

**APOLINARIO G. DE LOS SANTOS AND ISABELO ASTRAQUILLO,
PLAINTIFFS AND APPELLEES, VS. J. HOWARD MCGRATH ATTORNEY
GENERAL OF THE UNITED STATES, SUCCESSOR TO THE PHILIPPINE
ALIEN PRO...**

G.R. No. L-4818. February 28, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This action involves the title to 1,600,000 shares of stock of the Lepanto Consolidated Mining Co., Inc., a corporation duly organized and existing under the laws of the Philippines, hereinafter referred to, for the sake of brevity, as the Lepanto. Originally, one-half of said shares of stock were claimed by plaintiff, Apolinario de los Santos, and the other half, by his co-plaintiff Isabelo Astraquillo. During the pendency of this case, the latter has allegedly conveyed and assigned his interest in and to said half claimed by him to the former. The shares of stock in question are covered by several stock certificates issued in favor of Vicente Madrigal, who is registered in the books of the Lepanto as owner of said stocks and whose indorsement in blank appears on the back of said certificates, all of which, except certificates No. 2279—marked. Exhibit 2— covering 55,000 shares, are in plaintiffs' possession. So was said Exhibit 2, up to sometime in 1945 or 1946 when said possession was lost under the conditions set forth in subsequent pages.

Briefly stated, plaintiffs contend that De los Santos bought 500,000 shares from Juan Campos, in Manila, early in December 1942; that he bought 300,000 shares from Carl Hess, in the same city, several days later; and that, before Christmas of 1942, he bought 800,000 shares from Carl Hess, this time for the account and benefit of Astraquillo. By virtue of vesting order P-12, dated February 18, 1945, title to the 1,600,000 shares of stock in dispute was, however, vested in the Alien Property Custodian of the U. S. (hereinafter referred to as the Property Custodian) as Japanese property. Hence, plaintiffs filed their respective claims with the Property Custodian. In due course, the Vested Property Claims Committee of the Philippine Alien Property Administration made a "determination," dated March 9, 1948, allowing said claims, which were considered and heard jointly as Claim No. 535, but, upon personal review, the Philippine Alien Property Administrator (hereinafter referred to as "Administrator"), in an opinion dated November 26, 1948, reversed the determination made by said Committee and decreed that "title to the shares in question shall remain in the name of the Philippine Alien Property Administrator." Consequently, plaintiffs instituted the present action to establish title to the aforementioned shares of stock. In their complaint, they pray that judgment be rendered declaring them lawful owners of said shares of stock, with such dividends, profits and rights as may have accrued thereto; requiring the defendant to render accounts and to transfer said shares of stock to plaintiffs' names; and sentencing the former to pay the costs.

The defendant herein is the Attorney General of the U.S., successor to the "Administrator". He contends, substantially, that, prior to the outbreak of war in the Pacific, said shares of stock were bought by Vicente Madrigal, in trust for, and for the benefit of, the Mitsui Bussan Kaisha (hereinafter referred to as the "Mitsuis"), a corporation organized in accordance with the laws of Japan, the true owner thereof, with branch office in the

Philippines; that on or before March, 1942, Madrigal delivered the corresponding stock certificates, with his blank indorsement thereon, to the Mitsuis, which kept said certificates, in the files of its office in Manila, until the liberation of the latter by the American forces early in 1945; that the Mitsuis had never sold, or otherwise disposed of, said shares of stock; and that the stock certificates aforementioned must have been stolen or looted, therefore, during the emergency resulting from said, liberation.

Inasmuch as, pursuant to the Philippine Property Act, all property vested in the United States, or any of its officials, under the Trading with the Enemy Act, as amended, located in the Philippines at the time of such vesting, or the proceeds thereof, shall be transferred to- the Republic of the Philippines, the latter sought permission, and was allowed, to intervene in this case and filed an answer adopting in substance the theory of the defendant.

After due hearing, the Court of First Instance of Manila, presided over by Honorable Higinio B. Macadaeg, Judge, rendered a decision the dispositive part of which reads, as follows:

"In view of the foregoing consideration, judgment is hereby rendered in favor of the plaintiffs and against the defendant, declaring the former the absolute owners of the shares of stock of the Lepanto Consolidated Mining Company covered by the certificates of stock, respectively, in their (plaintiffs') possession. The transfer of said shares of stock in favor of the Alien Property Custodian of the U. S. of America, now Philippine Alien Property Administration, is hereby declared null and void and of no effect. Consequently, the Lepanto Consolidated Mining Company is ordered to cancel the certificates of stock issued in the name of the Philippine Alien Property Custodian or Philippine Alien Property Administrator, as the case may be. Defendant shall pay the costs of the proceeding." (p. 67, R.A.)

The defendant and the intervenor have appealed from this decision. The main question for determination in this appeal is whether or not plaintiffs had purchased the shares of stock in question. In support of the negative answer, appellants have introduced the testimony of Vicente Madrigal, Matsune Kitajima, Kingy Miwa, Miguel Simon, E. A. Perkins and Victor E. Lednicky, as well as several pieces of documentary evidence.

Mr. Madrigal, whose testimony before the claims Committee of the Philippine Alien Property Administration was admitted with plaintiffs' consent, stated that he purchased the shares of stock in question, among others, for the Mitsuis and at their request; that he paid with his own funds the corresponding price, which was later reimbursed to him by the Mitsuis; that he held the corresponding stock certificates, which were issued in his name, with the understanding that he would effect the necessary transfer, to the Mitsuis, upon demand; and that, shortly before the outbreak of war, he delivered said stock certificates, with his blank endorsement thereon, to the Mitsuis, to whom said stocks belonged.

Matsune Kitajima declared that in June 1941 he relieved one Kobayashi, as manager of the branch office of the Mitsuis in Manila; that he then received from Kobayashi the stock certificates for about 1,900,000 shares of the Lepanto, belonging to the Mitsuis, but issued in favor of Vicente Madrigal, except the certificates for 200,000 shares, which were in the name of the Mitsuis; that all these certificates were kept in a steel safe in said office of the Mitsuis; that, in July 1941, he returned the stock certificates to Madrigal, with the request that he buy for the Mitsuis, from time to time, some more shares of stock, in small lots; that Madrigal bought 200,000 additional shares of the Lepanto for the Mitsuis; that, late in November or early in December, 1941, the stock certificates of the aforementioned 2,100,000 shares were returned to the Mitsuis, which had decided to stop buying, in view of the strained international situation then prevailing; that, as branch manager of the Mitsuis, he was the only official authorized to dispose of the shares in question, none of which was alienated by him; and that he had the aforementioned stock certificates in his possession continuously until early in April 1943, when he delivered the same to his successor in office, Kingy Miwa.

Apart from corroborating Kitajima's testimony relative to said delivery of stock certificates in April 1943, Kingy Miwa testified that he kept the latter in his possession, as branch manager of the Mitsuis; that said shares of stock were never sold or otherwise disposed of by the Mitsuis; that, late in September 1944, he bade his assistant, one Miyazima, to transfer all important documents to their residence and headquarters, at Taft Avenue, Manila, although he did not know personally whether or not the transfer was actually carried out; and that in January 1945, when the Japanese were about to evacuate Manila, he told his Assistant Manager, one Shinoda, to burn all important papers before leaving the city.

Miguel Simon, brother of Carl Hess, from whom plaintiffs claim to have purchased 1,100,000 shares of stock, affirmed that Hess lived in front of his (Simon's) house; that they were close to each other and had long been associated in business; that he was the office manager of "Hess and Zeitling" before the war; that Hess used to tell him his daily transactions during the occupation; that at that time, Hess did not have in his possession any certificate of stock of the Lepanto in the name of Vicente Madrigal; that neither did Hess, during that period, operate as a broker, for, being American, he was under Japanese surveillance; and that Hess had made, during the occupation, no transaction involving mining shares, except when he sold 12,000 shares of the Benguet Consolidated, inherited from his mother, sometime in 1943.

E.A. Perkins, a member of the law firm DeWitt, Perkins & Ponce Enrile testified substantially as follows: On October 27, 1945, Leonardo Recio brought stock certificate No. 2279 (Exhibit 2) and offered the same for sale to Clyde DeWitt, who, in turn, asked Perkins, whose room adjoined that of DeWitt, to join them. Recio showed Exhibit 2 to DeWitt stating that he (Recio) wanted P0.13 per share. DeWitt handed Exhibit 2 over to Perkins, who, after examining the instrument, returned it to DeWitt. The latter, thereafter, checked it with a communication of the Property Custodian and then advised Recio that said Exhibit 2 was one of the stock certificates looted from the Mitsuis and that he (DeWitt) would have to report the matter to said official. As DeWitt, thereupon, telephoned one Mr. Erickson, of the Property Custodian's office, Recio stepped out of the room without Exhibit 2, which neither he or plaintiffs had ever tried to recover.

Victor E. Lednicky, one of the organizers and pre-war directors of the Lepanto, and present vice-president and member of its board of director, asserted that, having learned from a soldier of the existence of mining papers and securities of the Lepanto in the offices of the Mitsuis at the Ayala Building, formerly known as the National City Bank Building, in Manila, he went thereto in February 1945 and saw many documents scattered on the desks and floor of said premises. Among said papers, he noticed two stock certificates of the Lepanto, one, in the name of either a Japanese or Chinese, and the other, in the name of Vicente Madrigal, indorsed in blank. Soon, however, he heard voices coming from the stairs, whereupon he departed hurriedly, for fear of being mistaken for a looter.

After analyzing the foregoing evidence for the defense, the lower court found the same "inherently improbable" and seemingly concluded that, as a consequence, it should accept plaintiffs' version, for which reason judgment was rendered as above stated. It is well settled, in this jurisdiction, that the findings of fact—particularly those relating to the credibility of the opposing witnesses—made by the Judge a quo, should not be disturbed on appeal, in the absence of strong and cogent reasons therefor. This policy is predicated upon the circumstance that the trial court has had an opportunity, denied to the appellate court, to observe the behaviour of the witnesses during the hearing, a potent factor in gauging their bias and veracity. In the case at bar, however, we notice that, rejecting the theory of the defense, the court of origin was guided, not by the conduct of the witnesses in the course of their testimony, but by what His Honor, the trial Judge, regarded as the inherent weakness thereof, in the evaluation of which said court does not enjoy the advantage already adverted to.

Moreover, the decision appealed from appears to have assumed that plaintiffs' pretense must necessarily be relied upon, owing to the infirmities said to have been found in the theory of the defense. This view suffers from a fatal

defect. It overlooks the fact that the burden of proof is upon the plaintiffs, and that, accordingly, a decision in their favor is not in order unless a preponderance of the evidence supports their claim. To put it differently, the alleged improbabilities in the testimony of the witnesses for the defense will not justify a judgment against the latter, if the evidence for the plaintiffs is more improbable than, or, at least, as improbable as, that of the defense. Such is the situation obtaining in the case at bar. Indeed, upon careful examination of the record before us, we find it impossible to share the conclusions, made in the decision appealed from, relative to the alleged flaws in the version of the defense.

Let us, first, examine the evidence for the plaintiffs, consisting, mainly, of their own testimony and that of Primitivo Javier and Leonardo Recio.

According to De los Santos, on or about December 8, 1942, he purchased from Juan Campos, in Manila, 500,000 shares of stock of the Lepanto, for the aggregate sum of P30,000.00, or at P0.06 each share, paid in cash, in exchange for the corresponding stock certificates, which were delivered to him. Several days later, he bought from Carl Hess, in Manila, 300,000 shares of the Lepanto, at the same rate. Soon after, he visited his daughter in Baguio, where he, likewise, saw his co-plaintiff, and former secretary, Isabelo Astraquillo. Before leaving Astraquillo's house, De los Santos happened to mention his aforesaid purchases of Lepanto shares, at P0.06 each, whereupon, Astraquillo expressed the wish to buy 800,000 shares at the same price, the amount of which he delivered to De los Santos the next day. Upon his return to Manila, De los Santos purchased from Hess said 800,000 shares, the certificates of which were turned over by the former to Astraquillo, in Baguio, at about Christmas time. Over 3 years later, or in January 1946, De los Santos repaired to the offices of the Lepanto in Manila to ascertain whether it accepted certificates of stock for registration. He then received a negative answer. Upon further inquiry, he learned, in February 1946, that the shares in the name of Madrigal were blocked. So he engaged the services of Atty. A. Scheerer, who secured an order of release from the Freezing Control Office of the United States Treasury Department. As he brought a copy of this order to the offices of the Lepanto, on or about May 1, 1946, he was advised that no transfer could be effected without the authority of Clyde DeWitt, the company president. Thereupon, De los Santos caused to be filed, with the office of the Property Custodian, the corresponding claim for the shares of stock in question, with the result already adverted to.

Astraquillo tried to corroborate the testimony of De los Santos, confining the purchase of 800,000 shares of stock on behalf of the former. Moreover, Astraquillo declared that, being in need of money, he came, to Manila in November or December 1945, and delivered to stock broker Leonardo Recio stock certificate No. 2279 (Exhibit 2) for 55,000 shares, with a view to disposing of the same at a price ranging from P0.13 to P0.15 each. He advised Recio that, in the absence of any buyer, he could see Mr. DeWitt, who, probably, would be interested in purchasing the shares. Sometime later, Astraquillo learned that, according to Recio, upon seeing Exhibit 2, DeWitt retained it—upon the ground that the shares represented therein had been blocked by the United States—and that he (Recio) got therefor a receipt, which was subsequently lost in a fire that destroyed his (Recio's) dwelling. As Astraquillo hurried to Manila, he was told that representatives of the CIC would go to Baguio to investigate. So, he returned to Baguio, but he did not wait for the investigation in that city. Late in February or early in March, 1946, he came back to Manila and asked the assistance of De los Santos, whereupon both contacted Atty. Scheerer for the purpose already stated.

Primitivo Javier narrated that, late in 1945, he received Exhibit 2 from his uncle, Astraquillo, who wanted to sell the 55,000 shares represented by said stock certificate (No. 2279) at a price ranging from P0.12 to P0.15 each share. He, in turn, delivered the certificate to Recio, a licensed broker. Subsequently, Recio reported to him that he (Recio) had brought Exhibit 2 to the office of Mr. DeWitt, whom he did not see on his first visit; that he then left Exhibit 2 in the hands of a person who worked in said office, one Atty. Orlina, who issued a receipt therefor;

that, when Recio came back, later on, DeWitt told him that Exhibit 2 was defective; and that, accordingly, Exhibit 2 was left in the possession of Mr. DeWitt. Javier relayed this information to Astraquillo, who, thereupon, came to Manila. Both went to the temporary residence of Recio in Sampaloc, his house in San Juan del Monte, Rizal, having been destroyed by fire late in December 1945. Recio then advised them that said receipt had been burned with his house.

Leonardo Recio said that sometime in 1945, Javier gave him Exhibit 2, stating that it belonged to his uncle, who wanted to alienate the corresponding shares of stock at P0.15, more or less, each, and suggesting that he offer the same to Mr. DeWitt: In the latter's office, Atty. Orlina told Recio that DeWitt was busy and bade him {Recio} to return later. Recio delivered Exhibit 2 to Orlina, who gave him a receipt, which, subsequently, he showed to Javier. When, soon after, he went back to Orlina, the latter introduced him to Mr. DeWitt, who stated that the shares of stock covered by Exhibit 2 were included in the list of questioned shares. DeWitt, also, asked him whether he would leave the certificate, to which Recio replied affirmatively. While he was away, several months later, or shortly before Christmas, his house at Blumentritt Street, San Juan del Monte, Rizal, and everything contained therein, including the aforementioned receipt, which which was in his wallet, were destroyed by fire.

It thus appears that the only evidence on the alleged sale of the shares of stock in question to the plaintiffs— the main issue in the case at bar—is the testimony of Apolinario de los Santos, who now claims to be the sole owner thereof. Juan Campos and Carl Hess, the alleged vendors, could not take the witness stand, for Hess was executed by the Japanese, and Campos died during the liberation of Manila. Thus, death has sealed the lips of the only persons who could have positively corroborated or contradicted the aforementioned testimony of De los Santos. Was this a mere accident of fate, as plaintiffs would have us believe? Or were Campos and Hess named by the plaintiffs as their immediate predecessors in interest precisely because, as contended by appellants, said deceased persons could no longer impeach said testimony?

For obvious reasons, the Court can not answer these questions with absolute certainty. It can only explore the possibilities and probabilities of the case, in the light of human experience. And, viewed from this angle, it can not be denied that the demise of Campos and Hess before the filing of plaintiffs claim seriously impairs the weight thereof. That the Grim Reaper had chosen to strike at one of the alleged predecessors of the plaintiffs is a matter that may be attributed to sheer fortuitousness. When, as in the case at bar, not one, but both have thus been eliminated, it is clear, however, that this circumstances is most unusual, and must place the Court on guard.

The need for caution becomes more imperative when we bear in mind that an important piece of documentary evidence, which allegedly existed after liberation, and could have effectively corroborated one phase of the plaintiffs' contention, had, according to their evidence, disappeared through still another unfortunate turn of the wheel of fate. It will be recalled that late in 1945, Leonardo Recio, allegedly acting on behalf of Astraquillo, offered to sell to Atty. DeWitt the 55,000 shares represented by stock certificate No. 2279 (Exhibit 2). Recio testified that, having been unable to see DeWitt, when he (Recio) went to the latter's office, for the first time, said Exhibit 2 was left by him (Recio) in the hands of Atty. Orlina, who worked therein and gave him a receipt therefor. This receipt, if produced, would have surely afforded us tangible proof of the veracity of, at least this part of plaintiffs' story. Yet, we are now told that, one day in December, 1945, Recio's house accidentally caught fire, and that the latter consumed, also, said receipt, kept in a wallet, which, by accident, he had failed to bring with him. Aren't there too many accidents in plaintiffs' version? At any rate, we - have thus been deprived of all means to check with reasonable certainty the truth of any of the controverted portions of their pretense. In other words, the same is based, and must stand or fall, therefore, upon the uncorroborated testimony of plaintiff Apolinario de los Santos, and the credence and weight that may be given thereto. Upon a review of the record, we find, however, that said testimony is highly improbable and inherently weak, for, among other things:

(1) De los Santos declared that, in December, 1942, he purchased 300,000; shares from Juan Campos and 1,300,000 shares from Carl Hess, at P0.06 each share. As an enterprise controlled by Americans, the Lepanto had been seized by the Japanese who, accordingly, were operating it. At that time, there were no clear, or, even, substantial, indications that changes would take place, either in the local or in the international situation, in the near or foreseeable future. In deed, the morale of the population in democratic countries, particularly in the Philippines, was then at its lowest ebb. Both in Europe and in the Pacific, the Axis powers had reached in enemy territories the highest degree of penetration attained during the last war. Before the world had recovered from the shock produced by the German blitz- krieg operations in the low countries and in France, the Nazis were already knocking at the gates of Stalingrad and the Caucasus, whereas the Japanese seemed firmly entrenched in New Guinea and the Solomon Islands. The people had a hazy notion about the facts pertinent to the Battle of Midway (June 3-6, 1942) and the implications thereof were by and large unknown. In other words, the conditions were such as to warrant the general belief that the Lepanto would remain under the authority and management of the Japanese Imperial forces for an in- definite period of time. As a consequence, the Lepanto stock had not merely a doubtful value, but—as admitted by Santos—even, no market value at all (p. 132, t. s. n.). Indeed, the stockholders could neither collect dividends nor exercise their voting power, or otherwise participate in the operation of the enterprise. Moreover, there was a possibility of its assets being fully confiscated, for all practical purposes, should Japan emerge victorious in the war in the Pacific, which it appeared to be winning, easily up to that time (December, 1942).

(2) Inasmuch as citizens of the United States held a majority of the shares of stock of the Lepanto, the same had, from the view point of the Japanese, an enemy char- acter, and the purchase of said stocks was, therefore, a hostile act. As a matter of fact, in the proceedings before the Vested Property Claims Committee, the parties—including plaintiffs herein—had stipulated "that such transfers and dealings in said stock were prohibited by the Japanese during the occupation and hence were dangerous." (Record on Appeal, p. 110). Said transactions could jeopardize the life of the parties thereto and De los Santos was aware of the "highly dangerous" or "very risky" nature even of the "mere possession" of the stock certificates in question, (pp. 141, 143, t. s. n.)

(3) Astraquillo is merely a former employee of De los Santos, who had, therefore, no reason to risk his neck, not only by allegedly buying 800,000 shares of stock for Astraquillo, but, also, by avowedly bringing with him (De los Santos) the corresponding stock certificates from Manila to Baguio, to make delivery thereof to Astraquillo, as the defense would have us believe, notwithstanding the many Japanese check points in the 250 kilometers highway connecting both cities and the absence of any monetary or other gain he could have derived from the acts he professes to have performed.

(4) According to the Ballantyne schedule—the accuracy of which has not been impugned by plaintiffs herein—the Japanese war notes in the Philippines had the same exchange of purchase value as the currency of our legitimate government, in December, 1942—and this was conceded by De los Santos (p. 136J t. s. n.)—when they claim to have purchased the Lepanto stocks. The P48,000 supposedly paid by De los Santos, and the identical sum allegedly disbursed by Astraquillo, for their respective stocks, represented, therefore, the same amount in legal tender of the Commonwealth of the Philippines. In fact, according to the evidence for the plaintiffs, part of the price allegedly paid by Astraquillo, or P6,000, were in genuine Philippine money, representing his savings for 25 years. Said sum of F6,000 being insufficient to cover the cost of 800,000 shares of stock, Astraquillo, it is urged, alienated other properties to raise the amount necessary therefor. It is very difficult to believe that the plaintiffs would have parted with P48,000 each—precisely when, owing to the abnormal conditions brought about by the occupation, said funds might be needed, at any time, to meet unforeseen emergencies of the gravest and most vital nature—for shares of stock of dubious value then and in the foreseeable future.

(5) We are not satisfied that either De los Santos or Astraquillo possessed enough resources to have P48,000, in cash, each, in December 1942. Their evidence on this point is too general—apart from being based exclusively upon their respective oral testimonies, which are absolutely uncorroborated—to support their contention. At any rate, De los Santos admitted that he is "not yet" rich (p. 134, t. s. n.), and his testimony suggests that he did not even own the house in which he lived.

(6) Campos offered to sell his stocks, according to De los Santos, at P0.06 each (although its par value was P0.10), stating that "he (Campos) needed money" (p. 43, t. s. n.), and advised him that Hess was, also, willing to dispose of his own stocks at the same price. Being, accordingly, aware that Campos and Hess were in need of money and considering the risks attending the transaction, it is but logical to expect De los Santos, an experienced trader in stocks, to bargain for a lower price. Yet, the evidence for the plaintiffs shows that neither he nor Astraquillo tried to do so, contrary to the normal course of events.

(7) De los Santos could not have purchased 1,300,000 shares of stock, from Hess, and received from him the corresponding stock certificates, indorsed in blank by Vicente Madrigal, for Hess had never had such stock certificates in his possession during the occupation. There is no plausible reason to doubt the veracity of the testimony of Miguel Simon to this effect, for the latter had no possible motive to commit perjury, and was in a position to know what he was talking about. Apart from being a brother-in-law of Hess, Simon was manager of the firm Hess & Zeitling, of which Hess was the senior partner, who used to inform him (Simon) of his (Hess) business transactions.

(8) Campos and Hess could not have delivered the stock certificates for the 1,600,000 shares of stock in question, and, consequently, said shares of stock could not have been sold by them, to De los Santos in December 1942, inasmuch as from December 1941 to April 1943, said stock certificates were continuously in the custody of Matsume Kitajima, manager of the Mitsuis in Manila, whose testimony was corroborated by his successor in office, Kingy Miwa, to whom Kitajima turned over the stock certificates in April 1943. The sincerity of Matsume Kitajima and Kingy Miwa can not be doubted, for neither appears to have any possible reason to trifle with the facts. Indeed, their testimony, if accepted as true, would ultimately result in the confiscation, by the Republic of the Philippines, of the shares of stock in question and, thus, place the same beyond the reach of the Mitsuis.

It has been intimated that Kitajima and Kingy may have testified as they did, either to protect themselves, because they might have disposed of the shares of stock in question for their personal benefit, or because there had been undue influence or pressure from the authorities—presumably officers of the government of the United States. But these are mere speculations, without sufficient actual basis. Besides, judicial notice may be taken of the circumstance that, during the occupation, even minor Japanese officials could easily make money, in the Philippines, if they wanted to, without misappropriating Japanese properties. Again, in December, 1942, the Japanese in the Philippines appeared to have no doubts that, in effect, Japan had already won the war. In short, Kitajima and Kingy must have thought that, sooner or later, Japan would own the Lepanto and that, therefore, they would have to account for the shares of stock under consideration. Consequently, it is most unlikely that either would have misappropriated said shares of stock as suggested by the plaintiffs.

The benefits which the Mitsuis and Japan may derive from a decision against the plaintiffs—inasmuch as the value of the shares of stock in question would then be credited in payment of the reparations which may be demanded by the Philippines and/or the United States—has been pointed out, in the dissenting opinion, as a possible motive for the commission of perjury by Kitajima and Kingy. Besides being purely conjectural in nature, this line of thought—which not even the plaintiffs have taken would have no leg to stand on, unless we assume that the Mitsuis had sold or otherwise disposed of said stocks during the year 1942, but before the alleged transactions between Campos and Hess, on the one hand, and the plaintiffs on the other, in December of that year. It is

inconceivable, however, that the Mitsuis would part with the stocks in question, precisely when Japan was at the crest of its military and political victories. Indeed, even if its officers had already foreseen, at that time, the eventual defeat of the axis powers—and everything then appeared to indicate the contrary—the Mitsuis could not have disposed of said stocks without thereby revealing their own lack of faith in the ability of Japan to achieve final victory. Thus, the Mitsuis would have caused a grave injury upon the Japanese propaganda and thereby earned severe punishment from the Imperial Government. Nothing, absolutely nothing, in the record, or in contemporary history, warrants the belief that the Mitsuis, who were closely associated with the Japanese Government, could be guilty of such folly.

Let us now turn our attention to the evidence for the defense, beginning with the testimony of Victor E. Lednicky. It will be recalled that this witness claimed to have gone to the premises of the Mitsuis, sometime in February 1945, and to have seen many documents scattered about the place, including two (2) Lepanto certificates of stock, one of which was in the name of Vicente Madrigal, whose blank indorsement appeared thereon. Thus, the defense sought to prove that the certificates of the shares of stock involved in this case have probably been looted. The lower court found Lednicky's story inherently improbable and then concluded that the theory of the looting must, consequently, be "ruled out". To our mind, however, the testimony of Lednicky is not inherently improbable. Besides, it is a matter of common knowledge, of which judicial notice may be taken, that many offices and dwellings were looted during the liberation of Manila. The possibility that possession of the stock certificates in question may have been secured by looting should not be "ruled out," therefore, irrespective of the credence and weight given to the testimony of Lednicky. Actually, said certificates are included in the list of stocks certificates of the Lepanto which, soon after liberation, were reported and considered looted from the Mitsuis, and, accordingly, "blocked" or "frozen" by the authorities. Irrespective of the foregoing, De los Santos could not have obtained those certificates from Campos and Hess in December 1942, inasmuch as, from December 1941 to April 1943, Kitajima had been continuously in possession of said documents, none of which had been held by Hess during the occupation.

The lower court considered against the defense the circumstance that Lednicky, Simon and Perkins had not testified before the Vested Property Claims Committee. There is no evidence, however, that any of them knew of the proceedings before said committee. Furthermore, none of them has any personal interest in the outcome of this action. Consequently, they have no possible motive to distort the truth, unlike De los Santos, who, as the present claimant of all the shares of stock in dispute, will be directly affected by the outcome of the case at bar. His testimony, therefore, cannot be more weighty than that of the aforementioned witnesses for the defense.

The decision appealed from criticises the testimony of Perkins upon the following grounds:

- (1) Having taken no part in the alleged looting of Exhibit 2, Recio had nothing to fear in connection therewith and, so, he could not have left the office of Mr. DeWitt, while the latter was talking over the telephone with a representative of the Alien Property Custodian;
- (2) Inasmuch as DeWitt had stated that Exhibit 2 was included in the list of looted stock certificates, Perkins should have known that, as holder of the certificate, Recio is presumed to be the one who stole the same. Why then—plaintiffs inquire—did Perkins fail to prevent Recio from leaving said office?

As regards the first observation, suffice it to say that, as bearer of the Exhibit 2, Recio—who, according to the lower court, is an intelligent man—must have realized 1 the danger, probably unforeseen by him, of being considered a privy to the looting of said stock certificate, of which he might have been unaware before the conference with Mr. DeWitt. Hence, Recio's fright and virtual flight. Verily, the testimony of Perkins on this point is borne out by the undisputed fact that Exhibit 2 was left by Recio in the hands of DeWitt, and that neither

Astraquillo, nor his alleged successor in interest, De los Santos, has ever demanded from DeWitt the return of said certificate, or even recriminated Recio for having voluntarily parted with its possession, as he would have us believe, without authority therefor, as a broker or agent who was supposed merely to find a buyer.

As to the second observation, Perkins knew that Recio was acting solely as a broker or agent. As such, he was not the real holder of Exhibit 2, and, consequently, the presumption adverted to did not apply to him. Even if it did, however, what could Perkins have done? Use force or violence upon the person of Recio, or ask a policeman to detain him? Neither step, however, could have been taken without some risks. To begin with, Perkins could not have properly taken the law in his own hands. Had he done so, Recio could have legally used force against force. Moreover, said presumption is rebuttable and would have easily been offset by the undeniable fact that Recio had acted merely in a representative capacity. Again, why should Perkins take the initiative in the matter? Was it not being handled by his associate in the law firm, Mr. DeWitt, one of the most able members of the Philippine Bar? It may not be amiss to add that the record before us discloses absolutely nothing that may cast even a shadow of doubt upon the honesty of Mr. Perkins.

The language of the lower court in commenting on the testimony of Miwa was:

* * * In general, the testimony of Miwa is unreliable. His behaviour in Court in denying first and then in accepting later his own signature throws him to a position where the Court must look upon him with suspicion and distrust. His prevarication before the Court as to the genuineness of his own signature was probably due to the conscience of a man who came to Court with a mental reservation, but who may have been compelled under the circumstances to play the role of a willing tool." (p. 54, R. A.)

The following portion of Miwa's testimony illustrates the point referred to in the decision appealed from:

"Atty. Quirino:

Q.

Will you please go over this paper which for purposes of identification we request that it be marked as Exhibit M for the plaintiffs and which was marked as Exhibit 6-b before the Vested Property Claims Committee, and tell us if you know that document? —A. No. I do not remember this paper.

Q.

Mr. Miwa, at the bottom of this certificate or Exhibit M, which was Exhibit 6-b in the Committee and submitted by the Alien Property Administration, there is a typewritten name, Kingy Miwa, and above it is a signature. Will you kindly tell the Court if that is your signature or not? Please look over it again.—A. No. It is not mine.

Q.

Please examine it carefully and tell the Court afterwards if you recognize that signature. Examine it carefully.—A. It looks very similar to my signature.

Q.

But would you want or are you willing to go on record and say that it is not your signature?—A. I can not say. I don't exactly remember that I signed this, but it looks very similar to my signature.

Q.

You will not testify under oath that this is your signature? —A. Yes, sir.

Q.

What do you mean to say by 'yes, sir? Do you swear that this is your signature or not your signature?—A. I think this is my signature.

Q.

So, you are willing to go on record now that that signature appearing in Exhibit 'M' is your signature?—A. Yes, I think so." (pp. 125-126, t. s. n.)

We do not agree with its appraisal by the lower court. It is clear that, as he did not remember the execution of I Exhibit M several years before the hearing of this case, Miwa had doubts about the genuineness of the signature thereon, but the appearance thereof, similar or identical to that of his own signature, prevented him from denying its authenticity. This does not indicate lack of veracity on his part. At any rate, plaintiffs claim to have bought the shares of stock in question in December, 1942, or during the management of Kitajima, who held the corresponding stock certificates continuously from December, 1941, to April, 1943, when Miwa substituted him, so that neither Campos nor Hess could have delivered those certificates to De los Santos in December 1942. Apart from this, if there are flaws in the proof for the defense, those of the evidence for the plaintiffs are much bigger and more substantial and vital. Consequently, we hold that plaintiffs have not established their pretense by a preponderance of the evidence.

Even, however, if Juan Campos and Carl Hess had sold the shares of stock in question, as testified to by De los Santos, the result, insofar as plaintiffs are concerned, would be the same. It is not disputed that said shares of stock were registered, in the records of the Lepanto, in the name of Vicente Madrigal. Neither is it denied that the latter was, as regards said shares of stock, a mere trustee for the benefit of the Mitsuis. The record shows— and there is no evidence to the contrary—that Madrigal had never disposed of said shares of stock in any manner whatsoever, except by turning over the corresponding stock certificates, late in 1941, to the Mitsuis, the beneficial and true owners thereof. It has, moreover, been established, by the uncontradicted testimony of Kitajima and Miwa, the managers of the Mitsuis in the Philippines, from 1941 to 1945, that the Mitsuis had neither sold, conveyed, or alienated said shares of stock, nor delivered the aforementioned stock certificates, to anybody during said period. Section 35 of the Corporation Law reads:

"The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or the vice- president, countersigned by the secretary or clerk and sealed with the seal of the corporation, shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred.

"No shares of stock against which the corporation holds any unpaid claim shall be transferable on the books of the corporation." (*Italics supplied.*)

Pursuant to this provision, a share of stock may be transferred by endorsement of the corresponding stock certificate, coupled with its delivery. However, the transfer shall "not be valid, except as between the parties/" until it is "entered and noted upon the books of the corporation." No such entry in the name of the plaintiffs herein having been made, it follows that the transfer allegedly effected by Juan Campos and Carl Hess in their favor is "not valid, except as between" themselves. It does not bind either Madrigal or the Mitsuis, who are not parties to said alleged transaction. What is more, the same is "not valid," or, in the words of the Supreme Court of Wisconsin (*Re Murphy*, 51 Wis. 519, 8 N. W. 419) — which were quoted approval in *Uson vs. Diosomito* (61 Phil., 535)—"absolutely void" and, hence, as good as non-existent, insofar as Madrigal and the Mitsuis are concerned. For this reason, although a stock certificate is sometimes regarded as quasi-negotiable, in the sense

that it may be transferred by endorsement, coupled with delivery, it is well settled that the instrument is non-negotiable, because the holder thereof takes it without prejudice to such rights or defenses as the registered owner or creditor may have under the law, except insofar as such rights or defenses are subject to the limitations imposed by the principles governing estoppel.

"Certificates of stock are not negotiable instruments (post, Par. 102), consequently, a transferee under a forged assignment acquires no title which can be asserted against the true owner, unless his own negligence has been such as to create an estoppel against him (Clarke on Corporations, Sec. Ed. p. 415). If the owner of the certificate has endorsed it in blank, and it is stolen from him, no title is acquired by an innocent purchaser for value (East Birmingham Land Co. vs. Dennis, 85 Ala. 565, 2 L.R.A. 836; Sherwood vs. Mining Co., 50 Calif. 412). As was said by the Supreme Court of the United States in a leading case (Western Union Telegraph Co. vs. Davenport, 97 U.S. 369; 24 L. Ed. 1047)—

'Neither the absence of blame on the part of the officers of the company in allowing an unauthorized transfer of stock, nor the good faith of the purchaser of stolen property, will avail as an answer to the demand of the true owner. The great principle that no one can be deprived of his property without his assent, except by processes of the law, requires, in the case mentioned, that the property wrongfully transferred or stolen should be restored to its rightful owner.'" (The Philippine Law of Stock Corporations by Fisher, p. 132.) (Italics ours.)

In the language of Fletcher's Cyclopedia Corporations (Vol. 12, pp. 521-534) :

"The doctrine that a bona fide purchaser of shares under a forged or unauthorized transfer acquires no title as against the true owner does not apply where the circumstances are such as to estop the latter from asserting his title. * * *

* * * * *

"A reason often given for the rule is that it is a case for the application of the maxim that where one of two innocent parties must suffer by reason of a wrongful or unauthorized act, the loss must fall on the one who first trusted the wrongdoer and put in his hands the means of inflicting such loss. But 'negligence which will work an estoppel of this kind must be a proximate cause of the purchase or advancement of money by the holder of the property, and must enter into the transaction itself; the negligence must be in or immediately connected with the transfer itself. Furthermore, 'to establish this estoppel it must appear that the true owner had conferred upon the person who has diverted the security the indicia of ownership, or an apparent title or authority to transfer the title.' So the owner is not guilty of negligence in merely intrusting another with the possession of his certificate of stock, if he, does not, by assignment or otherwise, clothe him with the apparent title. Nor is he deprived of his title or his remedy against the corporation because he intrusts a third person with the key of a box in which the certificate are kept, where the latter takes them from the box and by forging the owner's name to a power of attorney procures their transfer on the corporate books. Nor is the mere indorsement of an assignment and power of attorney in blank on a certificate of stock, which is afterwards lost or stolen, such negligence as will estop the owner from asserting his title as against a bona fide purchaser from the finder or thief, or from holding the corporation liable for allowing a transfer on its books, where the loss or theft of the certificate was not due to any negligence on the part of the owner, although there is some dangerous and wholly unjustifiable dictum to the contrary. So it has been held that the fact that stock pledged to a bank is indorsed in blank by the owner does not estop him from asserting title thereto as against a bona fide purchaser for value who derives his title from one who stole the certificate from the pledgee. And this has also been held to be true though the thief was an officer of the pledgee, since his act in wrongfully appropriating the certificate cannot be regarded as a misappropriation by the bank to whose custody the certificate was intrusted by the owner, even though the bank may be liable to the pledgor. * * *. A person is not guilty of negligence in leaving a certificate of stock indorsed in blank in a safe deposit box used by himself and another jointly, so as to be estopped from asserting his title after the certificate has been stolen by the other, and sold or pledged to a bona fide purchaser or pledgee. Nor is he negligent in putting a certificate so indorsed in a place to which an

employee had access, where he has no reason to doubt the tatter's honesty, * * *." (Italics ours.)

In the leading case of *Knox vs. Eden Muscee American Co.* (42 N. E. 988, 992-993), the rule has been forcefully stated as follows:

"The courts have been frequently importuned to extend the qualities of negotiability of stock certificates beyond the limits mentioned, and clothe them with the same character of complete negotiability as attaches to commercial paper, so as to make a transfer to a purchaser in good faith for value equivalent to actual title, although there was no agency in the transferror, and the certificate had been lost without the fault of the true owner, or had been obtained by theft or robbery. But the courts have refused to accede to this view, and we have found no case entitled to be regarded as authority which denies to the owner of a stock certificate which has been lost without his negligence, or stolen, the right to reclaim it from the hands of any person in whose possession it subsequently comes, although the holder may have taken it in good faith and for value. The precise question has not often been presented to the courts, for the reason, probably, that they have with great uniformity held that stock certificates were not negotiable instruments in the broad meaning of that phrase; but whenever the question has arisen it has been held that the title of the true owner of a lost or stolen certificate may be asserted against any one subsequently obtaining its possession although the holder may be a bona fide purchaser. *Anderson vs. Nicholas*, 28 N. Y. 600; *Power Co. vs. Robinson*, 52 Fed. 520; *Biddle vs. Bayard*, 13 Pa. St. 150; *Barstow vs. Mining Co.*, 64 Cal. 388, 1 Pac. 349. See *Shaw vs. Railroad Co.*, 101 U. S. 557. * * *

It is plain, we think, that the argument in support of the judgment in this case, based on the complete negotiability of stock certificates, is not supported by, but is contrary to, the decisions. If public policy requires that a further advance should be made in more completely assimilating them to commercial paper in the qualities of negotiability, the legislature, and not the courts, should so declare. Under the law as it has hitherto prevailed there does not seem to have been any serious hindrance in dealing with property of this character. It may, perhaps, be doubted, taking into consideration the interests of investors as well as dealers, whether it would be wise to remove the protection which the true owner of a stock certificate now has against accident, theft, or robbery. The system of registry of negotiable bonds, which prevails to a considerable extent, authorized by statutes of some of the states and of the United States, seems to indicate a tendency to restrict, rather than to extend, the range of negotiable instruments." (Italics ours.)

The status of quasi-negotiability generally accorded to, and at present enjoyed by, certificates of stock, under the Philippine law, is in itself a recognition of the fact that the certificates are non-negotiable. Instead of sustaining appellees' claim, section 5 of the Uniform Stock Transfer Act, which "gives full negotiability to certificates of stock," refutes said claim and confirms the non-negotiable character of stock certificates in the absence of said Uniform Act, for, obviously, the same could not have given, negotiability to an instrument already possessing this attribute prior thereto. Again, apart from being distinct from the general Corporation Law, the aforementioned Uniform Act is not in force in the Philippines. In this connection, it should be noted that this special piece of legislation was adopted in some states of the union as early as the year 1910. The failure of the Philippine government to incorporate its provisions in our statute books, for a period of almost 45 years, is, to our mind, clear proof of the unwillingness of our legislative department to change the policy set forth in section 35 of Act No. 1459. Needless to say, this fact negates our authority—which is limited to the interpretation of the law, and its application, with all its imperfections—to abandon what the dissenting opinion characterizes as the "civil law standpoint," and substitute, in lieu thereof, the commercial viewpoint, by applying said section 5 of the Uniform Stock Transfer Act, although not a part of the law of the land. Indeed, even in matters generally considered as falling within "commercial territory", the Roman Law concept has not given way in the Philippines to the Common Law approach, except when there is explicit statutory provision to the contrary.

In the case at bar, neither Madrigal nor the Mitsuis had alienated the shares of stock in question. It is not even claimed that either had, through negligence, given— occasion for an improper or 'irregular disposition of the

corresponding stock certificates. Plaintiffs merely argue without any evidence whatsoever thereon—that Kitajima might have, or must have, assigned the certificates on or before December 1942, although, as above stated, this is, not only, improbable, under the conditions, then obtaining, but, also, impossible, considering that, in April 1943, Kitajima delivered the instruments to Miwa, who kept them in its possession until 1945. At any rate, such assignment by Miwa—granting for the sake of argument the accuracy of the surmise of plaintiffs herein—was unauthorized by the Mitsuis, who, in the light of the precedents cited above, are not chargeable with negligence. In other words, assuming that Kitajima had been guilty of embezzlement, by negotiating the stock certificates in question for his personal benefit, as claimed by the plaintiffs, the title of his assignees and successors in interest would still be subject to the rights of the registered owner, namely, Madrigal, and, consequently, of the party for whose benefit and account the latter held the corresponding shares of stock, that is to say, the Mitsuis.

At any rate, at the time of the alleged sales in their favor, plaintiffs were aware of sufficient facts to put them on notice of the need of inquiring into the regularity of the transactions and the title of the supposed vendors. Indeed, the certificates of stock in question were in the name of Madrigal. Obviously, therefore, the alleged sellers (Campos and Hess) were not registered owners of the corresponding shares of stock. Being presumed to know the law—particularly the provisions of section 35 of Act No. 1459—and, also, as experienced traders in shares of stock, plaintiffs must have, accordingly, been conscious of the consequent infirmities in the title of the supposed vendors, or of the handicaps thereof. Moreover, the aforementioned sales were admittedly hostile to the Japanese, who had prohibited it and plaintiffs had actual knowledge of these facts and of the risks attendant to the alleged transaction. In other words, plaintiffs advisely assumed those risks and, hence, they can not validly claim, against the registered stockholder, the status of purchasers in good faith.

The lower court held, and plaintiffs maintain that, not being the registered owners of the shares of stock in question, the Mitsuis can not assert a better right than said plaintiffs. This pretense is untenable. Inasmuch as Madrigal, the registered owner of said shares of stock, has always acknowledged that he held the same merely as an agent of, or trustee for, the Mitsuis—and this is not denied—it follows that the latter are entitled to invoke such rights as Madrigal had as registered stockholder. Upon the other hand, even the alleged sale by Juan Campos and Carl Hess to plaintiffs herein is contested by the defense and, to our mind, has not been established by a preponderance of the evidence. Hence, as the undisputed principal or beneficiary of the registered owner (Madrigal), the Mitsuis may claim his rights, which cannot be exercised by the plaintiffs, not only because their alleged title is not derived either from Madrigal or from the Mitsuis, but, also, because it is in derogation, of said rights. Madrigal and the Mitsuis are c privies to the alleged sales by Campos and Hess to the plaintiffs, contrary to the latter's pretense.

In conclusion, when the Property Custodian issued the Vesting Order complained of, the shares of stock in question belonged to the Mitsuis, admittedly an enemy corporation, so that said Vesting Order is in conformity with law and should be upheld. Wherefore, the decision appealed from is hereby reversed, and the complaint, accordingly, dismissed, with costs against the plaintiffs-appellees.

It is so ordered.

Paras, C.J., Pablo, Padilla, Montemayor, Reyes, A., Jugo and Labrador, JJ., concur.

DISSENTING OPINION

BENGZON, J., dissenting:

Unable to agree with my distinguished colleagues, I find it necessary to write a rather extended dissent, due

principally to the far-reaching effect of their ruling upon future operations of the local stock market and corporate business. A dissent may at least indicate what is not the law.

During the Japanese occupation two Filipinos—the plaintiffs—secretly purchased shares of an American corporation, whose assets had been seized by the enemy invader. Risking Japanese wrath, they staked their funds (perhaps their freedom or lives) on the eventual return of the American forces. After two years, these came back in victorious liberation; but oddly enough plaintiffs lose their money and the shares.

Such anti-climax is brought about by this decision of the Philippine Supreme Court, upon the initiative or opposition of Americans and Filipinos, resulting ultimately to the benefit of the Japanese.[1] Not that I believe property rights should be apportioned on the basis of nationality; but the impact of plaintiffs' misadventure may not be fully realized unless these details are described.

Just the luck of plaintiffs: They won before the U.S. Treasury, and later before the Vested Property Aliens Committee but they lost before the Administrator because this officer applied an erroneous legal principle.[2] Thereafter they resort to the courts, winning the first round. Now again they lose.

Perspective, imperfect I believe, accounts for this their second defeat. We take the viewpoint of a trial judge passing on conflicting testimony, and thusly adjudicate: "evidence for the plaintiff is as improbable as that of the defense"; yet the burden of proof is upon plaintiffs', therefore judgment for defendants." On appeal our coign of vantage lies on higher ground; and, following established practice, the issue involving credibility of witnesses, we should uphold the judgment for plaintiffs—unless the trial judge unduly discarded significant evidentiary pieces for the defendants. Reading the testimony in black and white, we might disagree with his estimate of the factual probabilities; nevertheless we should, as usual, make allowance for his peculiar advantage of having seen the witnesses testifying on the chair; and then affirm, realizing that this distance we cannot perceive minor movements of the pointer in the judicial balance.

The majority attempt to justify their deviation from accepted practice with the statement that "in rejecting the theory of the defense" His Honor "was guided not by the conduct of the witnesses in the course of their testimony", but by the inherent "weakness" of such theory. For the application of the principle recognizing the advantage of the trial judge, it is not necessary in my opinion—for the said officer to declare explicitly, that in appraising the witnesses' versions he was guided by their conduct on the witness-stand; normally, in matters of credibility he weighs their testimony against the background of the sense-images they produced, their demeanor, expression of their faces etc.

Nevertheless, admitting *arguendo*, that this appeal must be decided upon the finding that plaintiffs' theory of purchase "is as improbable as defendant's theory" (of looting), I submit that, inasmuch as the plaintiffs have possession of the certificates which were indorsed in blank, and inasmuch as the burden of proof shifted to the defendants to prove the alleged looting, plaintiffs should receive the award. In addition to plaintiffs' testimony,—it must be emphasized—they have the certificates in proper order, indorsed in blank. Such documentary proof, speaking for itself, should tip the scales, whenever,—as this court declares now—the testimonial evidence "is even."

The presumption is that * * * stock which was endorsed in blank was delivered to the parties who had possession of stock (Hess and Campos) and transferred it to bona fide purchasers (plaintiffs). (See *Lilley vs. First Federal Savings & Loan Association*, La. App. 1940, 194 So. 901.)

Furthermore, there are these presumptions: (1) Hess and Campos, and Plaintiffs are innocent of crime or wrong, and (2) things which a person possesses are owned by him. (Rule 123 sec. 69).

Listed in the majority decision are eight grounds to disbelieve Santos' declarations. Let me comment briefly on

them: Anent the first, Santos was positive the American forces would eventually return, and he bought the shares. As to the second; and the third, he braved the dangers, for the sake of sure financial gain. As to the fourth and the fifth, it must be remembered that Santos had a monthly income of P6,000, and was co-owner of ten hectares of land in Tondo. His living in a rented apartment does not imply financial inability; many landed provincial folk were ordinary tenants in Manila during the war. As to the price, Santos who had been dabbling in other stock knew that at P0.06 the Lepanto shares were a bargain; so he did not hesitate and grabbed the chance. As to the 7th, Miguel Simon could not affirm under oath that Carl Hess "had imparted all his activities to me" (p. 29 s. n.) ; and because the handling of these shares was "dangerous" at that time, most probably Hess did not inform him about it. And what about the shares Santos bought from Campos?

Concerning the 8th, remember that although Kitajima and Miwa said the Lepanto certificates were in their possession, they did not mean physical personal possession, but official possession, in the vaults or cabinets of the Mitsui office. Yet they admitted that other officials had access to the same certificates (p. 115 testimony of Miwa). Inference: such other officials could have—and probably-disposed of the certificates.

As to Kitajima's testimony that in April 1943 he delivered these certificates to his successor Kenji Miwa, no satisfactory explanation exists for defendants' failure to present the inventory admittedly prepared at that time. The document was the best evidence, since Kitajima might not have been sincere, for he would be personally responsible to the Mitsui higher-ups for the certificates; and the temptation to palm off responsibility is great where opportunity offers.

And Miwa could not have received and kept these shares, because he swore to having seen to it—when ordered to leave Manila in 1945—that the important documents including the Lepanto shares were burned. How come these shares are now in the possession of Santos? Obviously, because they were not among those shares burned, nor shares delivered to Miwa or kept by him in the Manila offices.

The Mitsui Company it must be underscored—stands to benefit from a declaration that these shares still belong to it. True, they will be confiscated now, for defendants. They are nevertheless Japanese assets which may ultimately have to be credited to the said corporation.

Supposing Kitajima told the whole truth that he did not dispose of the shares, then the probabilities are that such shares had been disposed of by other Mitsui officials without his knowledge.

Now then, the question arises, if the shares had been disposed of by unauthorized officials of Mitsui Bussan Kaisha do the plaintiffs have a valid title? They have acquired the shares for value and in good faith, without notice that Campos and Hess had defective titles.

Parenthetically, the defendants—and this decision—doubt the plaintiffs' purchase partly because Campos died during the liberation of Manila and Hess was executed by the Japanese. That both of them died is quite a suspicious circumstance, says the majority. I might agree, if both occurred during normal times. Yet during the Japanese occupation and the battle of liberation, death was no unusual occurrence in the city. And then, who knows but that Hess was executed by the Japanese for having engaged in dangerous activities, such as the handling of this stock?

By the way, the Foreign Funds Control of the U. S. Treasury Department; the Vested Property Aliens Committee, the Alien Property Administrator and the court of first instance never doubted such sale by Campos and Hess. And this controversy would not have reached the courts had not the Alien Property Administrator held that admitting the sale, the plaintiffs failed to trace their chain of title to these shares, beginning from Madrigal, (the registered owner) and Mitsui all the way down to Hess and Campos. Which is error, because as aptly pointed out

in appellees' brief:

"A purchaser for value is not bound to show affirmatively that the certificates were delivered by a former owner to his own grantor," (*Helbrook vs. New Jersey Line*, 57 N. Y. 616) (*Fletcher's, Cyclopaedia of the Law of Private Corporation*, Vol. 12, Sec. 5474.) (*Italics ours*).

"Such a contention is quite fallacious because neither the law nor the established custom of the trade requires a purchaser in good faith to trace back all its predecessors in interest. That would be requiring the purchaser to prove an utter impossibility, because as shown by the cases cited and also in the actual practice of trade, a certificate endorsed in blank may travel through different hands which may number 10, 20, 50 or 100." (p. 169 brief.) (cf. *Hager vs. Bryan*, *infra*.)

"The holder of corporate stock containing blank assignment and power of attorney to transfer stock on books of company, signed and indorsed on back thereof, has prima facie good title to the shares." (*Jones vs. Courts* (1940) Ga. App. 239, 12 S. E. 2d 446.)

That the shares were disposed of by officers of the Mitsui in 1942, is not improbable, considering: (a) the shares were purposely kept indorsed in blank before and during the war; (b) the Mitsui did not report the shares to the American High Commissioner, violating the latter's order of July 1941 (c) the shares were valueless during the war because the Japanese government had seized the corporate property; (d) the officers of Mitsui possibly foresaw the final result of the Pacific war, and made the most of their belongings before the oncoming disaster; and (e) the only other alternative that may explain how the shares reached the hands of Hess and Campos in 1942—theft or loss before 1945—is not asserted nor proven.

Against this probability—which must be accepted,[3] because the shares were subsequently found in the possession of Hess and Campos, who cannot be declared to have stolen them—the defendants countered with a possibility that those shares had been looted after the arrival of the Americans in Manila in 1945.

Interesting to note that no evidence supporting such possibility was given during the hearings before the American Claims Committee, that decided for herein plaintiffs. Moreover, the American Aliens Property Administrator, dismissed it too, although he decided against plaintiffs, on a mistaken view of the controlling legal principle, as hereinbefore indicated.

However, when the matter was brought to the court, the defendants, perceiving the weakness of their stand, presented Victor Lednicky, Vice President of the Lepanto Consolidated Mining Corporation that, without waiting for a court determination of plaintiffs' right to the shares issued new certificates cancelling (prematurely and illegally) the certificates in plaintiffs' custody, with actual knowledge of the latter's claims.

Lednicky testified that on or about February 12 or 13, 1945 he went to the office of Mitsui Bussan Kaisha on the Ayala Building, across the Pasig River and saw Lepanto papers and other documents scattered over the floor; that he picked up two certificates of the Lepanto, one in the name of Madrigal and the other in the name of a Japanese or Chinese; that upon hearing some noises, he threw the certificates away and left. The trial judge considered his testimony inherently improbable, giving among other reasons :

Here is an old man who had been imprisoned in the concentration camp during the occupation, suffering brutalities at the hands of the Japanese, and whose escape from death may perhaps be even termed providential, yet when finally saved and liberated, he ventured into the areas where bombing, shelling, and fighting were still going on, thus risking his dear life only to salvage the papers, document, and securities belonging to the Lepanto Consolidated Mining Company, which, according to the information of an American soldier, were all scattered on the floor of the offices of the Mitsui Bussan Kaisha in the Ayala Building. * * *

* * * In explaining his failure to pick up the documents which was contrary to his avowed desire to save the

records of the Lepanto Consolidated Mining Company, he said that he and the American soldier with him heard noises around, and fearing lest they be shot as looters, they took to their heels.

* * * The fear of being taken for looters, likewise does not appear logical, because he was with an American soldier in uniform" (pp. 41-43 Record on Appeal.)

His Honor was right. Those who were in Manila remember that on February 12 or 13, 1945 and subsequent days, the battle of liberation was raging in Ermita and Malate; Intramuros was besieged; and unless compelled by absolute necessity nobody—except looters—dared to circulate around the places surrounding Intramuros or other points near the scene of fighting.[4] It is hard to believe that Lednicky, a substantial resident of advanced age, would care to go sight-seeing, to satisfy his curiosity about some Lepanto shares. Unless we yield to the uncharitable suspicion that he too wanted to lay hands on those Lepanto shares of the Japanese, Which would not, of course, exactly bolster his personal credibility. Anyway as plaintiffs reasoned out,

"Conceding, however, that Mr. Lednicky did find some certificates of the Lepanto Consolidated on the Third Floor of the Ayala Building—it does not prove that the shares adjudicated to the plaintiffs were precisely the ones looted there, for the simple reason that the 1,600,000 shares in the possession of the plaintiffs were not the only certificates of the Lepanto Consolidated. And Lednicky saw only one[4a]—if he saw anything at all. It will be remembered that Mitsui purchased a total of 1,900,000 shares in the name of Madrigal, all of them endorsed in blank. So conceding, arguendo, that Mr. Lednicky found some shares of the Lepanto on the Third Floor of the Ayala Building—it is nonetheless possible that the certificates he had seen were part of what might have been left of the 1,900,000 shares after the certificates of the plaintiffs had left the safe of the company." (pp. 56-57 brief.)

On this issue, another line of thought suggests itself. Because of the Japanese war, Hess and Campos cannot now confirm the sale to plaintiffs nor help them trace their chain of title; because of war conditions, plaintiffs could not and did not ask from Hess and Campos who their predecessors were; because of war, looting occurred in the city and planted the seed, of suspicion against plaintiffs' title; because of war, plaintiffs find themselves litigating with their own government. Should the Japanese profit from such mix-up?

In fine, the probability of looting of these particular shares in 1945 (to make it stronger for defendants) should yield to the uncontradicted evidence of sale to plaintiffs in 1942 by Hess and Campos.

Again, in support of their thesis of looting, the defendants presented Atty. Eugene E. Perkins who testified about the alleged unceremonious departure of Leonardo Recio when Atty. DeWitt (to whom he offered one of the certificates for sale) happened to mention looted certificates. Recio denied, and gave a plausible explanation of the incident. The matter is controversial. Yet supposing the facts were as Atty. Perkins had described, Recio's "flight" could at most demonstrate that he (Recio) had some doubts about the origin of said particular certificate—one only [5]. Looting was an ugly word and may be he wanted to avoid all discussion with big lawyers. Nevertheless, his private notions cannot legally reflect plaintiffs' state of mind. Recio's opinions were his own. And mark well, the shares were not placed in his hands by plaintiffs directly, but by Primitivo Javier.

Once the theory of looting is discarded, defendants' remaining line of defense would fall on the proposition that the shares must have been disposed of by officers of the Mitsui Company, who had no authority to sell. And plaintiffs would counter with the assertion that they bought the shares from Hess and Campos in good faith without knowledge of such breach of trust or excess of authority. What is then the governing principle? This is the last and decisive issue.

At the outset it should be clear that the situation is the same as if Mitsui litigated with the plaintiffs, considering that, having paid nothing for the shares, defendants may not assert better rights than the Mitsui Company had.

It should also be observed that the blank indorsements of these shares signed by V. Madrigal are worded as follows:

For value received, ... hereby sell, assign, and transfer unto shares of the Capital Stock represented by the within Certificate, and to hereby irrevocably constitute and appoint to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated 19

.....

V. Madrigal

Stock-traders in this jurisdiction know (*Hagar vs. Bryan*, 19 Phil., 138) that through the above indorsement "by the usages of business of which the courts take judicial notice, the certificate may be passed from hand to hand;" and when "it reaches the hands of someone who desires to assume the legal rights of a shareholder * * * he fills up the blanks by inserting his own name as transferee", and "inserts in the second blank the name of the attorney in fact whom he wishes to make the transfer for him" on the corporate books. (And then such attorney-in-fact may compel the transfer.) According to Commissioner Cosio of the Securities and Exchange Commission, such indorsement increases the marketability of the certificate enhances the mobility of this form of wealth so that by mere delivery of the certificates endorsed in blank the ownership thereof is transferred.

The certificates of stock when so indorsed, we said once, acquire quasi-negotiable character, (*Bachrach Motor Co. vs. Ledesma*, 38 Off. Gaz., 796); and parties who deal with them innocently have long been protected by the law upon principles analogous to those applicable to commercial paper. (*Tolentino*, *Commercial Laws of the Philippines* Vol. II (5th Ed.) p. 796 citing cases).

Under the Negotiable Instruments Law a bona fide purchaser for value (holder in due course) of an instrument would be protected, even if his seller had obtained the bearer" instrument by theft.

"A holder in due course, it has been broadly held, both at common law and under the Negotiable Instruments Act takes good title even from a thief; more strictly, if the instrument is made payable to bearer, or is indorsed in blank, or is otherwise negotiable by delivery, an innocent purchaser for value and before maturity who acquires it from a thief or finder acquires a good title and may recover thereon, and he may retain it even as against the true owner." (10 C.J.S., pp. 1117, 1118, citing lots of cases.)

As a less serious defect in the seller's title would exist when he conveys the instrument in breach of faith or breach of trust, a fortiori, a bona fide purchaser of such instrument, without notice and for value, should likewise be protected.

In this part of this dissent—I will admit that the situation before us is a sale by Mitsui employees in excess of, or without, authority. Then I say, it is akin to sale or pledge in breach of trust. It should be validated, especially because the Mitsui Corporation purposely kept the shares indorsed in blank for a long time, notwithstanding its managers' actual knowledge that in such form the shares were easily negotiable (73, 74 s. n.) and even when the times were so topsy-turvy war that loss, theft, or misplacement of the papers were likely to occur.

This Court has already begun applying principles of negotiability to corporate certificates in a recent case where the owner of the certificate pledged the same to a broker and the broker misused the certificate by pledging the same to guaranty his own account with a bank. We held, the owner of the certificate can not recover the same

from the bank.[6]

Ours is now the opportunity, and duty, to carry this principle forward in line with the general tendency to regard shares indorsed in blank as in the nature of negotiable credits. After all, Commercial law is essentially "progressive".[7]

Thus we would be following the last word in the law governing transfers of stock, as embodied in the Uniform Stock Transfer Act in force in all the States of the American Union, from Alabama, Arizona etc. all the way down to Wisconsin and Wyoming, some states having adopted it as recently as the year 1947.

"Section 1. How title to certificates and share may be transferred. —Title to a certificate and to the shares represented thereby can be transferred only,

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. * * *

Sec. 5. Who may deliver a certificate.—The delivery of a certificate to transfer title in accordance with the provisions of section 1, is effectual, except as provided in section 7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. (Italics mine.)

Sec. 7. Rescission of transfer.—If the indorsement or delivery of a certificate,

(a) was procured by fraud or duress, or

(b) was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

(c) without authority from the owner, or

(d) after the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

(l) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or * * *." (Italics mine.)

The Uniform Act is a mere codification of common law principles. (Patterson vs. Fitzpatrick—McElroy Co. (1927) 247 111. App. 1.) It necessarily reflects the prevailing opinion in all the States. And section 5 "gives full negotiability to certificates of stock," according to the Commissioners that drafted the Act (Uniform Laws Annotated Vol. 6 p. 10.)

(Cases and authorities are to be found in the enclosed addenda.)

Vis-a-vis the Uniform Stock Transfer Act, the authorities cited by the majority decision turn out to be dated, apart from the circumstance that at the time they were enunciated or published there were court decisions in the other direction.[8] Now the Transfer Act —unanimously adopted by all the states—settled the conflicts, and declared the predominant doctrine to be, that a bona fide buyer for value of stock indorsed in blank acquires title even if his seller had no authority to sell from the owner. (Please read again the provisions of the Act above quoted, and the cases in addenda.)

Such prevailing doctrine in the U.S. may properly be engrafted in our corporation law, of American origin, specially because our statute contains nothing contrary to it (cf. sec. 35 Corporation Law). Besides, it must be taken to represent the true sentiment of the commercial world, which the local business community could not but echo. For as Commissioner Cosio explained, referring: to local practice, mere delivery of the certificate endorsed in blank transferred ownership. And usages of commerce, or commercial practices, the Code says, are part of the Commercial Law. (Art. 2 Code of Commerce.)

Therefore, on legal principles plaintiffs should prevail. Even if the certificate had been stolen^[9] and then sold to Hess and Campos (which is not the case).

At this juncture I may advert to the majority propositions allegedly supported by section 35 of the Corporation Law:

"Pursuant to this provision, a share of stock may be transferred by endorsement of the corresponding stock certificate, coupled with its delivery. However, the transfer shall "not be valid, except as between the parties," until it is "entered and noted upon the books of the corporation." No such entry in the name of the plaintiffs herein having been made, it follows that the transfer allegedly effected by Juan Campos and Carl Hess in their favor is "not valid, except as between" themselves. It does not bind either Madrigal or the Mitsuis, who are not parties to said alleged transaction."

This argument, with due respect to the majority, is their weakest.

The phrase "except as between the parties" means parties and their privies, their predecessors or successors in interest. The exception was meant to protect creditors of the parties, or the corporation itself, that may be paying dividends to the recorded stockholder even after said stockholder had sold his stock without recording the sale. Adoption of the majority view would have the effect of requiring every transfer of the stock to be entered on the books (contrary to what we said in *Hager vs. Bryan*, 19 Phil. 138 and the accepted practice). For if a certificate endorsed in blank has passed from A to B, then to C, then to D and then to E, but the transfers to B to C and to D have not been recorded, therefore E gets no title and may not have it recorded in the books of the corporation, because his contract with D does not affect A, B and C. It is not the purpose, I hope, presently to overrule *Hager vs. Bryan* now. Peculiar thing about this *Hager vs. Bryan* case: there is another decision between the same parties reported in. Vol. 21 p. 523; the unwary reader is apt to conclude that 1 the decision in Vol. 21 overrules the decision in the previous volume, but it is just reverse; look at the dates.

Even on grounds of equity^[10], plaintiffs should win. Who caused these shares to be indorsed in blank? Who kept them thus even knowing the dangers of loss or confusion? Who allowed its officers to have access to those shares? Who appointed those officers?

Incidentally, these shares, I understand, are now worth much more than the amount invested by plaintiffs. I find no reluctance to validate their good fortune. For I have always maintained that in contracts involving speculation, the resultant profit to the purchaser, however sizable, can never of itself serve to becloud the genuineness of the transaction. (*Gomez vs. Rofio*, 46 Off. Gaz., Supp. (11) 339.)

One final paragraph:

Overshadowing the deliberative process of the majority opinion, I perceive the guiding principle in civilian affairs that, the purchaser of goods acquires no better title than his seller had. It examined the problem from a civil law standpoint. Again, perspective, less than perfect, inasmuch as the issue arises on Commercial territory, wherein the need of promoting exchange of goods in business have often allowed purchasers for value in good faith to obtain a better title than their seller had, for instance, (1) purchasers of goods from stores open to the public (Art

85 Code of Commerce, Art. 1505 New Civil Code) (2) purchasers for value in good faith of negotiable bearer instruments, see *supra*, and (3) purchasers in good faith for value of shares endorsed in blank, under the Uniform Stock Transfer Act.

ADDENDA

(RIGHTS OF PURCHASER IN GOOD FAITH OF STOCK CERTIFICATE ENDORSED IN BLANK) ,

- "The purpose of rules making certificates of corporate stock negotiable when indorsed in blank is to enable all persons to treat possession of certificates as equivalent of ownership. *Mason vs. Public Nat. Bank & Trust Co. of New York*, 1941, 262 App. Div. 249, 28 N. Y. S. 2d 416, affirmed 287 N. Y. 809, 41 N. E. 2d 91."
- "The Uniform Stock Transfer Act was adopted to give stocks the security of negotiability and so that purchasers of stock might have reasonable assurance as to their title. *Untermeyer vs. State Tax Commission*, 1942, 102 Utah 214, 129 P. 2d 881, reversed on other grounds 62 S. Ct. 1104, 316 U. S. 645, 86 L. Ed. 1729."
- "As a general rule indorsement in blank and delivery passes absolute and unconditional title, *Desmond vs. Pierce*. (1925) 485 Wis. 479, 201 N. W. 742 (holding that a person who had thus indorsed and delivered certificates could not sue on a contract of the corporation to repurchase them)."
- "Where a stock certificate was delivered to a pledgee accompanied by a stock power signed by the pledgor, but blank as to the transferee and grantee of the power, such delivery was held sufficient to transfer title under this section. *Ironside vs. Levi*, (1932) 278 Mass. 18, 179 N. E. 226."
- "Where owner indorsed stock in blank and transferred it to brokerage company as security for loan, under agreement that company would not transfer the stock, but the company transferred the stock to its corporate creditor to secure payment, by creditor at request of the company, of certain drafts the creditor, which had no notice of the transaction between owner and company, stood in position of a 'bona fide purchaser without notice' and as against the owner acquired title to these stock as security for amount which the creditor advanced to the company. *Jones vs. Courts*, 1940, 64 GA. App. 239, 12 S.E. 2d 446."
- "Under this title, which makes valid transfers of stock certificates indorsed in blank even though transfers are without owner's authority unless there is bad faith on part of transferee, the test of good faith is common honesty and not the degree of care exercised. * * * " *Mason vs. Public Nat. Bank & Trust Co. of New York*, 1941, 262 App. Div. 249, 28 N. Y. S. 2d 416, affirmed 287 N. Y. 809, 41 N. E. 2d 91. "Transfers of stock certificates indorsed in blank are valid, even though the transfers are without authority of actual owner, unless there is bad faith on the part of the transferee of such certificates or failure by him to take cognizance of circumstances giving notice that the transfer was wrongful. *Id.*
- "Under this section, stock certificates which are assigned by their owner in blank have the qualities of negotiable instruments. *U. S. Gypsum Co. vs. Faroll* 1938, 296 111.. App. 47 N. E. 2d. 888. "Stock certificates are assignable and pass by indorsement or delivery as do bills of exchange and promissory notes. *Cliffs Corporation vs. U. S. C. A. Ohio* 1939, 103 F. 2d 77, certiorari denied 60 S. Ct. 91, 308 U. S. 575, 84 L. Ed. 482.
- "Where the owner of stock certificates indorses them in blank and delivers them to a stranger, being induced by a forged telegram and letter purporting to be from the corporation's secretary directing the stranger to take up the stock for redemption, such owner cannot, recover from a bona fide purchaser of the certificates. *Jackson vs. Peerless Portland Cement Co.*, (1927) 238 Mich. 476, 213 N. W. 863. This case follows the holding in

Peckinpaugh vs. Noble, (1927) 238 Mich. 464, 213 N. W. 859, 52 A. L. R. 941.

- "In Chappuis vs. Spencer, (1928) 167 La. 527, 119 So. 697 (citing Act generally), it was held that a purchaser in good faith of a stock certificate from the holder under a proper indorsement obtained valid title thereto, even though the person transferring the stock was a pledgee."

- "A purchaser in good faith and for value of a stock certificate assigned by the owner in blank acquires good title as against the true owner, even if the transfer was without authority, and even if the certificate was obtained from the true owner's possession by illegal means, U. S. Gypsum Co. vs. Faroll, 1938, 296 111. App. 47, 15 N. E. 2d. 888.

- The corporation remains under the legal duty of recognizing any bona fide purchaser of the lost or stolen certificate who did not have notice." (of the theft or defect). Transfer of Stock, Christy and McLean (2d Ed.) sec. 278 citing cases.

- A purchaser who in good faith for value and without notice of any adverse interests, purchases a stock certificate bearing endorsement of registered owner endorsed in blank, acquires good title to the shares -of stock represented by the certificate. Chatos vs. Midco Oil Corp. Fed. (2d) 153 certiorari denied 329 U. S. 717.

Judgment reversed, complaint dismissed.

[1] Because if the shares belong to Mitsuis and are confiscated for the Government, in the liquidation of war reparations, they may be Hated on the credit side of the Japanese.

[2] As will be shown later in this opinion.

[3] In the. absence of certainty, probability is the best criterion.

[4] Stray bullets or shrapnel, even Japanese snipers, were terrifying contingencies.

[4a] Plaintiffs hold 18 certificates.

[5] Plaintiffs hold no less than 18 certificates.

[6] Santamaria vs. Hongkong, etc. (89 Phil., 780).

[7] "Es progresivo, porque la especulacion, que sin cesar busca esferas nuevas en donde poder desinvolverse, da tal movilidad a las necesidades del comercio, que de continuo reclama reglas juridicas nuevas, en armonia con sus progresos." (Blanco Constans, Estudios Elementales de Derecho Mercantil, p. 86.)

[8] The pages previous to those quoted from Fletcher's Cyclopedia by the majority, contain statements of contrary doctrines (also cases in addenda).

[9] Cf. C.J.S., Vol. 10.

[10] Where one of two innocent persons is to suffer by the act of a third party, the loss should fall on him who enabled such third Party to perform the act.

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