

**NIELSON & COMPANY, INC., PLAINTIFF-APPELLANT, VS.
LEPANTO CONSOLIDATED MINING COMPANY,
DEFENDANT-APPELLEE.**

G.R. No. L-21601. December 28, 1968

Ponente: ZALDIVAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/679553b04ce7/>

ZALDIVAR, J.:

Lepanto seeks the reconsideration of the decision rendered on December 17, 1966. The motion for recon-sideration is based on two sets of grounds -- the first set consisting of four principal grounds, and the second set consisting of five alternative grounds, as fol-lows:

Principal Grounds:

1. The court erred in overlooking and failing to apply the proper law ap-plicable to the agency or management contract in question, namely, Article 1733 of the Old Civil Code (Article 1920 of the new), by virtue of which said agency was effectively revoked and terminated in 1945 when, as stated in paragraph 20 of the complaint, "defendant voluntari-ly ... prevented plaintiff from re-suming management and operation of said mining properties."
2. The court erred in holding that paragraph II of the management contract (Exhibit C) suspended the period of said contract.
3. The court erred in reversing the ruling of the trial judge, based on well-settled jurisprudence of this Supreme Court, that the management agreement was only suspended but not extended on account of the war.
4. The court erred in reversing the finding of the trial judge that Nielson's action had prescribed, but considering only the first claim and ignoring the prescriptibility of the other claims.

Alternative Grounds:

5. The court erred in holding that the period of suspension of the contract on account of the war lasted from February 1942 to June 26, 1948.
6. Assuming arguendo that Nielson is entitled to any relief, the court erred in awarding as damages (a) 10% of the cash dividends declared and paid in December, 1941; (b) the management fee of P2,500.00 for the Month of January, 1942; and (c) the full contract price for the extended period of sixty months, since these damages were neither demanded nor proved and, in any case, not allowable under the general law of damages.
7. Assuming arguendo that appellant is entitled to any relief, the court erred in ordering appellee to issue and deliver to appellant shares of stock together with fruits thereof.
8. The court erred in awarding to appellant an undetermined amount of shares of stock and/or cash, which award cannot be ascertained and executed without further litigation.
9. The court erred in rendering judgment for attorney's fees.

We are going to dwell on these grounds in the order they are presented.

1. In its first principal ground Lepanto claims that its own counsel and this Court had overlooked the real nature of the management contract entered into by and between Lepanto and Nielson, and the law that is applicable on said contract. Lepanto now asserts for the first time -- and this is done in a motion for re-consideration -- that the management contract in question is a contract of agency such that it has the right to revoke and terminate the said contract, as it did terminate the same, under the law of agency, and particularly pursuant to Article 1733 of the Old Civil Code (Article 1920 of the New Civil Code).

We have taken note that Lepanto is advancing a new theory. We have carefully examined the pleadings filed by Lepanto in the lower court, its memorandum and its brief on appeal, and never did it assert the theory that it has the right to terminate the management contract because that contract is one of agency which it could terminate at will. While it is true that in its ninth and tenth special affirmative defenses, in its answer in the court below, Lepanto pleaded that it had the right to terminate the management contract in question, that plea of its right to terminate was not based upon the ground that the relation between Lepanto and Nielson was that of principal and agent but upon the ground that Nielson had allegedly not complied with certain terms of the management contract. If Lepanto had thought of considering the management contract as one of agency it could have amended its answer by stating exactly its position. It could have asserted its theory of agency in its memorandum for the lower court and in its brief on appeal. This, Lepanto did not do. It is the rule, and the settled doctrine of this Court, that a party cannot change his theory on appeal -- that is, that a party cannot raise in the appellate court any question of law or of fact that was not raised in the court below or which was not within the issue made by the parties in their pleadings (Section 19, Rule 49 of the old Rules of Court, and also Section 18 of the new Rules of Court; *Hautea vs. Magallon*, L-20345, November 28, 1964; *Northern Motors, Inc. vs. Prince Line*, L-13884, February 29, 1960; *American Express Co. vs. Natividad*, 46 Phil. 207; *Agoncillo vs. Javier*, 38 Phil. 424 and *Molina vs. Somas*, 24 Phil. 49.)

At any rate, even if we allow Lepanto to assert its new theory at this very late stage of the proceedings, this Court cannot sustain the same.

Lepanto contends that the management contract in question (Exhibit C) is one of agency because: (1) Nielson was to manage and operate the mining properties and mill on behalf, and for the account, of Lepanto; and (2) Nielson was authorized to represent Lepanto in entering, on Lepanto's behalf, into contracts for the hiring of laborers, purchase of supplies, and the sale and marketing of the ores mined. All these, Lepanto claims, show that Nielson was, by the terms of the contract, destined to execute juridical acts not on its own behalf but on behalf of Lepanto under the control of the Board of Directors of Lepanto "at all times". Hence Lepanto claims that the contract is one of agency. Lepanto then maintains that an agency is revocable at the will of the principal (Article 1733 of the Old Civil Code) regardless of any term or period stipulated in the contract, and it was in pursuance of that right that Lepanto terminated the contract in 1945 when it took over and assumed exclusive management of the work previously entrusted to Nielson under the contract. Lepanto finally maintains that Nielson as an agent is not entitled to damages since the law gives to the principal the right to terminate the agency at will.

Because of Lepanto's new theory We consider it necessary to determine the nature of the management contract -- whether it is a contract of agency or a contract of lease of services. Incidentally, we have noted that the lower court, in the decision appealed from, considered the management contract as a contract of lease of services.

Article 1709 of the old Civil Code, defining contract of agency, provides:

"By the contract of agency, one person binds himself to render some service or do something for the account or at the request of another."

Article 1544, defining contract of lease of service, provides:

"In a lease of work or services, one of the parties binds himself to make or construct something or to render a service to the other for a price certain."

In both agency and lease of services one of the parties binds himself to render some service to the other party. Agency, however, is distinguished from lease of work or services in that the basis of agency is representation, while in the lease of work or services the basis is employment. The lessor of services does not represent his employer, while the agent represents his principal. Manresa, in his "Commentarios al Código Civil Español" (1931, Tomo IX, p. 372-373), points out that the element of representation distinguishes agency from lease of services, as follows:

"Nuestro art. 1.709 como el art. 1.984 del Código de Napoleon y cuantos textos legales citamos en las concordancias, expresan claramente esta idea de la representación, 'hacer alguna cosa por cuenta o encargo de otra' dice nuestro Código; 'poder de hacer alguna cosa para el mandante o en su nombre' dice el Código de Napoleon, y en tales palabras aparece vivo y luminoso el concepto y la teoría de la representación, tan fecunda en enseñanzas, que a su sola luz es como se explican las diferencias que separan el mandato del arrendamiento de servicios, de los contratos inominados, del consejo y de la gestión de negocios.

"En efecto, en el arrendamiento de servicios al obligarse para su ejecución, se trabaja, en verdad, para el dueño que remunera la labor, pero ni se le representa ni se obra en su nombre x x x"

On the basis of the interpretation of Article 1709 of the old Civil Code, Article 1868 of the new Civil Code has defined the contract of agency in more explicit terms, as follows:

"By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

There is another obvious distinction between agency and lease of services. Agency is a preparatory contract, as agency "does not stop with the agency because the purpose is to enter into other contracts." The most characteristic feature of an agency relationship is the agent's power to bring about business relations between his principal and third persons. "The agent is destined to execute juridical acts (creation, modification or extinction of relations with third parties). Lease of services contemplate only material (non-juridical) acts." (Reyes and Puno, "An Outline of Philippine Civil Law," Vol. V, p. 277).

In the light of the interpretations we have mentioned in the foregoing paragraphs, let us now determine the nature of the management contract in question. Under the contract, Nielson had agreed, for a period of five years, with the right to renew for a like period, to explore, develop and operate the mining claims of Lepanto, and to mine, or mine and mill, such pay ore as may be found therein and to market the metallic products recovered therefrom which may prove to be marketable, as well as to render for Lepanto other services specified in the contract. We gather from the contract that the work undertaken by Nielson was to take complete charge, subject at all times to the general control of the Board of Directors of Lepanto, of the exploration and development of the mining claims, of the hiring of a sufficient and competent staff and of sufficient and capable laborers, of the prospecting and development of the mine, of the erection and operation of the mill, and of the beneficiation and marketing of the minerals found on the mining properties; and in carrying out said obligation Nielson should proceed diligently and in accordance with the best mining practice. In connection with its work Nielson was to submit reports, maps, plans and recommendations with respect to the operation and development of the mining properties, make recommendations and plans on the erection or enlargement of any existing mill, dispatch mining engineers and technicians to the mining properties as from time to time may reasonably be required to investigate and make recommendations without cost or expense to Lepanto. Nielson was also to "act as purchasing agent of

supplies, equipment and other necessary purchases by Lepanto, provided, however, that no purchase shall be made without the prior approval of Lepanto; and provided further, that no commission shall be claimed or retained by Nielson on such purchase"; and "to submit all requisition for supplies, all contracts and arrangement with engineers, and staff and all matters requiring the expenditures of money, present or future, for prior approval by Lepanto; and also to make contracts subject to the prior approval of Lepanto for the sale and marketing of the minerals mined from said properties, when said products are in a suitable condition for marketing." [1]

It thus appears that the principal and paramount undertaking of Nielson under the management contract was the operation and development of the mine and the operation of the mill. All the other undertakings mentioned in the contract are necessary or incidental to the principal undertaking -- these other undertakings being dependent upon the work on the development of the mine and the operation of the mill. In the performance of this principal undertaking Nielson was not in any way executing juridical acts for Lepanto, destined to create, modify or extinguish business relations between Lepanto and third persons. In other words, in performing its principal undertaking Nielson was not acting as an agent of Lepanto, in the sense that the term agent is interpreted under the law of agency, but as one who was performing material acts for an employer, for a compensation.

It is true that the management contract provides that Nielson would also act as purchasing agent of supplies and enter into contracts regarding the sale of mineral, but the contract also provides that Nielson could not make any purchase, or sell the minerals, without the prior approval of Lepanto. It is clear, therefore, that even in these cases Nielson could not execute juridical acts which would bind Lepanto without first securing the approval of Lepanto. Nielson, then, was to act only as an intermediary, not as an agent.

Lepanto contends that the management contract in question being one of agency it had the right to terminate the contract at will pursuant to the provision of Article 1733 of the old Civil Code. We find, however, a proviso in the management contract which militates against this stand of Lepanto. Paragraph XI of the contract provides:

"Both parties to this agreement fully recognize that the terms of this Agreement are made possible only because of the faith or confidence that the Officials of each company have in the other; therefore, in order to assure that such confidence and faith shall abide and continue, NIELSON agrees that LEPANTO may cancel this Agreement at any time upon ninety (90) days written notice, in the event that NIELSON for any reason whatsoever, except acts of God, strike and other causes beyond its control, shall cease to prosecute the operation and development of the properties herein described, in good faith and In accordance with approved mining practice."

It is thus seen, from the above-quoted provision of paragraph XI of the management contract, that Lepanto could not terminate the agreement at will. Lepanto could terminate or cancel the agreement by giving notice of termination ninety days in advance only in the event that Nielson should prosecute in bad faith and not in accordance with approved mining practice the operation and development of the mining properties of Lepanto. Lepanto could not terminate the agreement if Nielson should cease to prosecute the operation and development of the mining properties by reason of acts of God, strike and other causes beyond the control of Nielson.

The phrase "Both parties to this agreement fully recognize that the terms of this agreement are made possible only because of the faith and confidence of the officials of each company have in the other" in paragraph XI of the management contract does not qualify the relation between Lepanto and Nielson as that of principal and agent based on trust and confidence, such that the contractual relation may be terminated by the principal at any time that the principal loses trust and confidence in the agent. Rather, that phrase simply implies the circumstance that brought about the execution of the management contract. Thus, in the annual report for 1936[2], submitted by Mr. C. A. Dewit, President of Lepanto, to its stockholders, under date of March 15, 1937, we read the following:

"To the Stockholders:

x x x x

"The incorporation of our Company was effected as a result of negotiations with Messrs. Nielson & Co., Inc., and an offer by these gentlemen to Messrs. C. I. Cookes and V. L. Lednicky, dated August 11, 1936, reading as follows:

'Messrs. Cookes and Lednicky,

'Present

'Re: Mankayan Copper Mines.

'GENTLEMEN:

'After an examination of your property by our engineers, we have decided to offer as we hereby offer to underwrite the entire issue of stock of a corporation to be formed for the purpose of taking over said properties, said corporation to have an authorized capital of P1,750,000.00, of which P700,000.00 will be issued in escrow to the claim owners in exchange for their claims, and the balance of P1,050,000.00 we will sell to the public at par or take ourselves.

'The arrangement will be under the following conditions:

'1. The subscriptions for cash shall be payable 50% at time of subscription and the balance subject to the call of the Board of Directors of the proposed corporation.

'2. We shall have an underwriting and brokerage commission of 10% of the P1,050,000.00 to be sold for cash to the public, said commission to be payable from the first payment of 50% on each subscription.

'3. We will bear the cost of preparing and mailing any prospectus that may be required, but no such prospectus will be sent out until the text thereof has been first approved by the Board of Directors of the proposed corporation.

'4. That after the organization of the corporation, all operating contract be entered into between ourselves and said corporation, under the terms which the property will be developed and mined and a mill erected, under our supervision, our compensation to be P2,000.00 per month until the property is put on a profitable basis and P2,500.00 per month plus 10% of the net profits for a period of five years thereafter.

'5. That we shall have the option to renew said operating contract for an additional period of five years, on the same basis as the original contract, upon the expiration thereof.

'It is understood that the development and mining operations on said property and the erection of the mill thereon, and the expenditures thereof shall be subject to the general control of the Board of Directors of the proposed corporation, and, in case you accept this proposition, that a detailed operating contract will be entered into, covering the relationships between the parties.

Yours very truly,

(Sgd.) L. R. Nielson"

"Pursuant to the provisions of paragraph 2 of this offer, Messrs. Nielson & Co., took subscriptions for One Million Fifty Thousand Pesos (P1,050,000.00) in shares of our Company and their underwriting and brokerage commission has been paid. More than fifty per cent of these subscriptions have been paid to the Company in cash. The claim owners have transferred their claims to the Corporation, but the P700,000.00 in stock which they are to receive therefore, is as yet held in escrow.

"Immediately upon the formation of the Corporation Messrs. Nielson & Co., as-sumed the Management of the property under the control of the Board of Directors. A modification in the Management Contract was made with the consent of all the then stockholders, in virtue of which the compensation of Messrs. Nielson & Co., was increased to P2,500.00 per month when mill construction began. The formal Management Contract was not entered into until January 30, 1937."

x x x x

"Manila, March 15, 1937

(Sgd.) "C.A. DeWitt

"President"

We can gather from the foregoing statements in the annual report for 1936, and from the provision of paragraph XI of the Management contract, that the employment by Lepanto of Nielson to operate and manage its mines was principally in consideration of the know-how and technical services that Nielson offered Lepanto. The contract thus entered into pursuant to the offer made by Nielson and accepted by Lepanto was a "detailed operating contract". It was not a contract of agency. Nowhere in the record is it shown that Lepanto considered Nielson as its agent and that Lepanto terminated the management contract because it had lost its trust and confidence in Nielson.

The contention of Lepanto that it had terminated the management contract in 1945, following the libera-tion of the mines from Japanese control, because the relation between it and Nielson was one of agency and as such it could terminate the agency at will, is, therefore, untenable. On the other hand, it can be said that, in asserting that it had terminated or cancelled the management contract in 1945, Lepanto had thereby violated the express terms of the management contract. The management contract was renewed to last until January 31, 1947, so that the contract had yet almost two years to go -- upon the liberation of the mines in 1945. There is no showing that Nielson had ceased to prosecute the operation and development of the mines in good faith and in accordance with approved mining practice which would warrant the termination of the contract upon ninety days written notice. In fact there was no such written notice of termination. It is an admitted fact that Nielson ceased to operate and developed the mines because of the war -- a cause beyond the control of Nielson.

Indeed, if the management contract in question was intended to create a relationship of principal and agent between Lepanto and Nielson, paragraph XI of the contract should not have been inserted because, as provided in Article 1733 of the old Civil Code, agency is essentially revocable at the will of the principal -- that means, with or without cause. But precisely said paragraph XI was inserted in the management contract to provide for the cause for its revocation. The provision of paragraph XI must be given effect.

In the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all[3], and if some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most ade-quate to render it effectual.[4]

It is Our considered view that by express sti-pulation of the parties, the management contract in question is not revocable at the will of Lepanto. We rule that this management contract is not a con-tract of agency as defined in Article 1709 of the old Civil Code, but a contract of lease of services as defined in Article 1544 of the same code. This contract can not be unilaterally revoked by Lepanto.

The first ground of the motion for reconsidera-tion should, therefore, be brushed aside.

2. In the second, third and fifth grounds of its motion for reconsideration, Lepanto maintains that this Court erred,

in holding that paragraph II of the management contract suspended the period of said contract, in holding that the agreement was not only suspended but was extended on account of the war, and in holding that the period of suspension on account of the war lasted from February, 1942 to June 26, 1948. We are going to discuss these three grounds together because they are inter-related.

In Our decision we have dwelt lengthily on the points that the management contract was suspended because of the war, and that the period of the contract was extended for the period equivalent to the time when Nielson was unable to perform the work of mining and milling because of the adverse effects of the war on the work of mining and milling.

It is the contention of Lepanto that the happening of those events, and the effects of those events, simply suspended the performance of the obligations by either party in the contract, but did not suspend the period of the contract, much less extended the period of the contract.

We have conscientiously considered the arguments of Lepanto in support of these three grounds, but We are not persuaded to reconsider the rulings that We made in Our decision.

We want to say a little more on these points, however. Paragraph II of the management contract provides as follows:

"In the event of inundation, flooding of the mine, typhoon, earthquake or any other force majeure, war, insurrection, civil commotion, organized strike, riot, fire, injury to the machinery or other event or cause reasonably beyond the control of NIELSON and which adversely affects the work of mining and milling; NIELSON shall report such fact to LEPANTO and without liability or breach of the terms of this Agreement, the same shall remain in suspense, wholly or partially during the terms of such inability." (Underlined supplied)

A reading of the above-quoted paragraph II cannot but convey the idea that upon the happening of any of the events enumerated therein, which adversely affects the work of mining and milling, the agreement is deemed suspended for as long as Nielson is unable to perform its work of mining and milling because of the adverse effects of the happening of the event on the work of mining and milling. During the period when the adverse effects on the work of mining and milling exist, neither party in the contract would be held liable for non-compliance of its obligation under the contract. In other words, the operation of the contract is suspended for as long as the adverse effects of the happening of any of those events had impeded or obstructed the work of mining and milling. An analysis of the phraseology of the above-quoted paragraph II of the management contract readily supports the conclusion that it is the agreement, or the contract, that is suspended. The phrase "the same" can refer to no other than the term "Agreement" which immediately precedes it. The "Agreement" may be wholly or partially suspended, and this situation will depend on whether the event wholly or partially affected adversely the work of mining and milling. In the instant case, the war had adversely affected -- and wholly at that -- the work of mining and milling. We have clearly stated in Our decision the circumstances brought about by the war which caused the whole or total suspension of the agreement or of the management contract.

LEPANTO itself admits that the management contract was suspended. We quote from the brief of LEPANTO:

"Probably, what Nielson meant was, it was prevented by Lepanto to assume again the management of the mine in 1945, at the precise time when defendant was at the feverish phase of rehabilitation and although the contract had already been suspended." (Lepanto's Brief, p. 9).

"x x x it was impossible, as a result of the destruction of the mine, for the plaintiff to manage and operate the same and because, as provided In the agreement, the contract was suspended by reason of the war." (Lepanto's Brief, pp. 9-10).

"Clause II, by its terms, is clear that the contract is suspended in case fortuitous event or force majeure, such as war, adversely affects the work of mining and milling." (Lepanto's Brief, p. 49).

Lepanto is correct when it said that the obligations under the contract were suspended upon the happening of any of the events enumerated in paragraph II of the management contract. Indeed, those obligations were suspended because the contract itself was suspended. When we talk of a contract that has been suspended we certainly mean that the contract temporarily ceased to be operative, and the contract becomes operative again upon the happening of a condition - or when a situation obtains - which warrants the termination of the suspension of the contract.

In Our decision We pointed out that the agreement in the management contract would be suspended when two conditions concur, namely: (1) the happening of the event constituting a force majeure that was reasonably beyond the control of Nielson, and (2) that the event constituting the force majeure adversely affected the work of mining and milling. The suspension, therefore, would last not only while the event constituting the force majeure continued to occur but also for as long as the adverse effects of the force majeure on the work of mining and milling had not been eliminated. Under the management contract the happening alone of the event constituting the force majeure which did not affect adversely the work of mining and milling would not suspend the period of the contract. It is only when the two conditions concur that the period of the agreement is suspended.

It is not denied that because of the war, in February 1942, the mine, the original mill, the original power plant, the supplies and equipment, and all installations at the Mankayan mines of Lepanto, were destroyed upon order of the United States Army, to prevent their utilization by the enemy. It is not denied that for the duration of the war Nielson could not undertake the work of mining and milling. When the mines were liberated from the enemy in August, 1945, the condition of the mines, the mill, the power plant and other installations, was not the same as in February 1942 when they were ordered destroyed by the US army. Certainly, upon the liberation of the mines from the enemy, the work of mining and milling could not be undertaken by Nielson under the same favorable circumstances that obtained before February 1942. The work of mining and milling, as undertaken by Nielson in January, 1942, could not be resumed by Nielson soon after liberation because of the adverse effects of the war, and this situation continued until June of 1948. Hence, the suspension of the management contract did not end upon the liberation of the mines in August, 1945. The mines and the mill and the installations, laid waste by the ravages of war, had to be reconstructed and rehabilitated, and it can be said that it was only on June 26, 1948 that the adverse effects of the war on the work of mining and milling had ended, because it was on that date that the operation of the mines and the mill was resumed. The period of suspension should, therefore, be reckoned from February 1942 until June 26, 1948, because it was during this period that the war and the adverse effects of the war on the work of mining and milling had lasted. The mines and the installations had to be rehabilitated because of the adverse effects of the war. The work of rehabilitation started soon after the liberation of the mines in August, 1945 and lasted until June 26, 1948 when, as stated in Lepanto's annual report to its stockholders for the year 1948, "June 28, 1948 marked the official return to operation of this company at its properties at Mankayan, Mountain province, Philippines" (Exh. F-1).

Lepanto would argue that if the management contract was suspended at all the suspension should cease in August of 1945, contending that the effects of the war should cease upon the liberation of the mines from the enemy. This contention cannot be sustained, because the period of rehabilitation was still a period when the physical effects of the war -- the destruction of the mines and of all the mining installations -- adversely affected, and made impossible, the work of mining and milling. Hence, the period of the reconstruction and rehabilitation of the mines and the installations must be counted as part of the period of suspension of the contract.

Lepanto claims that it would not be unfair to end the period of suspension upon the liberation of the mines

because soon after the liberation of the mines Nielson insisted to resume the management work, and that Nielson was under obligation to reconstruct the mill in the same way that it was under obligation to construct the mill in 1937. This contention is untenable. It is true that Nielson insisted to resume its management work after liberation, but this was only for the purpose of restoring the mines, the mill, and other installations to their operating and producing condition as of February 1942 when they were ordered destroyed. It is not shown by any evidence in the record, that Nielson had agreed, or would have agreed, that the period of suspension of the contract would end upon the liberation of the mines. This is so because, as found by this Court, the intention of the parties in the management contract, and as understood by them, the management contract was suspended for as long as the adverse effects of the force majeure on the work of mining and milling had not been removed, and the contract would be extended for as long as it was suspended. Under the management contract Nielson had the obligation to erect and operate the mill, but not to re-erect or reconstruct the mill in case of its destruction by force majeure.

It is the considered view of this court that it would not be fair to Nielson to consider the suspension of the contract as terminated upon the liberation of the mines because then Nielson would be placed in a situation whereby it would have to suffer the adverse effects of the war on the work of mining and milling. The evidence shows that as of January 1942 the operation of the mines under the management of Nielson was already under beneficial conditions, so much so that dividends were already declared by Lepanto for the years 1939, 1940 and 1941. To make the management contract immediately operative after the liberation of the mines from the Japanese, at the time when the mines and all its installations were laid waste as a result of the war, would be to place Nielson in a situation whereby it would lose all the benefits of what it had accomplished in placing the Lepanto mines in profitable operation before the outbreak of the war in December, 1941. The record shows that Nielson started its management operation way back in 1936, even before the management contract was entered into. As early as August 1936 Nielson negotiated with Messrs. C. I. Cookes and V. L. Lednicky for the operation of the Mankayan mines and it was the result of those negotiations that Lepanto was incorporated; that it was Nielson that helped to capitalize Lepanto, and that after the formation of the corporation (Lepanto) Nielson immediately assumed the management of the mining properties of Lepanto. It was not until January 30, 1937 when the management contract in question was entered into between Lepanto and Nielson (Exhibit A.).

A contract for the management and operation of mines calls for a speculative and risky venture on the part of the manager-operator. The manager-operator invests its technical know-how, undertakes back-breaking efforts and tremendous spade-work, so to say, in the first years of its management and operation of the mines, in the expectation that the investment and the efforts employed might be rewarded later with success. This expected success may never come. This had happened in the very case of the Mankayan mines where, as recounted by Mr. Lednicky of Lepanto, various persons and entities of different nationalities, including Lednicky himself, invested all their money and failed. The manager-operator may not strike sufficient ore in the first, second, third, or fourth year of the management contract, or he may not strike ore even until the end of the fifth year. Unless the manager-operator strikes sufficient quantity of ore he cannot expect profits or reward for his investment and efforts. In the case of Nielson, its corps of competent engineers, geologists, and technicians begun working on the Mankayan mines of Lepanto since the latter part of 1936, and continued their work without success and profit through 1937, 1938, and the earlier part of 1939. It was only in December of 1939 when the efforts of Nielson started to be rewarded when Lepanto realized profits and the first dividends were declared. From that time on Nielson could expect profit to come to it -- as in fact Lepanto declared dividends for 1940 and 1941 -- if the development and operation of the mines and the mill would continue unhampered. The operation, and the expected profits, however, would still be subject to hazards due to the occurrence of fortuitous events, fires, earthquakes, strikes, war, etc., constituting force majeure, which would result in the destruction of the mines and the mill. One of these diverse causes, or one after the other, may consume the whole period of the contract, and if

it should happen that way the manager-operator would reap no profit to compensate for the first years of spade-work and investment of efforts and know-how. Hence, in fairness to the manager-operator, so that he may not be deprived of the benefits of the work he had accomplish-ed, the force majeure clause is incorporated as a stand-ard clause in contracts for the management and operation of mines.

The nature of the contract for the management and operation of mines justifies the interpretation of the force majeure clause, that a period equal to the period of suspension due to force majeure should be added to the original term of the contract by way of an extension. We, therefore, reiterate the ruling in Our decision that the management contract in the instant case was suspended from February, 1942 to June 26, 1948, and that from the latter date the contract had yet five years to go.

3. In the fourth ground of its motion for recon-sideration, Lepanto maintains that this Court erred in reversing the finding of the trial court that Nielson's action has prescribed, by considering only the first claim and ignoring the prescriptibility of the other claims.

This ground of the motion for reconsideration has no merit.

In Our decision We stated that the claims of Nielson are based on a written document, and, as such, the cause of action prescribes in ten years.[5] In-asmuch as there are different claims which accrued on different dates the prescriptive periods for all the claims are not the same. The claims of Nielson that have been awarded by this Court are itemized in the dispositive part of the decision.

The first item of the awards in Our decision refers to Nelson's compensation in the sum of P17,500.00, which is equivalent to 10% of the cash dividends dec-lared by Lepanto in December, 1941. As We have stated in Our decision, this claim accrued on December 31, 1941, and the right to commence an action thereon started on January 1, 1942. We declared that the action on this claim did not prescribe although the complaint was filed on February 6, 1958 -- or after a lapse of 16 years, 1 month and 5 days -- because of the operation of the moratorium law. We declared that under the applicable decisions of this Court[6] the moratorium period of 8 years, 2 months and 8 days should be deducted from the period that had elapsed since the accrual of the cause of action to the date of the filing of the complaint, so that there is a period of less than 8 years to be reckon-ed for the purpose of prescription.

This claim of Nielson is covered by Executive Order No. 32, issued on March 10, 1945, which provides as follows:

"Enforcement of payments of all debts and other monetary obligations payable in the Philippines, except debts and other monetary obligations entered into in any area after declaration by Presidential Proclamation that such area has been freed from enemy occupa-tion and control, is temporarily suspended pending action by the Com-monwealth Government." (41 O.G. 56-57; Underlining supplied)

Executive Order No. 32 covered all debts and mo-netary obligation contracted before the war (or before December 8, 1941) and those contracted subsequent to December 8, 1941 and during the Japanese occupation. Re-public Act No. 342, approved on July 26, 1948, lifted the moratorium provided for in Executive Order No. 32 on pre-war (or pre-December 8, 1941) debts of debtors who had not filed war damage claims with the United States War Damage Commission. In other words, after the effectivity of Republic Act No. 342, the debt mora-torium was limited: (1) to debts and other monetary obligations which were contracted after December 8, 1941 and during the Japanese occupation, and (2) to those pre-war (or pre-December 8, 1941) debts and other mone-tary obligations where the debtors filed war damage claims. That was the situation up to May 18, 1953 when this Court declared Republic Act No. 342 unconstitu-tional.[7] It has been held by this Court, however, that from March 10, 1945 when Executive Order No. 32 was issued, to May 18, 1953 when Republic Act No. 342 was

declared unconstitutional -- or a period of 8 years, 2 months and 8 days -- the debt moratorium was in force, and had the effect of suspending the period of prescription.[8]

Lepanto is wrong when in its motion for reconsideration it claims that the moratorium provided for in Executive Order No. 32 was continued by Republic Act No. 342 "only with respect to debtors of pre-war obligations or those incurred prior to December 8, 1941," and that "the moratorium was lifted and terminated with respect to obligations incurred after December 8, 1941." [9]

This Court has held that Republic Act No. 342 does not apply to debts contracted during the war and did not lift the moratorium in relation thereto.[10] In the case of *Abraham, et al. vs. Intestate Estate of Juan C. Ysmael, et al.*, L-16741, Jan. 31, 1962, this Court said:

"Respondents, however, contend that Republic Act No. 342, which took effect on July 26, 1948, lifted the moratorium on debts contracted during the Japanese occupation. The court has already held that Republic Act No. 342 did not lift the moratorium on debts contracted during the war (*Uy vs. Kalaw Katigbak*, G.R. No. L-1830, Dec. 31, 1949) but modified Executive Order No. 32 as to pre-war debts, making the protection available only to debtors who had war damage claims (*Sison v. Mirasol*, G.R. No. L-4711, Oct. 3, 1952)."

We therefore reiterate the ruling in Our decision that the claim involved in the first item awarded to Nielson had not prescribed.

What we have stated herein regarding the non-prescription of the cause of action of the claim involved in the first item in the award also holds true with respect to the second item in the award, which refers to Nielson's claim for management fee of P2,500.00 for January 1942. Lepanto admits that this second item, like the first, is a monetary obligation. The right of action of Nielson regarding this claim accrued on January 31, 1942.

As regards items 3, 4, 5, 6 and 7 in the awards in the decision, the moratorium law is not applicable. That is the reason why in Our decision We did not discuss the question of prescription regarding these items. The claims of Nielson involved in these items are based on the management contract, and Nielson's cause of action regarding these claims prescribes in ten years. Corollary to Our ruling that the management contract was suspended from February, 1942 until June 26, 1948, and that the contract was extended for five years from June 26, 1948, the right of action of Nielson to claim for what is due to it during that period of extension accrued during the period from June 26, 1948 till the end of the five-year extension period -- or until June 26, 1953. And so, even if We reckon June 26, 1948 as the starting date of the ten-year period in connection with the prescriptibility of the claims involved in items 3, 4, 5, 6 and 7 of the awards in the decision, it is obvious that when the complaint was filed on February 6, 1958 the ten-year prescriptive period had not yet lapsed.

In Our decision We have also ruled that the right of action of Nielson against Lepanto had not prescribed because of the arbitration clause in the Management contract. We are satisfied that there is evidence that Nielson had asked for arbitration, and an arbitration committee had been constituted. The arbitration committee, however, failed to bring about any settlement of the differences between Nielson and Lepanto. On June 25, 1957 counsel for Lepanto definitely advised Nielson that they were not entertaining any claim of Nielson. The complaint in this case was filed on February 6, 1958.

4. In the sixth ground of its motion for reconsideration, Lepanto maintains that this Court "erred in awarding as damages (a) 10% of the cash dividends declared and paid in December, 1941; (b) the management fee of P2,500.00 for the month of January 1942; and (c) the full contract price for the extended period of 60 months, since the damages were never demanded nor proved and, in any case, not allowable under the general law on damages."

We have stated in Our decision that the original agreement in the management contract regarding the compensation of Nielson was modified, such that instead of receiving a monthly compensation of P2,500.00 plus 10% of the net profits from the operation of the pro-properties for the preceding month,[11] Nielson would receive a compensation of P2,500.00 a month, plus (1) 10% of the dividends declared and paid, when and as paid, during the period of the contract, and at the end of each year, (2) 10% of any depletion reserve that may be set up, and (3) 10% of any amount expended during the year out of surplus earnings for capital account.

It is shown that in December, 1941, cash dividends amounting to P175,000.00 was declared by Lepanto.[12] Nielson, therefore, should receive the equivalent of 10% of this amount, or the sum of P17,500.00. We have found that this amount was not paid to Nielson.

In its motion for reconsideration, Lepanto inserted a photographic copy of page 127 of its cash disbursement book, allegedly for 1941, in an effort to show that this amount of P17,500.00 had been paid to Nielson. It appears, however, in this photographic copy of page 127 of the cash disbursement book that the sum of P17,500.00 was entered on October 29 as "sur-plus a/c Nielson & Co. Inc." The entry does not make any reference to dividends or participation of Nielson in the profits. On the other hand, in the photographic copy of page 89 of the 1941 cash disbursement book, also attached to the motion for reconsideration, there is an entry for P17,500.00 on April 23, 1941 which states "Accts. Pay. Particip. Nielson & Co. Inc." This entry for April 23, 1941 may really be the participation of Nielson in the profits based on dividends declared in April 1941 as shown in Exhibit L. But in the same Exhibit L it is not stated that any dividend was declared in October 1941. On the contrary it is stated in Exhibit L that dividends were declared in December 1941. We cannot entertain this piece of evidence for several reasons: (1) because this evidence was not presented during the trial in the court below; (2) there is no showing that this piece of evidence is newly discovered and that Lepanto was not in possession of said evidence when this case was being tried in the court below; and (3) according to Exhibit L cash dividends of P175,000.00 were declared in December, 1941, and so the sum of P17,500.00 which appears to have been paid to Nielson in October 1941 could not be payment of the equivalent of 10% of the cash dividends that were later declared in December, 1941.

As regards the management fee of Nielson corresponding to January, 1942, in the sum of P2,500.00, We have also found that Nielson is entitled to be paid this amount, and that this amount was not paid by Lepanto to Nielson. Whereas, Lepanto was able to prove that it had paid the management fees of Nielson for November and December, 1941,[13] it was not able to present any evidence to show that the management fee of P2,500.00 for January, 1942 had been paid.

It having been declared in Our decision, as well as in this resolution, that the management contract had been extended for 5 years, or sixty months, from June 27, 1948 to June 26, 1953, and that the cause of action of Nielson to claim for its compensation during that period of extension had not prescribed, it follows that Nielson should be awarded the management fees during the whole period of extension, plus the 10% of the value of the dividends declared during the said period of extension, the 10% of the depletion reserve that was set up, and the 10% of any amount expended out of surplus earnings for capital account.

5. In the seventh ground of its motion for reconsideration, Lepanto maintains that this Court erred in ordering Lepanto to issue and deliver to Nielson shares of stock together with fruits thereof.

In Our decision, We declared that pursuant to the modified agreement regarding the compensation of Nielson which provides, among others, that Nielson would receive 10% of any dividends declared and paid, when and as paid, Nielson should be paid 10% of the stock dividends declared by Lepanto during the period of extension of the contract.

It is not denied that on November 28, 1949, Lepanto declared stock dividends worth P1,000,000.00; and on August 22, 1950, it declared stock dividends worth P2,000,000.00. In other words, during the period of extension Lepanto had declared stock dividends worth P3,000,000.00. We held in Our decision that Nielson is entitled to receive 10% of the stock dividends declared, or shares of stocks, worth P300,000.00 at the par value of P0.10 per share. We ordered Lepanto to issue and deliver to Nielson those shares of stocks as well as all the fruits or dividends that accrued to said shares.

In its motion for reconsideration, Lepanto contends that the payment to Nielson of stock dividends as compensation for its services under the management contract is a violation of the Corporation Law, and that it was not, and it could not be, the intention of Lepanto and Nielson -- as contracting parties -- that the services of Nielson should be paid in shares of stock taken out of stock dividends declared by Lepanto. We have assiduously considered the arguments adduced by Lepanto in support of its contention, as well as the answer of Nielson in this connection, and We have arrived at the conclusion that there is merit in the contention of Lepanto.

Section 16 of the Corporation Law, in part, provides as follows:

"No corporation organized under this Act shall create or issue bills, notes or other evidence of debt, for circulation as money, and no corporation shall issue stock or bonds except in exchange for actual cash paid to the corporation or for: (1) property actually received by it at a fair valuation equal to the par or issued value of the stock or bonds so issued; and in case of disagreement as to their value, the same shall be presumed to be the assessed value or the value appearing in invoices or other commercial documents, as the case may be; and the burden of proof that the real present value of the property is greater than the assessed value or value appearing in invoices or other commercial documents, as the case may be, shall be upon the corporation, or for (2) profits earned by it but not distributed among its stockholders or members; Provided, however, That no stock or bond dividend shall be issued without the approval of stockholders representing not less than two-thirds of all stock then outstanding and entitled to vote at a general meeting of the corporation or at a special meeting duly called for the purpose.

x x x x

"No corporation shall make or declare any dividend except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution: Provided, That banking, savings and loan, and trust corporations may receive deposits and issue certificates of deposit, checks, drafts, and bills of exchange, and the like in the transaction of the ordinary business of banking, savings and loan, and trust corporations." (As amended by Act No. 2792, and Act No. 3518; Underlining supplied.)

From the above-quoted provision of Section 16 of the Corporation Law, the consideration for which shares of stock may be issued are: (1) cash; (2) property; and (3) undistributed profits. Shares of stock are given the special name "stock dividends" only if they are issued in lieu of undistributed profits. If shares of stocks are issued in exchange of cash or property then those shares do not fall under the category of "stock dividends". A corporation may legally issue shares of stock in consideration of services rendered to it by a person not a stockholder, or in payment of its indebtedness. A share of stock issued to pay for services rendered is equivalent to a stock issued in exchange of property, because services is equivalent to property.^[14] Likewise a share of stock issued in payment of indebtedness is equivalent to issuing a stock in exchange for cash. But a share of stock thus issued should be part of the original capital stock of the corporation upon its organization, or part of the stocks issued when the increase of the capitalization of a corporation is properly authorized. In other words, it is the shares of stock that are originally issued by the corporation and forming part of the capital that can be exchanged for cash or services rendered, or property; that is, if the corporation has original shares of stock unsold or unsubscribed,

either coming from the original capitalization or from the increased capitalization. Those shares of stock may be issued to a person who is not a stockholder, or to a person already a stockholder in exchange for services rendered or for cash or property. But a share of stock coming from stock dividends declared can-not be issued to one who is not a stockholder of a corporation.

A "stock dividend" is any dividend payable in shares of stock of the corporation declaring or authorizing such dividend. It is, what the term itself implies, a distribution of the shares of stock of the corporation among the stockholders as dividends. A stock dividend of a corporation is a dividend paid in shares of stock instead of cash, and is properly payable only out of surplus profits.[15] So, a stock dividend is actually two things: (1) a dividend, and (2) the enforced use of the dividend money to purchase additional shares of stock at par.[16] When a corporation issues stock dividends, it shows that the corporation's accumulated profits have been capitalized instead of distributed to the stockholder or retained as surplus available for distribution, in money or kind, should opportunity offer. Far from being a realization of profits for the stockholder, it tends rather to postpone said realization, in that the fund represented by the new stock has been transferred from surplus to assets and no longer available for actual distribution.[17] Thus, it is apparent that stock dividends are issued only to stockholders. This is so because only stockholders are entitled to dividends. They are the only ones who have a right to a proportional share in that part of the surplus which is declared as dividends. A stock dividend really adds nothing to the interest of the stockholder; the proportional interest of each stockholder remains the same.[18] If a stockholder is deprived of his stock dividends -- and this happens if the shares of stock forming part of the stock dividends are issued to a non-stockholder -- then the proportion of the stockholder's interest changes radically. Stock dividends are civil fruits of the original investment, and to the owners of the shares belong the civil fruits.[19]

The term "dividend" both in the technical sense and its ordinary acceptance, is that part or portion of the profits of the enterprise which the corporation, by its governing agents, sets apart for ratable division among the holders of the capital stock. It means the fund actually set aside, and declared by the directors of the corporation as a dividend, and duly ordered by the director, or by the stockholders at a corporate meeting, to be divided or distributed among the stockholders according to their respective interests.[20]

It is Our considered view, therefore, that under Section 16 of the Corporation Law stock dividends can not be issued to a person who is not a stockholder in payment of services rendered. And so, in the case at bar Nielson can not be paid in shares of stock which form part of the stock dividends of Lepanto for services it rendered under the management contract. We sustain the contention of Lepanto that the understanding between Lepanto and Nielson was simply to make the cash value of the stock dividends declared as the basis for determining the amount of compensation that should be paid to Nielson, in the proportion of 10% of the cash value of the stock dividends declared. And this conclusion of Ours finds support in the record.

We had adverted to in Our decision that in 1940 there was some dispute between Lepanto and Nielson regarding the application and interpretation of certain provisions of the original contract particularly with regard to the 10% participation of Nielson in the net profits, so that some adjustments had to be made. In the minutes of the meeting of the Board of Directors of Lepanto on August 21, 1940, We read the following:

"The Chairman stated that he believed that it would be better to tie the computation of the 10% participation of Nielson & Company, Inc. to the dividend, because Nielson will then be able to definitely compute its net participation by the amount of the dividends declared. In addition to the dividend, we have been setting up a depletion reserve and it does not seem fair to burden the 10% participation of Nielson with the depletion reserve, as the depletion reserve should not be considered as an operating expense. After a prolonged discussion, upon motion duly made and seconded, it was -

"RESOLVED, That the President, be, and he hereby is, authorized to enter into an agreement with Nielson & Company, Inc., modifying Paragraph V of management contract of January 30, 1937, effective January 1, 1940, in such a way that Nielson & Company, Inc. shall receive 10% of any dividends declared and paid, when and as paid during the period of the contract and at the end of each year, 10% of any depletion reserve that may be set up and 10% of any amount expended during the year out of surplus earnings for capital account." (Underlining supplied.)

From the sentence, "The Chairman stated that he believed that it would be better to tie the computation of the 10% participation of Nielson & Company, Inc. to the dividend, because Nielson will then be able to definitely compute its net participation by the amount of the dividends declared" the idea is conveyed that the intention of Lepanto, as expressed by its Chairman C.A. DeWitt, was to make the value of the dividends declared -- whether the dividends were in cash or in stock -- as the basis for determining the amount of compensation that should be paid to Nielson, in the proportion of 10% of the cash value of the dividends so declared. It does not mean, however, that the compensation of Nielson would be taken from the amount actually declared as cash dividend to be distributed to the stockholder, nor from the shares of stocks to be issued to the stockholders as stock dividends, but from the other assets or funds of the corporation which are not burdened by the dividends thus declared. In other words, if, for example, cash dividends of P300,000.00 are declared, Nielson would be entitled to a compensation of P30,000.00, but this P30,000.00 should not be taken from the P300,000.00 to be distributed as cash dividends to the stockholders but from some other funds or assets of the corporation which are not included in the amount to answer for the cash dividends thus declared. This is so because if the P30,000.00 would be taken out from the P300,000.00 declared as cash dividends, then the stockholders would not be getting P300,000.00 as dividends but only P270,000.00. There would be a dilution of the dividend that corresponds to each share of stock held by the stockholders. Similarly, if there were stock dividends worth one million pesos that were declared, which means an issuance of ten million shares at the par value of ten centavos per share, it does not mean that Nielson would be given 100,000 shares. It only means that Nielson should be given the equivalent of 10% of the aggregate cash value of those shares issued as stock dividends. That this was the understanding of Nielson itself is borne out by the fact that in its appeal brief Nielson urged that it should be paid "P300,000.00 being 10% of the P3,000,000.00 stock dividends declared on November 28, 1949 and August 20, 1950..."[21]

We, therefore, reconsider that part of Our decision which declares that Nielson is entitled to shares of stock worth P300,000.00 based on the stock dividends declared on November 28, 1949 and on August 20, 1950, together with all the fruits accruing thereto. Instead, We declare that Nielson is entitled to payment by Lepanto of P300,000.00 in cash, which is equivalent to 10% of the money value of the stock dividends worth P3,000,000.00 which were declared on November 28, 1949 and on August 20, 1950, with interest thereon at the rate of 6% from February 6, 1958.

6. In the eighth ground of its motion for reconsideration Lepanto maintains that this Court erred in awarding to Nielson an undetermined amount of shares of stock and/or cash, which award can not be ascertained and executed without further litigation.

In view of Our ruling in this resolution that Nielson is not entitled to receive shares of stock as stock dividends in payment of its compensation under the management contract, We do not consider it necessary to discuss this ground of the motion for reconsideration. The awards in the present case are all reduced to specific sums of money.

7. In the ninth ground of its motion for reconsideration Lepanto maintains that this Court erred in rendering judgment for attorney's fees.

The matter of the award of attorney's fees is within the sound discretion of this Court. In Our decision We have

stated the reason why the award of P50,000.00 for attorney's fees is considered by this Court as reason-able.

Accordingly, We resolve to modify the decision that We rendered on December 17, 1966, in the sense that instead of awarding Nielson shares of stock worth P300,000.00 at the par value of ten centavos (P0.10) per share based on the stock dividends declared by Lepanto on November 28, 1949 and August 20, 1950, together with their fruits, Nielson should be awarded the sum of P300,000.00 which is an amount equivalent to 10% of the cash value of the stock dividends thus declared, as part of the compensation due Nielson under the management contract. The dispositive portion of the decision should, therefore, be amended, to read as follows:

IN VIEW OF THE FOREGOING CONSIDERATIONS, We hereby reverse the decision of the court a quo and enter in lieu thereof another, ordering the appellee Lepanto to pay the appellant Nielson the different amounts as specified herein below:

- (1) Seventeen thousand five hundred pesos (P17,500.00), equivalent to 10% of the cash dividends of December, 1941, with legal interest thereon from the date of the filing of the complaint;
- (2) Two thousand five hundred pesos (P2,500.00), as management fee for January, 1942, with legal interest thereon from the date of the filing of the complaint;
- (3) One hundred fifty thousand pesos (P150,000.00), representing management fees for the sixty-month period of extension of the management contract, with legal interest thereon from the date of the filing of the complaint;
- (4) One million four hundred thousand pesos (P1,400,000.00), equivalent to 10% of the cash dividends declared during the period of extension of the management contract, with legal interest thereon from the date of the filing of the complaint;
- (5) Three hundred thousand pesos (P300,000.00), equivalent to 10% of the cash value of the stock dividends declared on November 28, 1949 and August 20, 1950, with legal interest thereon from the date of the filing of the complaint;
- (6) Fifty three thousand nine hundred twenty eight pesos and eighty eight centavos (P53,928.88), equivalent to 10% of the depletion reserve set up during the period of extension, with legal interest thereon from the date of the filing of the complaint;
- (7) Six hundred ninety four thousand three hundred sixty four pesos and seventy six centavos (P694,364.76), equivalent to 10% of the expenses for capital account during the period of extension, with legal interest thereon from the date of the filing of the complaint;
- (8) Fifty thousand pesos (P50,000.00) as attorney's fees; and
- (9) The costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Sanchez and Ruiz Castro, JJ., concur.
Fernando, Capistrano, Teehankee and Barredo, JJ., did not take part.

[1] Annex A to complaint, pp. 43-46, R.A.; Also Exhibit C.

[2] Exhibit A.

[3] Sec. 9, Rule 130 of the Rules of Court.

- [4] Article 1373 of the (new) Civil Code.
- [5] Section 43, par. 1, Act 190.
- [6] Tiosejo vs. Day, et al., L-9944, April 30, 1937; Levi Hermanos, Inc. vs. Perez, L-14487, April 29, 1960.
- [7] Rutter vs. Esteban, 93 Phil. 68.
- [8] Tiosejo vs. Day, supra; Levi Hermanos Inc. vs. Perez, supra.
- [9] Motion for reconsideration, p. 60.
- [10] Uy v. Kalaw Katigbak, G.R.No.L-1830, Dec 31, 1949; Sison v. Mirasol, L-4711, Oct. 31, 1952; Compañia Maritima v. Court of Appeals, L-14949, May 30, 1960.
- [11] Par. V of Management Contract, Exhibit C.
- [12] Page 3, Exhibit L, Report for 1954.
- [13] Exhibit 1.
- [14] Sec. 5187, 11 Fletcher, Cyclopedia of the Law on Private Corporations, p. 422.
- [15] Sec. 16, Corporation Law.
- [16] Words and Phrases, p. 270.
- [17] Fisher vs. Trinidad, 43 Phil. 973.
- [18] Towne vs. Eisner, 62 L. Ed. 372.
- [19] Art. 441, Civil Code of the Philippines.
- [20] 7 Thompson on Corporations 134-135.
- [21] p. 115, Nielson's Appeal Brief.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.