that he is a buyer of the US\$4 million PVL-LEI allocation under his February 7, 1964 contract with the LEI, and that he is an assignee of Filipinas for US\$4 million of the PVL-LEI allocation. But he overlooks the fact that by reason of the Compromise Agreement of May 13, 1964, Eguia, Panay, Magno, Worldwide and Keyser agreed to allow him to buy all the goods procured under Resolution 396 of the Repacom in the amount of US\$1 million, provided their respective contracts of purchase with the LEI will be implemented against the balance of the PVL-LEI allocation of US\$4 million, i.e., the allocation made available in addition to the first US\$1 million. Indeed, his Compromise Agreement with Filipinas dated September 30, 1965 takes favorable cognizance of the May 13, 1964 Compromise Agreement with other parties because it provides that it (the agreement with Filipinas) must "be implemented in relation to and harmoniously with the Compromise Agreement between Cochingyan and the other buyer-claimants of PVL/LEI." In fact, when Branch I of the Court of First Instance of Manila approved the Filipinas-Cochingyan contract, it ordered the LEI Receiver -?

"x x x to implement the contract of LEI and Cochingyan dated February 7, 1964, pursuant to the Compromise Agreement of May 13, 1964 approved by this Court in its Order of June 1, 1964 and the Compromise Agreement of Cochingyan and Filipinas of September 30, 1965 and finally the parties to said compromise agreements are hereby enjoined to comply with the terms and the conditions thereof."

Finally, the order of January 3, 1967 was issued on motion of the LEI Receiver upon the re-request of the LEI which had to take such legal step, otherwise it could be held liable for damages and could be exposed to lawsuits which the parties-buyers might file against it for specific performance of their clearly established rights, should the Receiver fail to implement their respective contracts. Rather than risk the certainty of incurring expenses and facing court litigations, the LEI saw the need to write the Receiver to obtain instructions from the court to submit firm offers to satisfy the requirements of the parties-buyers pursuant to the Compromise Agreement of May 13, 1964. We likewise fail to see any abuse of discretion on the part of the respondent court in issuing this order.

It is not, however, difficult to imagine why the petitioner is vigorously objecting to the implementation of the contracts of other parties with the LEI on the balance of US\$3 million of the PVL-LEI allocation which is now authorized in the sum of \$1.5 million, \$789,600 of which was already made available under the 9th and 10th year reparations schedule, as aforesaid. In October 1966, he sneaked out of the Philippines, and, with-out informing the other parties, went to Japan and entered into contracts with various Japanese firms over the amount of US\$789,600 for goods other than those that Panay, Magno, Eguia and Keyser would want to order. Naturally, if out of the amount of US\$789,600, only the sum of US\$135,000 (corresponding to the share of Worldwide which the latter assigned to him) will be awarded to him, and the rest to Panay, Keyser, Eguia and Magno, then he would be placed in a very embarrassing position and would lose face with the various Japanese firms with which he unauthorizedly entered into contracts.

Let us now consider the questioned order of December 28, 1966. Pursuant to the Compromise Agreement of February 17, 1966 and the supplement thereto of the same date, the petitioner, for and in consideration of the rights and interests in the reparations goods which Worldwide and Torrefranca had assigned to him, obligated himself to pay to the latter P0.85 for every US\$1.00 of the said goods released to him up to the amount of P600,000. On the first release obtained by the petitioner following the date of execution of the said agreement, he paid what was due to Worldwide and Torrefranca. However, on the subsequent releases of goods, he began proving himself short of expectation in the religious performance of his obligations. He started paying Worldwide way off the period of 30 days from his receipt of the goods, with checks post-dated at that, for a period of from 60 to 120 days. On many occasions, the petitioner, in spite of the demands made on him by Worldwide, refused to pay, and because of such refusal, the latter was compelled to file numerous motions with the respondent court for it to order the petitioner to pay Worldwide its legal claim. Thus, upon an ex-parte motion filed by Worldwide, the respondent court issued the questioned order of December 28, 1966.

The petitioner impugns this order on the ground that it is contrary to and in violation of the meaning and intention of the Compromise Agreement of February 17, 1966 which he admits is binding upon the parties and res judicata. But the said compromise agreement and the supplement thereto define the right of Worldwide and Torrefranca to be paid P0.85 per US\$1.00 of reparations goods released to the petitioner and the latter's obligation to make such payment. Since both paragraphs 1 of the aforementioned two documents alleged by the petitioner to have been violated, do not speak of a right on his part, but on the contrary, define his obligation to pay, ergo there is no violation of the petitioner's right.

He insists, however, that it violates the provision of the compromise agreement granting him a period of 30 days within which to pay Worldwide and Torrefranca. We do not agree. The penal clause of the compromise agreement states that:

"4. In the event that Cochingyan shall fail to pay any amounts due Worldwide, Joaquin So and Torrefranca for any shipment that would have arrived, then said unpaid amount shall constitute a lien on all subsequent shipments and the same shall not be released to Cochingyan until all unpaid arrears shall have been paid..."

Since the petitioner has still an unpaid account in favor of Worldwide and Torrefranca for goods released to him in the first and second weeks of November 1966, Worldwide could have availed itself of the above penalty clause. But it chose to be more liberal and selected the less onerous way of enforcing its rights through an early payment of its claim. If harsher remedies could be made use of by Worldwide, there should be no reason why it cannot resort to a lighter penalty or remedy in order to enforce its rights.

Indeed, the order merely seeks the implementation by the LEI Receiver of an obligation unperformed by the petitioner in favor of a party to which he is obligated to pay. The order was not an amendment to the agreement because the 30-day period within which to make payments includes the day of release of the goods, the day

following and up to the end of the said period. Besides, the LEI Receiver had been appointed by the respondent court to protect the interests of the parties by carrying out the provisions of the various compromise agreements that are *res judicata*. Surely, there is no more expeditious and effective protection that the Receiver could provide than the earliest delivery of whatever belongs to a party whose interest he is supposed to protect. After all, there is no reason why the portion of the money realized from the goods which by right has to be paid to Worldwide should be kept in the Receiver's possession for 30 days. If the Receiver had agreed to pay the rightful claim of a party at an earlier date but well within the period for making such payment, this is far from censurable. And the court which authorized such cannot be faulted because it was merely serving the cause of justice.

It is apropos to mention at this juncture that, with respect to the reparations goods that he has already taken away, the petitioner has not yet paid all his monetary obligations to the different veterans organizations and persons and entities who/which are to share in the proceeds of the sale of the goods. Thus, as far back as January 4, 1967, Col. Cirilo B. Garcia, president and chairman of the Board of the LEI, wrote the LEI Receiver, Atty. Clapano (Annex 13, Receiver's Motion dated June 21, 1969, pp. 1124-1126, Vol. III, Rollo) that the petitioner had the following outstanding obligations, to wit:

1. P106,394.32 - representing amounts due the various veterans organizations;
2. P 6,000.00 - representing the share payable to the LEI;
3. P988,000.00 - representing the exchange rate difference of P1.90 per US\$1.00 payable by the LEI to the Repacom should the payment at free market rate be upheld;
4. P25,000.00 - representing P0.30 per US\$1.00 payable to Filipinas, which constitutes a lien on all importations of consumer goods by the LEI;
5. P40,000.00 - representing P0.25 per US\$1.00 settlement in favor of the Joaquin So group; and
6. P13,000.00 - representing P0.85 per US\$1.00 settlement in favor of Worldwide.

In fact, the respondent court had repeatedly warned the petitioner to pay his obligations to the other parties in this case, pursuant to the various compromise agreements--to no avail.

As far as the Repacom is concerned, the petitioner does not owe it any amount, except that -- as hereafter to be discussed -- he is obliged to replace the performance bonds guaranteeing the payment to the Repacom of the difference between the free market rate of exchange and the old rate of exchange of P2.00 to \$1.00 in connection with the f.o.b. value of the reparations goods he procured for some end-users.

The petitioner also denounces the order of December 19, 1966 which denied the PVL's motion for reconsideration on the reinstatement of the LEI receivership, relieved as receiver Atty. Mariano L. Mercado, and appointed as the new LEI Receiver Atty. Ireneo R. Clapano, Jr. A flashback of the events which preceded the issuance of the said order will show that the petitioner has absolutely no reason to complain.

The respondent court, by virtue of an ex-parte motion of the petitioner, issued, on October 14, 1966, an order appointing Atty. Mercado as the new LEI Receiver. Neither the motion for the appointment of Atty. Mercado as the LEI Receiver, nor the order granting the said motion, was made known to the other parties. However, the said parties learned about them, and upon their motions, the respondent court gave all the parties the chance to be heard and present their candidates for the position if they wished, although the court is vested with the sole power to select a receiver. After considering the arguments of all parties whose rights and interests could be affected thereby, the respondent court reconsidered its order of October 14, 1966 by explicitly revoking the appointment of Atty. Mariano L. Mercado and appointing Atty. Clapano as the LEI Receiver in its order of December 19, 1966.

Certainly, there is no logic in the petitioner's assertion that the order of December 19, 1966 should be held null and void while the order of October 14, 1966 should be valid. He cannot accept a court's prerogative to appoint a receiver, on the one hand, and refuse to admit its power to revoke such appointment, on the other. The power of a court vested in it by law to appoint a receiver necessarily carries with it the power to revoke the said appointment. And although the final selection of a receiver is vested solely in a court, it is also proper for a judge to receive advice from parties interested in the trust.[12] In this case, the respondent court gave opportunity to all the parties to agree on a person who could be qualified as a receiver and is supported by at least a majority, if not by all of the parties. Indeed, except the petitioner, there is no organization or person who openly objects to the continuation of Atty. Clapano as the LEI Receiver. In fact, his appointment, as the order of December 19, 1966 shows, had been made by virtue of the indorsement of the majority of the parties to this case.

Besides, the revocation of the appointment of Atty. Mercado as the LEI Receiver was not without sufficient basis, as shown by the well-reasoned order of the respondent court which states, *inter alia*:

"... Further, this Court notes and has observed that the present receiver has not reported or informed the Court, or his stand defined, despite several incidents in these cases from the date of his appointment, as to his position on the several conflicting claims of the various opposing parties in these cases. Under these circumstances, the Court is inclined to give credence to one of the parties' claim that Atty. Mercado's old age, his having retired from the judiciary and is residing (sic) in Cavite, may be a handicap in the faithful and rigorous implementation of the veterans reparations allocation and in the discharge of his duties as receiver. The Court needs a receiver who is physically active, with sufficient knowledge and experience."

In fact, during his entire tenure, Atty. Mercado never visited the LEI offices, nor had he consulted with the LEI officers to find out how he could best serve the organization he was representing as receiver.

The position of LEI Receiver should be given to one who is not only physically fit, but as well knows the case, the parties, and the procedure at the Repacom -- in the words of the respondent Court, one "who is physically active, with sufficient know-ledge and experience." The petitioner himself admits that Atty. Clapano has been trained in the ramifications of reparations business and is familiar with the transactions in connection therewith. For about four years, Clapano was the technical assistant to the then Executive Director, now Commissioner Mauricio O. Bas of the Repacom. He was so capable in screening procurement orders and studying the different legal aspects of every transaction involving the Repacom that Executive Director Bas would not sign any procurement order or other communication unless initialed by him. Verily, the knowledge and experience of Clapano in reparations matters would prove invaluable to the LEI and its buyers.

The petitioner's argument that Clapano is not qualified to perform the duties of the LEI Receiver because he has been his former employee and legal counsel and therefore privy to his trade secrets, deserves scant attention. The petitioner concedes that he had already virtually dismissed Clapano, therefore, their relation as counsel and client no longer exists.

"... An attorney is not disqualified where the relation of attorney and client has terminated before the appointment, or where, although he is attorney for another judgment creditor or defendant, he is not attorney for the judgment creditor who applied for the receivership; and, a fortiori, the mere fact that one is a solicitor or practicing barrister, being in no way connected with the particular parties or subject matter, does not disqualify him to be a receiver."[13]

Clapano can no longer act as the petitioner's counsel in any of his cases even if the former's name has not yet been deleted as counsel of record. It is the petitioner's fault that although he had dismissed Clapano as counsel, he (the petitioner) has not given his written consent for Clapano to withdraw as his counsel. But even this refusal to give his written consent is of no moment. Having exercised the universally recognized right of a client to terminate the

relation between himself and his counsel, which can be done at any time and for any cause, it is absurd for the petitioner to aver that Atty. Clapano must obtain his written consent before the latter can withdraw as his counsel. At any rate, Atty. Clapano has filed a pleading in the court below wherein he disavowed any further connection or relation with the petitioner and denied that he is still the petitioner's counsel in any case. Besides, no prejudice was caused to the petitioner's rights because he was being represented by a chief counsel (Atty. Patajo) at that time. Moreover, there is no proof that the respondent Receiver has acquired trade secrets which he is now adversely using against the petitioner. On the contrary, the records show that the respondent Receiver has given his conformity to many motions of the petitioner. Indeed, it is strange that the complaint and opposition against the appointment of Clapano as the LEI Receiver should emanate from the petitioner's corner. It should be the other respondents who would logically express fear and apprehension in the appointment as LEI Receiver of a former counsel of the adverse party, the petitioner. After all, he might side with his former employer.

It is thus clear that petitioner has not made out a cause against the appointment of Clapano as receiver. But while the court below judiciously revoked Mercado's appointment and in his stead appointed Clapano, it would do well for the court, considering the various incidents in the case, to exercise a tighter supervision over the new receiver in order to forestall any charge of unfairness or partiality from any source, always having in mind that a receiver is to be regarded as the arm, officer or representative of the court; that his contracts and liabilities are, in contemplation of law, the contracts and liabilities of the court and that, as a necessary consequence, the receiver is subject to the control and supervision of the court.

The exercise of a close supervision over the present receiver augurs a more advantageous alternative to considering again the appointment of a new one in place of Clapano for this latter course would again entail delay in the disposition of this case and, consequently, delay also in the remittance of the proceeds from the sale of the reparations goods to the "Trust Fund," to the prejudice of the veterans of World War II and their widows and orphans.

2. The second issue posed is whether this Court has lost jurisdiction over the reparations goods now stored at the piers and in different bonded warehouses by virtue of its resolution dated July 15, 1968 granting the petitioner's petition to withdraw his supplemental petition for certiorari, thus supposedly precluding us by implication from taking cognizance of the LEI Receiver's motion and supplemental motion dated March 21, 1969 and July 28, 1970, respectively.

Parenthetically, with respect to the reparations goods still at the piers and in different bonded warehouses, the contracts between the petitioner and the different organizations and persons involved, computed at US\$1.00 f.o.b. invoice value, require the petitioner to pay as follows:

1. PVL----- P0.30

2. LEI----- 0.20

3. Other veterans

groups: VOP,

PQOG, DBC and

War Widows at

P0.06 each ----- 0.24

P0.74 for all veterans

4. Joaquin So ----- P0.25

5. Filipinas----- 0.30

6. Worldwide----- 0.85

P1.40 for private parties

7. Reparations Commission----- P2.00

(excluding bank

commissions, service fees,

freightage, and the premiums

to be paid for the

P1.90 per US\$1.00 to guarantee

pay-ment of the difference between

free market rate and preferred rate

to be paid the Repacom)

8. Warehousing charges

at present, not

less than P650,000

due to long

storage----- P2.20

By order dated January 14, 1967, the respondent court allowed the LEI Receiver to take partial delivery of the reparations goods and dispose of part of the same for the maintenance and expenses of the corporation (LEI). Thus, the petitioner filed his supplemental petition for certiorari impugning the said order as issued in excess of jurisdiction and with grave abuse of discretion. However, the parties to this case apparently came to some sort of an agreement that the petitioner be allowed to take delivery of the goods because on May 16, 1967 he filed a petition to withdraw his supplemental petition for certiorari. By resolution dated July 15, 1968, as above stated, this Court granted the petitioner's petition to withdraw his supplemental petition for certiorari, thereby paving the way for the delivery to the petitioner of the reparations goods presently deposited at the piers and in customs bonded warehouses. However, on November 13, 1968, the Repacom, by Resolution 243 (68) (pp. 1099-1100, Rollo III), permanently disqualified the petitioner from further dealing or transacting with the Repacom relative to the procurement of reparations goods because of his failure to replace the performance bonds issued by the Consolacion Insurance Co., Inc., a bonding company which he admitted to be bankrupt and in the process of liquidation. This insurance firm posted the performance bonds for the petitioner guaranteeing the payment to the Repacom of the difference between the free market rate of exchange and the old preferred rate of P2.00 to US\$1.00 relative to the f.o.b. value of the reparations goods which he procured for the veterans groups.

Petitioner, in order to requalify himself to deal on reparations matters, made various representations with the Repacom to replace the worthless bonds. His request was granted and the Repacom adopted Resolution 43 (69) on February 14, 1969 (Annex 10-a, Receiver's Motion of March 21, 1969, pp. 1116-1117, Rollo III) allowing him to

replace periodically the judicial bonds, as follows: P150,000 initial replacement, and P100,000 monthly thereafter until all worthless judicial bonds in the total amount of P670,300.20 issued by the Consolacion Insurance Co., Inc. are fully replaced; and temporarily lifting his disqualification imposed in Resolution 243 (68) dated November 13, 1968. However, since February 14, 1969 up to the present, the petitioner has not replaced the worthless judicial bonds. He alleged that he could not file the replacement bonds because in Civil Case 255-M (11611) of the Court of First Instance of Rizal, entitled "United Disabled Veterans Association of the Philippines (Reformist Block) v. The Reparations Commission, et al.," a restraining order was issued enjoining the Repacom to act on any of the representations of the petitioner to have his initial P150,000 bond approved. However, the said restraining order was lifted on January 7, 1970, but still the petitioner has failed to comply with the Repacom's requirement to replace the bonds. Because of this failure to comply with the conditions imposed by Repacom Resolution 43 (69), the permanent disqualification imposed on him by Repacom Resolution 243 (68) was automatically restored.

The petitioner's financial incapability and incapacity, and his failure to replace the worthless bonds, are the principal grounds why the Repacom refuses to allow him to requalify. This is aside from the Repacom's own knowledge, obtained through its own investigations, that the petitioner has been implicated in the falsification of the list of the goods to be imported through reparations as approved by the National Economic Council; likewise, in the complaint of the United Disabled Veterans Association of the Philippines (UDVAP) that goods procured for its use had been pilfered, the petitioner is implicated in the pilferage (Annexes 1, 2, 3 and 3-1, Receiver's Reply dated September 19, 1970 to petitioner's comments).

In the aforesaid Repacom investigation, it was disclosed that the list of goods approved by the National Economic Council for importation via reparations cover was substituted with another which included banned items. The list was contained in the second page of a 3-page letter of the Council to the Repacom. The receiving clerk testified in the investigation that petitioner Cochingyan had approached and requested her to stamp a second copy of the letter which Cochingyan had brought, with the date of receipt similar to the original copy, and that she had overheard petitioner and a certain Mrs. Alcala, who was the clerk's superior, talking about the necessity of using a typewriter and a kind of paper similar to the ones used in the original copy of the letter ("dapat parehong papel, parehong typewriter"). Laborers under the employ of the petitioner executed affidavits pointing to petitioner as the one who directed and supervised them in taking away reparations goods on specified dates from various warehouses; they narrated in detail how they unpacked boxes, loaded their contents in petitioner's waiting car and closed the boxes to make them appear as though they had not been emptied of their contents. A case for theft had been filed with the office of the city fiscal of Manila against petitioner and other persons who appeared to have participated in the pilferage.

The first initial disqualification of the petitioner had something to do with the more than US\$500,000 worth of reparations goods which were released to him, through the then LEI Receiver, Atty. Ramon M. Velayo. The lower court allowed the then LEI Receiver Velayo to take delivery of the goods and release the same to the petitioner on condition that the latter should file a bond to be approved by the court to insure that the P1.90 difference between the old rate and the free market rate would be paid by the petitioner the moment it would be finally ruled that the rate of exchange should be the free market rate. These bonds posted by the Consolacion Insurance Co., Inc., which have now become worthless, are the same bonds which the Repacom required the petitioner to be replaced by other bonds to be issued by qualified bonding companies.

For the reasons above stated, the petitioner is no longer qualified to handle the reparations goods procured for the PVL/LEI now stored at the piers and in different bonded warehouses.

Consequently, on March 21, 1969, the LEI Receiver filed a motion followed by a supplement thereto filed on July 28, 1970, praying this Court (a) to authorize him to sell the reparations goods (now in storage at the piers and in

different bonded warehouses) upon the grounds that these goods, because they have been in storage for four or more years, are rapidly deteriorating and depreciating in value, and that the storage fees corresponding to these unreleased reparations goods are mounting from day to day; and (b) to order the full implementation of the balance of the US\$1 million PVL-LEI allocation in the amount of \$188,251.21. Acting on the LEI Receiver's two motions, this Court required all the parties to comment thereon. The following respondents have manifested that they have no objection to and are in conformity with the said two motions: the Repacom, the PVL, the LEI, Panay, Keyser, Worldwide, Magno, Eguia and Torre Franca. Atty. Panfilo Manguera, Chief Legal Counsel, Adviser and Head, Legal Department of the Repacom, made the following manifestation for and in behalf of the Repacom:

"... It does not wish to entangle itself with the purely intramural conflicts of the different claimants for the reparations goods procured and to be procured for Legionnaires Enterprises, Inc. Respondent Commission's only concern is the prompt generation of the Veterans Trust Fund which, under the law (Section 2[d] of Republic Act No. 1789), it is charged with the duty to perform; that under the established reparations set-up, said reparations goods remain the property of the government until paid for and payment for the same is required to be in cash; that the proceeds from the sale are constituted into the Veterans Trust Fund which under Republic Act No. 3518 (Veterans Bank Act) shall be immediately paid and transmitted to the Philippine Veterans Bank to form a portion of the capitalization of said bank; that any delay in the generation of said trust fund will necessarily result in the delay in the transmittal of the proceeds to the Philippine Veterans Bank, to the prejudice of the intended beneficiaries, the Filipino Veterans, their widows and orphans; that in the light of the fact that reparations consumer goods are payable in cash, and until so paid remain the property of the Government, and the amounts so paid are constituted into the Veterans Trust Fund, the interest of conflicting claimants should be confined to whatever margin profits there may be after payment of the value of the goods is made to the Reparations Commission. Accordingly, in the expeditious procurement of reparations goods intended for the generation of the Veterans Trust Fund, the Reparations Commission should be allowed to undertake the corresponding implementation unhampered by any restraint or injunctive process and only after the proceeds thereof shall have been generated should the interested private parties be allowed to squabble among themselves relative to the goods." (Emphasis ours)

On the respondent Receiver's motions of March 21, 1969 and July 28, 1970, the Repacom's position is that -

"...[I]n the meanwhile, certain vital facts adverted to and discussed in the Receiver's Motion have intervened which have rendered ineffective the position of the Petitioner, Joseph Cochingyan, Jr., as an instrumentality for the generation of the Veterans Trust Fund for which the goods in question had been procured, and correspondingly, a situation has thus arisen by reason of these facts which render it not only imperative, but also just, fair, valid and reasonable that the Receiver's motion be given due course, xxx; that the protection, therefore, of the paramount public interest and the expeditious generation of the Veterans Trust Fund intended to be achieved by the subject procurements demands that the disposition of the goods thru the Receiver, and the grant of authority to said Receiver to fully implement the balance of the US\$1 Million PVL-LEI allocation, subject to the approval of the respondent Court, should be given due course."

It must be noted that it has been and still is the policy of the Repacom that all reparations goods must be sold and released under a "no selective release scheme" or pakiaao to one person or entity, provided that before actual release is made, the costs and the charges and expenses incident to procurement (i.e., f.o.b. value of costs, back commissions, service fees, freightage and storage charges which the Repacom has advanced to warehousemen) are fully paid for in cash directly to the Repacom. Reparations goods intended for veterans are payable in cash, and, until so paid, remain the property of the Government. As aforementioned, the amounts so paid are constituted into the Veterans Trust Fund.

The petitioner's position, however, is that this Court can not act on the LEI Receiver's motions because by virtue

of its resolution dated July 15, 1968 granting his petition for withdrawal of his supplemental petition for certiorari, the reparations goods in question ceased to be the subject of any action pending before this Court. We do not subscribe to this argument. When we issued the resolution of July 15, 1968 which should have paved the way for the delivery to the petitioner of the goods kept at the piers and in customs bonded warehouses, he was still legally and fully qualified to take delivery thereof. However, on November 13, 1968, by Resolution 243 (68), the Repacom permanently disqualified him from further dealing or transacting with it relative to the procurement of reparations goods. Upon his application, the Repacom, in Resolution 43 (69) of February 14, 1969, temporarily lifted his permanent disqualification upon the conditions specified in the said resolution, but he failed to comply therewith, causing the automatic restoration of his permanent disqualification. The petitioner cannot now, therefore, take delivery of the reparations goods since he has not taken any steps to lift his permanent disqualification -- one of which is an appeal to the Office of the President from the refusal of the Repacom to accept the substitute bonds he had submitted.

Moreover, there is a legal impediment to allowing the petitioner to requalify himself. Under the Reparations Law (Rep. Act 1789, as amended), it is the Repacom which specifically defines the qualifications and determines who are qualified to take delivery of the reparations goods, and unless clear abuse is shown in the exercise of such function, courts should not interfere therewith. Indeed, the Repacom is the entity vested by law to "ascertain and verify that the applicant concerned has enough financial resources and capacity to pay" (Sec. 6 [a-1], R.A. 1789 as amended), and "to provide for the care, custody, protection and proper delivery to end-users of all such reparations goods as provided in this Act" (Sec. 6 d, Id.). The Repacom is likewise the entity vested with authority "to hear and decide all questions and controversies regarding the rules and regulations which it shall issue to carry out the purposes of this Act, its decisions in all such cases being appealable directly to the President" (Sec. 6 h, Id.). Since the Repacom has disqualified permanently and totally the petitioner from further dealing on reparations matters, and this disqualification has not been appealed by the petitioner to the President, this Court can not extend any relief in the matter of the petitioner's efforts to requalify himself. Besides, since the Repacom is neither a signatory nor a party to any of the various compromise agreements executed by the private parties-buyers, it cannot be compelled to deliver the goods to parties it sees unfit to receive them. It cannot be bound by any stipulation of the various agreements. Consequently, the petitioner cannot therefore assert or claim an absolute right over the goods, as in fact he admits that "his rights did not spring from his dealings with the Reparations Commission but from his dealings with LEI" (Par. 2, page 2, Petitioner's Comments on the Supplemental Manifestations of the Reparations Commission). Thus, unless they are fully paid for in cash (f.o.b. costs of goods and expenses of procurement), the Repacom is the absolute owner of the goods in question, although the same are being procured for the PVL/LEI.

The issuance by this Court of its resolution of July 15, 1968 was implicitly conditioned upon the petitioner's ability and qualification to take delivery of the goods. Being now bereft of such ability and qualification, he cannot avail himself of the said resolution. Consequently, this Court still has jurisdiction over the said goods, and can and will favorably act on the LEI Receiver's motion to sell the same, upon the conditions to be hereinafter set forth, impelled only by the thought that this will best serve public interest and the interests of the widows and orphans for whose benefit the Veterans Trust Fund is sought to be generated; and that no prejudice in any way will result to any of the parties, including the petitioner, because the money to be realized from the sale of the reparations goods will be deposited with a stable and reputable bank. Moreover, we see no legal impediment to this Court ordering the implementation of the remainder of the US\$1 million allocation in the amount of US\$188,251.21.

Finally, the petitioner vigorously objects to the advance payment made by the Repacom of warehousing fees at the rate of P0.50 per ton per day, alleging that it should be P0.07 per ton per day as agreed upon between him and

the Reliance Warehousing & Commercial Co., Inc. as allegedly approved by the Repacom. The facts, however, do not support the petitioner's stand. It appears that when the reparations goods released to the petitioner through the then LEI Receiver Atty. Velayo and pertaining to the first US\$500,000 were about to arrive, the Reliance Warehousing & Commercial Co., Inc. alone, among several warehouses, agreed to give a special rate of storage charge to the PVL-LEI at the rate now claimed by the petitioner, on condition that the next incoming shipments of reparations goods be also stored in the Reliance customs bonded warehouse. There is, however, no clear agreement that the special rate claimed by the petitioner be also made applicable to the goods now stored at the said warehouse. There is no written agreement to this effect. As now contended by the Reliance Warehousing and concurred in by the Repacom, the special rate of warehousing charges then previously given was made applicable only to the goods previously stored and long released. With respect to the goods now at the warehouse, they should be charged at the rate now claimed by the Reliance Warehousing and adopted by the Repacom because the said rate charge has been approved and fixed by the Bureau of Customs. The petitioner has not presented any written agreement or proved any verbal contract existing between the parties in this case, on the one hand, and the Reliance Warehousing, on the other, that the rate of warehousing charges be as claimed by him. Hence, the Repacom acted correctly when it adopted Resolution 148 (68), dated August 14, 1968 (Annex 5, Receiver's Reply dated September 19, 1970 to petitioner's comments), authorizing the release of the amount of P313,456.32 in favor of the Reliance Warehousing & Commercial Co., Inc. as warehousing charges, of which the amount of P272,707.43 was released through a General Voucher (Annex 12, Receiver's motion dated March 21, 1969, p. 1123, Rollo III).

ACCORDINGLY, the petition for certiorari is hereby dismissed, with costs against the petitioner.

Considering all the pleadings relative and relevant to the two above-mentioned motions of the Receiver dated March 21, 1969 and July 28, 1970, respectively, and finding the reasons adduced by the said Receiver in his said two motions, as well as the reasons stated in the manifestations of the Repacom, valid and compelling, this Court hereby creates a Committee to be composed of (a) Receiver Ireneo R. Clapano, Jr., as chairman, (b) a representative to be named without delay by the Reparations Commission, and (c) a representative of the Court of First Instance of Manila (Branch VI) to be named without delay by the Presiding Judge thereof. This Committee shall, with deliberate speed, and always under the guidance, supervision and control of the Presiding Judge of Branch VI:

- (1) Make a written inventory of all the reparations goods above referred to (stored at the piers and in the bonded warehouses), the dates of the making of such inventory to be communicated priorly to all the parties in this case who or which, at their options, may send their respective representatives to attend and observe the making of the inventory;
- (2) As soon as the final and complete inventory shall have been finished, forthwith furnish this Court fifteen (15) certified true copies thereof, signed by the chairman and the members of the Committee and attested by the Presiding Judge;
- (3) Immediately thereafter, to proceed to sell all the said reparations goods, each sale to be done either by public auction or by negotiation (negotiated sale), the manner of sale in every case subject to the prior approval of the Presiding Judge, always bearing in mind the primary objective of securing the best and/or highest possible prices for the goods, in the light of the particular or special environmental circumstances obtaining in each case;
- (4) To report to the Presiding Judge, as well as to this Court, each sale as it is consummated, the report to contain precise information as to (a) the date of the sale, (b) the kind of goods sold, (c) the quantity thereof, (d) the nature of the sale, whether by public auction or by negotiated sale, (e) the amount generated therefrom, and (f) the

name(s) and address(es) of the purchaser(s);

(5) To deliver the proceeds of each sale to the Presiding Judge who is hereby directed to deposit the same without delay with the Philippine Veterans Bank as a savings deposit in the name of the Philippine Reparations Commission, the disposition thereof to await the orders of this Court; and

(6) As soon as all the said reparations goods shall have been sold, to submit to this Court a final report attested by the Presiding Judge.

All proper and necessary expenses incurred by the Committee in the discharge of its functions and duties by virtue of this decision may, from time to time, be authorized to be paid by the Presiding Judge from the sales proceeds, prior to their being deposited with the Philippine Veterans Bank as herein-before directed.

Thereafter, the Reparations Commission shall file with this Court a verified manifestation itemizing and detailing the charges, taxes and duties that are due to it by virtue of the importation of the reparations goods in question.

It appearing that to require a bond from any of the respondents would be inequitable because none of them are in possession of the goods in question, nor have the power to dispose of them, nor have received any money proceeds by virtue of their importation, the Court will not, require the posting of any bond by any of the respondents.

The Reparations Commission is hereby authorize to take all proper and necessary steps to effect the full implementation not only of the balance of the US\$1 million PVL-LEI allocation, in the amount of \$188,251.21, but also of the balance of the US\$3 million PVL-LEI allocation.

Barredo, Makasiar, Antonio, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

Fernando, C.J., having previously been retained as counsel by petitioner in other cases took no part.

Teehankee, J., no part.

Aquino, J., in the result.

* L-23026 and L-23027 were dismissed by the Court (Second Division) on January 6, 1977 for having become moot and academic.

[1] Fernando vs. Vasquez, 31 SCRA 288 (1970).

[2] Maritime Company of the Phil., et al. vs. Paredes, et al., 19 SCRA 569 (1967), and cited cases.

[3] Id.

[4] Associated Labor Union vs. Ramolete, 13 SCRA 582 (1965) citing Villa-Rey Transit vs. Hon. E. Bello, 7 SCRA 735 (1963).

[5] Del Pilar Transit Inc. vs. Public Service Commission, 31 SCRA 372, 381-382 (1970); Eastern Paper Mills Employees Association vs. Eastern Paper Mills, Inc. 25 SCRA 234 (1968); Arroyo vs. Mencias, 14 SCRA 1050 (1965); Detective & Protective Bureau, Inc. vs. Cloribel, 26 SCRA 255 (1968); Aquino vs. Estenzo, 14 SCRA 18 (1965); Plaza vs. Mencias, 6 SCRA 562 (1962); Sy It vs. Tiangco, 4 SCRA 436 (1962); Santos vs. Cerdenola, 5 SCRA 823 (1962); Pagkakaisa Samahang Manggagawa sa San Miguel Brewery vs. Enriquez, 108 Phil. 1010 (1960); Cueto vs. Ortiz, 108 Phil. 538 (1960); Ricafort vs. Fernan, 101 Phil. 575; Collector of Internal Revenue vs. Reyes, 100 Phil. 822; Nicolas vs. Castillo, 97 Phil. 336.

[6] De Chavez vs. Ocampo, 66 Phil. 76, 78.

[7] Detective & Protective Bureau, Inc. vs. Cloribel, supra.

[8] Maritime Company of the Phil., et al. vs. Paredes, et al., supra, and cited cases; Associated Labor Union vs. Ramolete, supra.

[9] Maritime Company of the Phil., et al. vs. Paredes, et al., supra.

[10] Vda. de Guilas vs. David, 23 SCRA 762, 766 (1968), citing Meneses vs. De la Rosa, 77 Phil. 34.

[11] Rodulfa vs. Alfonso, 76 Phil. 225, quoting Power vs. Village of Athens, 99 N.Y. 592; 2 N.E. 609; 32 C.J., footnote.

[12] 45 Am Jur 106.

[13] 53 C.J. 72-73.

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