

PEDRO R. PALTING, PETITIONER, VS. SAN JOSE PETROLEUM INCORPORATED, RESPONDENT.*G.R. No. 14441. December 17, 1966*

Ponente: BARRERA, J.

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This is a petition for review of the order of August 29, 1958, later supplemented and amplified by another dated September 9, 1958, of the Securities and Exchange Commissioner denying the opposition to, and instead, granting the registration, and licensing the sale in the Philippines, of 5,000,000 shares of the capital stock of the respondent-appellee San Jose Petroleum, Inc. (hereafter referred to as SAN JOSE PETROLEUM), a corporation organized and existing in the Republic of Panama.

On September 7, 1956, JOSE PETROLEUM filed with the Philippine Securities and Exchange Commission a sworn registration statement, for the registration and licensing for sale in the Philippines Voting Trust Certificates representing 2,000,000 shares of its capital stock of a par value of \$0.35 a share, at P1.00 per share. It was alleged that the entire proceeds of the sale of said securities will be devoted or used exclusively to finance the operations of San Jose Oil Company, Inc. (a domestic mining corporation hereafter to be referred to as SAN JOSE OIL) which has 14 petroleum exploration concessions covering an area of a little less than 1,000,000 hectares, located in the provinces of Pangasinan, Tarlac, Nueva Ecija, La Union, Iloilo, Cotabato, Davao and Agusan. It was the express condition of the sale that every purchaser of the securities shall not receive a stock certificate, but a registered or bearer-voting-trust certificate from the voting trustees named therein James L. Buckley and Austin G.E. Taylor, the first residing in Connecticut, U.S.A., and the second in New York City. While this application for registration was pending consideration by the Securities and Exchange Commission, SAN JOSE PETROLEUM filed an amended Statement on June 20, 1958, for registration of the sale in the Philippines of its shares of capital stock, which was increased from 2,000,000 to 5,000,000, at a reduced offering price of from P1.00 to P0.70 per share. At this time the par value of the shares has also been reduced from \$.35 to \$.01 per share.[1]

Pedro R. Palting and others, allegedly prospective investors in the shares of SAN JOSE PETROLEUM, filed with the Securities and Exchange Commission an opposition to the registration and licensing of the securities on the grounds that (1) the tie-up between the issuer, SAN JOSE PETROLEUM, a Panamanian corporation, and SAN JOSE OIL, a domestic corporation, violates the Constitution of the Philippines, the Corporation Law and the Petroleum Act of 1949; (2) the issuer has not been licensed to transact business in the Philippines; (3) the sale of the share of the issuer is fraudulent, and works or tends to work a fraud upon Philippine purchasers; and (4) the issuer as an enterprise, as well as its business, is based upon unsound business principles. Answering the foregoing opposition if Palting, et al., the registrant SAN JOSE PETROLEUM claimed that it was a "business enterprise" enjoying parity rights under the Ordinance appended to the Constitution, which parity right, with respect to mineral resources in the Philippines, may be exercised, pursuant to the Laurel-Langley Agreement, only through the medium of a corporation organized under the laws of the Philippines. Thus, registrant which is allegedly qualified to exercise rights under the Parity Amendment, had to do so through the medium of a domestic

corporation, which is the SAN JOSE OIL. It refuted the contention that the Corporation Law was being violated, by alleging that Section V3 thereof applies only to foreign corporations doing business in the Philippines, and registrant was not doing business here. The mere fact that it was a holding company of SAN JOSE OIL and that registrant undertook the financing of and giving technical assistance to said corporation did not constitute transaction of business in the Philippines. Registrant also denied that the offering for sale in the Philippines of its shares of capital stock was fraudulent or would work or tend to work fraud on the investors. On August 29, 1953, and on September 9, 1958 the Securities and Exchange Commissioner issued the orders object of the present appeal.

The issues raised by the parties in this appeal are as follows:

- Whether or not petitioner Pedro R. Palting, as a "prospective investor" in respondent's securities, has personality to file the present petition for review of the order of the Securities and Exchange Commissioner;
 - Whether or not the issue raised herein is already moot and academic;
 - Whether or not the "tie-up" between the respondent SAN JOSE PETROLEUM, a foreign corporation, and SAN JOSE OIL COMPANY, INC., a domestic mining corporation, is violative of the Constitution, the Laurel-Langley Agreement, the Petroleum Act of 1949, and the Corporation Law; and
 - Whether or not the sale of respondent's securities is fraudulent, or would work or tend to work fraud to purchasers of such securities in the Philippines.
- In answer to the notice and order of the Securities and Exchange Commissioner, published in 2 newspapers of general circulation in the Philippines, for "any person who is opposed" to the petition for registration and licensing of respondent's securities, to file his opposition in 7 days, herein petitioner so filed an opposition. And, the Commissioner, having denied his opposition and instead, directed the registration of the securities to be offered for sale, oppositor Parting instituted the present proceeding for review of said order.
- Respondent raises the question of the personality of petitioner to bring this appeal, contending that as a mere "prospective investor", he is not an "aggrieved" or "interested" person who may properly maintain the suit. Citing a 1931 ruling of Utah State supreme court,[2] it is claimed that the phrase "party aggrieved" used in the Securities Act[3] and the Rules of Court[4] as having the right to appeal should refer only to issuers, dealers and salesmen of securities. It is true that in the cited case, it was ruled that the phrase "person aggrieved" is that party "aggrieved by the judgment or decree where it operates on his rights of property or bears directly upon his interest", that the word "aggrieved" refers to "a substantial grievance, a denial of some personal property right or the imposition upon a party of a burden or obligation." But a careful reading of the case would show that the appeal therein was dismissed because the court held that an order of registration was not final and therefore not appealable. The foregoing pronouncement relied upon by herein respondent was made in construing the provision regarding an order of revocation which the court held was the one appealable. And since the law provides that in revoking the registration of any security, only the issuer and every registered dealer of the security are notified, excluding any person or group of persons having no such interest in the securities, said court concluded that the phrase "interested person" refers only to issuers, dealers or salesmen of securities. We cannot consider the foregoing ruling by the Utah State Court as controlling on the issue in this case. Our Securities Act in Section 7(c) thereof, requires the publication and notice of the registration statement. Pursuant thereto, the Securities and Exchange Commissioner caused the publication of an order in part reading as follows:

"x x x Any person who is opposed to this petition must file his written opposition with this Commission within said period (2 weeks). x x x x."

In other words, as construed by the administrative office entrusted with the enforcement of the Securities Act, any

person (who may not be "aggrieved" or "interested" within the legal acceptance of the word) is allowed or permitted to file an opposition to the registration of securities for sale in the Philippines. And this is in, consonance with the generally accepted principle that Blue Sky Laws are enacted to protect investors and prospective purchasers and to prevent fraud and preclude the sale of securities which are in fact worthless or worth substantially less than the asking price. It is for this purpose that herein petitioner duly filed his opposition giving grounds therefor. Respondent SAN JOSE PETROLEUM was required to reply to the opposition. Subsequently both the petition and the opposition were set for hearing during which the petitioner was allowed to actively participate and did so by cross-examining the respondent's witnesses and filing his memorandum in support of his opposition. He therefore to all intents and purposes became a party to the proceedings. And under the New Rules of Court,[5] such a party can appeal from a final order, ruling or decision of the Securities and Exchange Commission. This new Rule eliminating the word "aggrieved" appearing in the old Rule, being procedural in nature,[6] and in view of the express provision of Rule 144 that the new rules made effective on January 1, 1964 shall govern not only cases brought after they took effect but all further proceedings in cases then pending, except to the extent that in the opinion of the Court their application would not be feasible or would work injustice, in which event the former procedure shall apply, we hold that the present appeal is properly within the appellate jurisdiction of this Court.

The order allowing the registration and sale of respondent's securities is clearly a final order that is appealable. The mere fact that such authority may be later suspended or revoked, depending on future developments, does not give it the character of an interlocutory or provisional ruling. And the fact that seven days after the publication of the order, the securities are deemed registered (Sec. 7, Com. Act 83, as amended), points to the finality of the order. Rights and obligations necessarily arise therefrom if not reviewed on appeal.

Our position on this procedural matter—that the order is appealable and the appeal taken here is proper—is strengthened by the intervention of the Solicitor General, under Section 23 of Rule 3 of the Rules of Court, as the constitutional issues herein presented affect the validity of Section 13 of the Corporation Law, which, according to the respondent, conflicts with the Parity Ordinance and the Laurel-Langley Agreement recognizing, it is claimed, its right to exploit our petroleum resources notwithstanding said provisions of the Corporation Law.

- Respondent likewise contends that since the order of Registration/Licensing dated September 9, 1958 took effect 30 days from September 3, 1958, and since no stay order has been issued by the Supreme Court, respondent's shares became registered and licensed under the law as of October 3, 1950. Consequently; it is asserted, the present appeal has become academic. Frankly we are unable to follow respondent's argumentation. First it claims that the order of August 29 and that of September 9, 1958 are not final orders and therefore are not appealable. Then when these orders, according to its theory, became final and were implemented, it argues that the orders can no longer be appealed as the question of registration and licensing became moot and academic.

But the fact is that because of the authority to sell, the securities are, in all probabilities, still being traded in the open market. Consequently the issue is much alive as to whether respondent's securities should continue to be the subject of sale. The purpose of the inquiry on this matter is not fully seived just because the securities had passed out of the hands of the issuer and its dealers. Obviously, so long as the securities are outstanding and are placed in the channels of trade and commerce, members of the investing public are entitled to have the question of the worth or legality of the securities: resolved one way or another.

But more fundamental than this consideration, we agree with the late Senator Glaro M. Recto, who appeared as amicus curiae in this case, that while apparently the immediate issue in this appeal is the right of respondent SAN JOSE PETROLEUM to dispose of and sell its securities to the Filipino public, the real and ultimate controversy here would actually call for the construction of the constitutional provisions governing the disposition, utilization,

exploitation and development of our natural resources. And certainly this is neither moot nor academic.

- We now come to the meat of the controversy—the "tie-up" between SAN JOSE OIL on the one hand, and the respondent SAN JOSE PETROLEUM and its associates, on the other. The relationship of these corporations involved or affected in this case is admitted and established through the papers and documents which are parts of the records: SAN JOSE OIL, is a domestic mining corporation, 90% of the outstanding capital stock of which is owned by respondent SAN JOSE PETROLEUM, a foreign (Panamanian) corporation, the majority interest of which is owned by OIL INVESTMENTS, Inc., another foreign (Panamanian) company. This latter corporation in turn is wholly (100%) owned by PANTEPEC OIL COMPANY, C.A., and PANCOASTAL PETROLEUM COMPANY, C.A., both organized and existing under the laws of Venezuela. As of September 30, 1956, there were 9,979 stockholders of PANCOASTAL PETROLEUM found in 49 American states and U.S. territories, holding 3,476,988 shares of stock; whereas, as of November 30, 1956, PANTEPEC OIL COMPANY was said to have 3,077,916 shares held by 12,373 stockholders scattered in 49 American states. In the two list of stockholders, there is no indication of the citizenship of these stockholders,[7] or of the total number of authorized stocks of each corporation, for the purpose of determining the corresponding percentage of these listed stockholders in relation to the respective capital stock of said corporation.

Petitioner, as well as the amicus curiae and the Solicitor General[8] contend that the relationship between herein respondent SAN JOSE PETROLEUM and its subsidiary, SAN JOSE OIL, violates the Petroleum Law of 1949, the Philippine Constitution, and Section 13 of the Corporation Law, which inhibits a mining corporation from acquiring an interest in another mining corporation. It is respondent's theory, on the other hand, that far from violating the Constitution, such relationship between the two corporations is in accordance with the Laurel-Langley Agreement which implemented the Ordinance Appended to the Constitution, and that Section 13 of the Corporation law is not applicable because respondent is not licensed to do business, as it is not doing business, in the Philippines.

Article XIII, Section 1 of the Philippine Constitution provides:

"SEC. 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease or concession at the time of the inauguration of this Government established under this Constitution, x x x x." (Italics supplied)

In the 1946 Ordinance Appended to the Constitution, this right (to utilize and exploit our natural resources) was extended to citizens of the United States, thus:

"Notwithstanding the provisions of Section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act numbered Seven Hundred and Thirty-Three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines, and the operation of public utilities shall, if open to any person, be open to citizens of the United States, and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon citizens of the Philippines or corporations or association owned or controlled by citizens of the Philippines. (Italics supplied)

In the 1954 Revised Trade Agreement concluded between the United States and the Philippines, also known as Laurel-Langley Agreement, embodied in Republic Act 1355, the following provisions appear:

"ARTICLE VI

"1. The disposition, exploitation, development and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces and sources of potential energy, and other natural resources of either Party, and the operation of public utilities, shall, if open to any person, be open to citizens of the other Party and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of such other Party in the same manner as to and under the same conditions imposed upon citizens or corporations or associations owned or controlled by citizens of the Party granting the right.

"2. The rights provided for in Paragraph 1 may be exercised, *xxx* in the case of citizens of the United States, with respect to natural resources in the public domain in the Philippines, only through the medium of a corporation organized under the laws of the Philippines and at least 60% of the capital stock of which is owned or controlled by citizens of the United States. *xxx*. "

"3. The United States of America reserves the rights of the several States of the United States to limit the extent to which citizens or corporations or associations owned or controlled by citizens of the Philippines may engage in the activities specified in this Article. The Republic of the Philippines reserves the power to deny any "of the rights specified in this Article to citizens" of the United States who are citizens of States "or to corporations or associations at least 60% of whose capital stock or capital is owned or controlled by citizens of States, which deny like rights to citizens of the Philippines, or to corporations or associations which are owned or controlled by citizens of the Philippines. *xxx*." (Italics supplied.)

Re-stated, the privilege to utilize, exploit, and develop the natural resources of this country was granted, by Article XIII of the Constitution, to Filipino citizens or to corporation or associations 60% of the capital of which is owned by such citizens. With the Parity Amendment to the Constitution, the same right was extended to citizens of the United States and business enterprises owned or controlled, directly or indirectly, by citizens of the United States.

There could be no serious doubt as to the meaning of the word "citizens" used in the aforementioned provisions of the Constitution. The right was granted to 2 types of persons: natural persons (Filipino or American citizens) and juridical persons (corporations 60% of which capital is owned by Filipinos and business enterprises owned or controlled directly or indirectly, by citizens of the United States). In American law, "citizen" has been defined as "one who, under the constitution and laws of the United States, has a right to vote for representatives in congress and other public officers, and who is qualified to fill offices in the gift of the people." (1 Bouvier's Law Dictionary, p. 490.) A citizen is—

"One of the sovereign people. A constituent member of the sovereignty, synonymous with the people." (Scott v. Sandford, 19 Ho. /U.S./ 404, 15 L. Ed. 691.)

"A member of the civil state entitled to all its privileges. (Cooley, Const. Lim. 77. See U.S. v. Cruikshank, 92 U.S. 542, 23 L. Ed. 588; Minor v. Happersett, 21 Wall. /U.S./ 162, 22 L. Ed. 627.)

These concepts clarified, is herein respondent SAN JOSE PETROLEUM an American business enterprise entitled to parity rights in the Philippines? The answer must be in the negative, for the following reasons:

Firstly,—It is not owned or controlled directly by citizens of the United States, because it is owned and controlled by a corporation, the OIL INVESTMENTS, another foreign (Panamanian) corporation.

Secondly—either can it be said that it is indirectly owned and controlled by American citizens through the OIL INVESTMENTS, for this latter corporation is in turn owned and controlled, not by citizens of the United States, but still by two foreign (Venezuelan) corporations, the PANTEPEC OIL COMPANY and PANCOASTAL PETROLEUM.

Thirdly—Although it is claimed that these two last corporations are owned and controlled respectively by 12,373 and 9,979 stockholders residing in the different American states, there is no showing in the certification furnished by respondent that the stockholders of PANCOASTAL or those of them holding the controlling stock, are citizens of the United States.

Fourthly—Granting that these individual stockholders are American citizens, it is yet necessary to establish that the different states of which they are citizens, allow Filipino citizens or corporations or associations owned or controlled by Filipino citizens, to engage in the exploitation, etc. of the natural resources of those states (see paragraph 3, Article VI of the Laurel-Langley Agreement, *supra*). Respondent has presented no proof to this effect.

Fifthly—But even if the requirements mentioned in the two immediately preceding paragraphs are satisfied, nevertheless to hold that the set-up disclosed in this case, with a long chain of intervening foreign corporations, comes within the purview of the Parity Amendment regarding business enterprises indirectly owned or controlled by citizens of the United States, is to unduly stretch and strain the language and intent of the law. For, to what extent must the word "indirectly" be carried? Must we trace the ownership or control of these various corporations ad infinitum for the purpose of determining whether the American ownership-control-requirement is satisfied? Add to this the admitted fact that the shares of stock of the PANTEPEC and PANCOASTAL which are allegedly owned or controlled directly by citizens of the United States, are traded in the stock exchange in New York, and you have a situation where it becomes a practical impossibility to determine at any given time, the citizenship of the controlling stock required by the law. In the circumstances, we have to hold that the respondent SAN JOSE PETROLEUM, as presently constituted, is not a business enterprise that is authorized to exercise the parity privileges under the Parity Ordinance, the Laurel-Langley Agreement and the Petroleum Law. Its tie-up with SAN JOSE OIL is, consequently, illegal.

What, then, would be the status of SAN JOSE OIL, about 90% of whose stock is owned by SAN JOSE PETROLEUM? This is a query which we need not resolve in this case as SAN JOSE OIL is not a party and it is not necessary to do so to dispose of the present controversy. But it is a matter that probably the Solicitor General would want to look into.

There is another issue which has been discussed extensively by the parties. This is whether or not an American mining corporation may lawfully "be in anywise interested in any other corporation (domestic or foreign) organized for the purpose of engaging in agriculture or in mining," in the Philippines or whether an American citizen owning stock in more than one corporation organized for the purpose of engaging in agriculture or in mining, may own more than 15% of the capital stock then outstanding and entitled to vote, of each of such corporations, in view of the express prohibition contained in Section 13 of the Philippine Corporation Law. The petitioner in this case contends that the provisions of the Corporation Law must be applied to American citizens and business enterprise otherwise entitled to exercise the parity privileges, because both the Laurel-Langley Agreement (Art. VI, para. 1) and the Petroleum Act of 1949 (Art. 31), specifically provide that the enjoyment by them of the same rights and obligations granted under the provisions of both laws shall be "in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines." The petitioner further contends that, as the enjoyment of the privilege of exploiting mineral resources in the Philippines by Filipino citizens or corporations owned or controlled by

citizens of the Philippines (which corporation must necessarily be organized under the Corporation Law), is made subject to the limitations provided in Section 13 of the Corporation Law, so necessarily the exercise of the parity rights by citizens of the United States or business enterprise owned or controlled, directly or indirectly, by citizens of the United States, must equally be subject to the same limitations contained in the aforesaid Section 13 of the Corporation Law.

In view of the conclusions we have already arrived at, we deem it not indispensable for us to pass upon this legal question, especially taking into account the statement of the respondent (SAN JOSE PETROLEUM) that it is essentially a holding company, and as found by the Securities and Exchange Commissioner, its principal activity is limited to the financing and giving technical assistance to SAN JOSE OIL.

- Respondent SAN JOSE PETROLEUM, whose shares of stock were allowed registration for sale in the Philippines, was incorporated under the laws of Panama in April, 1956, with an authorized capital stock of \$500,000.00, American currency, divided into 50,000,000 shares at par value of \$0.01 per share. By virtue of a 3-party Agreement of June 14, 1956, respondent was supposed to have received from OIL INVESTMENTS 8,000,000 shares of the capital stock of SAN JOSE OIL (at par value of \$0.01 per share), plus a note for \$250,000.00 due in 6 months, for which respondent issued in favor of OIL INVESTMENTS 16,000,000 shares of its capital stock, at \$0.01 per share or with a value of \$160,000.00, plus a note for \$230,297.97 maturing in 2 years at 6% per annum interest,[9] and the assumption of payment of the unpaid price of 7,500,000 (of the 8,000,000) shares of SAN JOSE OIL.

On June 27, 1956, the capitalization of SAN JOSE PETROLEUM was increased from \$500,000.00 to \$17,500,000.00 by increasing the par value of the same 50,000,000 shares, from \$0.01 to \$0.35. Without any additional consideration, the 16,000,000 shares of \$0.01 previously issued to OIL INVESTMENTS with a total value of \$160,000.00 were changed with 16,000,000 shares of the recapitalized stock, at \$0.35 per share, or valued at \$5,600,000.00. And, to make it appear that cash was received for these re-issued 16,000,000 shares, the board of directors of respondent corporation placed a valuation of \$5,900,000.00 on the 8,000,000 shares of SAN JOSE OIL (still having par value of \$0.10 per share) which were received from OIL INVESTMENTS as part-consideration for the 16,000,000 shares at \$0.01 per share.

In the Balance Sheet of respondent, dated July 12, 1956, from the \$5,900,000.00, supposedly the value of the 8,000,000 shares of SAN JOSE OIL, the sum of \$5,100,000.00 was deducted, corresponding to the alleged difference between the "value" of the said shares and the subscription price thereof which is \$300,000.00 (at \$0.10 per share). From this \$800,000.00, the subscription price of the SAN JOSE OIL shares, the amount of \$319,702.03 was deducted, as allegedly unpaid subscription price, thereby giving a difference of \$480,297.97, which was placed as the amount allegedly paid in on the subscription price of the 3,000,000 SAN JOSE OIL-shares. Then, by adding thereto the note receivable from OIL INVESTMENTS, for \$250,000.00 (part-consideration for the 16,000,000 SAN JOSE PETROLEUM-shares) and the sum of \$6,516.21, as deferred expenses, SAN JOSE PETROLEUM appeared to have assets in the sum of \$736,814.18.

These figures are highly questionable. Take the item \$5,900,000.00 the valuation placed on the 3,000,000 shares of SAN JOSE OIL. There appears no basis for such valuation other than belief by the board of directors of respondent that "should San Jose Oil Company be granted the bulk of the concessions applied for upon reasonable terms, that it would have a reasonable value of approximately \$10,000,000." [10] Then, of this amount, the subscription price of \$800,000.00 was deducted and called it "difference between the (above) valuation and the subscription price for the 8,000,000 shares." Of this \$800,000.00 subscription price, they deducted the sum of \$480,297.97 and the difference was placed as the unpaid portion of the subscription price. In other words, it was made to appear that they paid in \$480,297.97 for the 8,000,000 shares of SAN JOSE OIL. This amount

(\$480,297.97) was supposedly that \$250,000.00 paid by OIL INVESTMENTS for 7,500,000 shares of SAN JOSE OIL, embodied in the June 14-Agreement, and a sum of \$230,297.97 the amount expended or advanced by OIL INVESTMENTS to SAN JOSE OIL. And yet, there is still an item among respondent's liabilities, for \$230,297.97 appearing as note payable to Oil Investments, maturing in 2 years at 6% interest per annum.[11] As far as it appears from the records, for the 16,000,000 shares at \$0.35 per share issued to OIL INVESTMENTS, respondent SAN JOSE PETROLEUM received from OIL INVESTMENTS only the note for \$250,000.00 plus the 8,000,000 shares of SAN JOSE OIL, with par value of \$0.10 per share or a total of \$1,050,000.00—the only assets of the corporation. In other words, respondent actually lost \$4,550,000.00, which was received by OIL INVESTMENTS.

But this is not all. Some of the provisions of the Articles of Incorporation of respondent SAN JOSE PETROLEUM are noteworthy; viz:

- (1) the directors of the Company need not be share-holders;
- (2) that in the meetings of the board of directors, any director may be represented and may vote through a proxy who also need not be a director or stockholder; and
- (3) that no contract or transaction between the corporation and any other association or partnership will be affected, except in case of fraud, by the fact that any of the directors or officers of the corporation is interested in, or is a director or officer of, such other association or partnership, and that no such contract or transaction of the corporation with any other person or persons, firm, association or partnership shall be affected by the fact that any director or officer of the corporation is a party to or has an interest in, such contract or transaction, or has in anyway connection with such other person or persons, firm, association or partnership; and finally, that all and any of the persons who may become director or officer of the corporation shall be relieved from all responsibility for which they may otherwise be liable by reason of any contract entered into with the corporation, whether it be for his benefit or for the benefit of any other person, firm, association or partnership in which he may be interested.

These provisions are in direct opposition to our corporation law and corporate practices in this country. These provisions alone would outlaw any corporation locally organized or doing business in this jurisdiction. Consider the unique and unusual provision that no contract or transaction between the company and any other association or corporation shall be affected except in case of fraud, by the fact that any of the directors or officers of the company may be interested in or are directors or officers of such other association or corporation; and that none of such contracts or transactions of this company with any person or persons, firms, associations or corporations shall be affected by the fact that any director or officer of this company is a party to or has an interest in such contract or transaction or has any connection with such person or persons, firms, associations or corporations; and that any and all persons who may become directors or officers of this company are hereby relieved of all responsibility which they would otherwise incur by reason of any contract entered into which this company either for their own benefit, or for the benefit of any person, firm, association or corporation in which they may be interested.

The impact of these provisions upon the traditional fiduciary relationship between the directors and the stockholders of a corporation is too obvious to escape notice by those who are called upon to protect the interest of investors. The directors and officers of the company can do anything, short of actual fraud, with the affairs of the corporation even to benefit themselves directly or other persons or entities in which they are interested, and with immunity because of the advance condonation or relief from responsibility by reason of such acts. This and the other provision which authorizes the election of non-stockholders as directors, completely disassociate the

stockholders from the government and management of the business in which they have invested.

To cap it all on April 17, 1957, admittedly to assure continuity of the management and stability of SAN JOSE PETROLEUM, OIL INVESTMENTS, as holder of the only subscribed stock of the former corporation and acting "on behalf of All future holders of voting trust certificates", entered into a voting trust agreement^[12] with James L. Buckley and Austin E. Taylor, whereby said Trustees were given authority to vote the shares represented by the outstanding trust certificates (including those that may henceforth be issued) in the following manner:

(a) At all elections of directors, the Trustees designate a suitable proxy or proxies to vote for the election of directors designated by the Trustees in their own discretion, having in mind the best interests of the holders of the voting trust certificates, it being understood that any and all of the Trustees shall be eligible for election as directors;

(b) On any proposition for removal of a director, the Trustees shall designate a suitable proxy or proxies to vote for or against such proposition as the Trustees in their own discretion may determine, having in mind the best interest of the holders of the voting trust certificates:

(c) With respect to all other matters arising at any meeting of stockholders, the Trustees will instruct such proxy or proxies attending such meetings to vote the shares of stock held by the Trustees in accordance with the written instructions of each holder of voting trust certificates. (*Italics supplied.*)

It was also therein provided that the said Agreement shall be binding upon the parties thereto, their successors, and upon all holders of voting trust certificates.

And these are the voting trust certificates that are offered to investors at authorized by Security and Exchange Commissioner. It can not be doubted that the sale of respondent's securities would, to say the least, work or tend to work fraud to Philippine investors.

FOR ALL THE FOREGOING CONSIDERATIONS, the motion of respondent to dismiss this appeal, is denied, and the orders of the Securities and Exchange Commissioner, allowing the registration of Respondent's securities and licensing their sale in the Philippines are hereby set aside. The case is remanded to the Securities and Exchange Commission for appropriate action in consonance with this decision. With costs. Let a copy of this decision be furnished the Solicitor General for whatever action he may deem advisable to take in the premises.

SO ORDERED.

Concepcion, C.J, Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

[1] At a special stockholders' meeting held on January 27, 1958, the Articles of Incorporation of SAN JOSE PETROLEUM was amended so as to reduce the authorized capital from \$17,500,000 to \$500,000.00 divided into 50,000,000 shares at 1¢ per share.

[2] Ogden Chamber of Commerce, et al., v. State Securities Commission, 78 Utah 393, 3 P (2nd) 267.

[3] "SEC. 35. Court review of orders. - (a) Any person aggrieved by an order issued by the Commission in a proceeding under this Act to which such person is a party or who may be affected thereby may obtain a review of such order in the Supreme Court of the Philippines by filing in such court, within thirty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part, x x x." (Com. Act 83).

[4] "SECTION 1. Petition for review. — Within thirty (30) days-from notice of an order or decision issued by the

Public Service Commission or the Securities and Exchange Commission, any party aggrieved thereby may file, in the Supreme Court, a written petition for the review of such order or decision." (Rule 43, of the old Rules of Court).

[5] "Section 1. How appeal taken. Any party may appeal from a final order, ruling or decision of the Securities and Exchange Commission,—by filing with said bod(y)ies a notice of appeal and with the Supreme Court twelve (12) printed or mimeographed copies of a petition for certiorari or review of such order, ruling or decision, as the corresponding statute may provide." (Rule 43, New Rules of Court.)

[6] *Casambar v. Sino Cruz, et al.*, L-6882, Dec. 29, 1955.

[7] Later the Acting Assistant Secretary of Pantepec, who is a director of the San Jose Petroleum, certified, according to the best of his belief and knowledge that more than 60% of the stockholders are citizens of the United States and more than 60% of the stock is held by citizens of the United States.

[8] The Republic of the Philippines was allowed by this Court to intervene in this proceeding, in view of the allegation that the Corporation Law and the Petroleum Act of 1949 have been violated.

[9] Under the June 14, 1956 Agreement, this amount corresponded to the expenditures advanced by Oil Investments, in connection with the SAN JOSE OIL venture in the Philippines.

[10] Board Meeting of June 27, 1956.

[11] In the June 14, 1956 Agreement, it was stated that respondent "assumes the obligation of the Philippine company (SAN JOSE OIL) to repay the advances made to it by Oil Investments, including the total amount of any direct expenditures made by Oil Investments in connection with the San Jose venture in the Philippines. The amount of said obligation shall be calculated as of the date hereof, and shall be represented by a note to become payable in U.S. dollars two (2) years, from "the date of this agreement, and to bear interest at six percent (6%) per annum."

[(12)] The voting trust agreement will expire April 7, 1967.

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