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with the appellant that the trial court committed an error in sentencing him to undergo subsidiary imprisonment in case of insolvency.

WHEREFORE, the judgment of conviction appealed from is AFFIRMED. The penalty imposed should, however, be *life imprisonment* instead of *reclusion perpetua* and it is further ordered that there shall be no subsidiary imprisonment in case of insolvency. Costs against the appellant.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and *Romero, JJ.,* concur.

SECOND DIVISION

[G.R. No. 95696. March 3, 1992]

ALFONSO S. TAN, *petitioner, vs.* **SECURITIES AND EXCHANGE COMMISSION, VISAYAN EDUCATIONAL SUPPLY CORP., TAN SU CHING, ALFREDO B. UY, ANGEL S. TAN and PATRICIA AGUILAR,** *respondents.*

SYLLABUS

1. STATUTORY CONSTRUCTION; PROCEDURAL STATUTES CONSTRUED LIBERALLY; TERM "MAY" IN ADJECTIVE RULES CONSTRUED PERMISSIVE. — Contrary to the understanding of the petitioner with respect to the use of the word "may", in the case of *Shauf v. Court of Appeals*, (191 SCRA 713, 27 November 1990), this Court held, that "Remedial law statutes are to be construed liberally." The term 'may' as used in adjective rules, is only permissive and not mandatory.

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2. MERCANTILE LAW; CORPORATIONS; STOCK CERTIFICATE; DELIVERY OF CERTIFICATE NOT ESSENTIAL TO EFFECT TRANSFER.— Following the doctrine enunciated in the case of *Tuazon v. La Provisora Filipina*, where this Court held, that: "But delivery is not essential where it appears that the persons sought to be held as stockholders are officers of the corporation, and have the custody of the stock book . . ." (67 Phil. 36).

3. ID.; ID.; ID.; DEFINED. — A certificate of stock is the paper representative or tangible evidence of the stock itself and of the various interests therein. The certificate is not stock in the corporation but is merely evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby, but is not in law the equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but it is not essential to the existence of a share in stock or the creation of the relation of shareholder to the corporation. (13 Am. Jur. 2d, 769)

4. ID.; ID.; ID.; NOT A NEGOTIABLE INSTRUMENT. — In Philippine jurisprudence, a certificate of stock is not a negotiable instrument. "Although it is sometime regarded as quasi-negotiable, in the sense that it may be transferred by endorsement, coupled with delivery, it is well-settled that it is non-negotiable, because the holder thereof takes it without prejudice to such rights or defenses as the registered owner/s or transferor's creditor may have under the law, except insofar as such rights or defenses are subject to the limitations imposed by the principles governing estoppel."

5. ID.; ID.; BY-LAWS WHICH PROHIBITS TRANSFER OF STOCK WITHOUT APPROVAL OF ALL STOCKHOLDERS OR OF THE PRESIDENT OR BOARD OF DIRECTORS, ILLEGAL. — A by-law which prohibits a transfer of stock without the consent or approval of all the stockholders or of the president or board of directors is illegal as constituting undue limitation on the right of ownership and in restraint of trade.

6. ID.; SECURITIES AND EXCHANGE COMMISSION; NOT EMPOWERED TO AWARD DAMAGES. — With regard to the damages being claimed by the petitioner, the respondent Commission is not empowered to award such, other than the

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imposition of fine and imprisonment under Section 56 of the Corporation Code of the Philippines, as amended.

APPEARANCES OF COUNSEL

Reyes, Salazar & Associates for petitioner.

Ramirez, Corro & Associates for private respondents.

D E C I S I O N

PARAS, *J.*:

Petitioner filed a petition for *certiorari* against the public respondent Securities and Exchange Commission and its co-respondents, after the former in an *en banc* Order, overturned with modification, the decision of its Cebu SEC Extension hearing officer, Felix Chan, in SEC Case No. C-0096, dated May 23, 1989, on October 10, 1990, under SEC-AC No. 263. (*Rollo*, pp. 3 and 4)

Sought to be reversed by petitioner, is the ruling of the Commission, specifically declaring, that:

"1. Confirming the validity of the resolution of the board of directors of the Visayan Educational Supply Corporation so far as it cancelled Stock Certificate No. 2 and split the same into Stock Certificates No. 6 (for Angel S. Tan) and No. 8 (for Alfonso S. Tan);

"2. Invalidating the sale of shares represented under Stock Certificate No. 8 between Alfonso S. Tan and the respondent corporation which converted the said stocks into treasury shares, as well as those transactions involved in the withdrawal of the stockholders from the respondent corporation for being contrary to law, but ordering that neither party may recover pursuant to Article 1412 (1) Civil Code of the Philippines; and

"3. Revoking the Order of Hearing Officer Felix Chan to reinstate complainant's original 400 shares of stock in the books of the corporation in view of the validity of the sale of 50 shares represented under stock certificate No. 6; and the nullity of the sale of 350 shares

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represented under stock certificate No. 8, pursuant to the '*in pari delicto*' doctrine aforecited." (*Rollo*, p. 4)

The antecedent facts of the case are as follows:

Respondent corporation was registered on October 1, 1979. As incorporator, petitioner had four hundred (400) shares of the capital stock standing in his name at the par value of ₱100.00 per share, evidenced by Certificate of Stock No. 2. He was elected as President and subsequently reelected, holding the position as such until 1982 but remained in the Board of Directors until April 19, 1983 as director. (*Rollo*, p. 5)

On January 31, 1981, while petitioner was still the president of the respondent corporation, two other incorporators, namely, Antonia Y. Young and Teresita Y. Ong, assigned to the corporation their shares, represented by certificates of stock No. 4 and 5 after which, they were paid the corresponding 40% corporate stock-in-trade. (*Rollo*, p. 43)

Petitioner's certificate of stock No. 2 was cancelled by the corporate secretary and respondent Patricia Aguilar by virtue of Resolution No. 1981 (b), which was passed and approved while petitioner was still a member of the Board of Directors of the respondent corporation. (*Rollo*, p. 6)

Due to the withdrawal of the aforesaid incorporators and in order to complete the membership of the five (5) directors of the board, petitioner sold fifty (50) shares out of his 400 shares of capital stock to his brother Angel S. Tan. Another incorporator, Alfredo B. Uy, also sold fifty (50) of his 400 shares of capital stock to Teodora S. Tan and both new stockholders attended the special meeting presided over by petitioner. In this meeting, Angel Tan was elected director and on March 27, 1981, the minutes of said meeting was filed with the SEC. These facts stand unchallenged. (*Rollo*, p. 43)

Accordingly, as a result of the sale by petitioner of his fifty (50) shares of stock to Angel S. Tan on April 16,1981, Certificate of Stock No. 2 was cancelled and the corresponding Certificates Nos. 6 and 8 were issued, signed by the newly elected fifth member of the Board, Angel S. Tan as Vice-President, upon

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instruction of Alfonso S. Tan who was then the president of the Corporation. (Memorandum of the Private Respondent, p. 15)

With the cancellation of Certificate of Stock No. 2 and the subsequent issuance of Stock Certificate No. 6 in the name of Angel S. Tan and for the remaining 350 shares, Stock Certificate No. 8 was issued in the name of petitioner Alfonso S. Tan, Mr. Buzon, submitted an Affidavit (Exh. 29), alleging that:

"9. That in view of his having taken 33 1/3 interest, I was personally requested by Mr. Tan Su Ching to request Mr. Alfonso Tan to make proper endorsement in the cancelled Certificate of Stock No. 2 and Certificate No. 8, but he did not endorse, instead he kept the cancelled (1981) Certificate of Stock No. 2 and returned only to me Certificate of Stock No. 8, which I delivered to Ten Su Ching.

"10. That the cancellation of his stock (Stock No. 2) was known by him in 1981; that it was Stock No. 8, that was delivered in March 1983 for his endorsement and cancellation." (*Ibid*, p. 18)

From the same Affidavit, it was alleged that Atty. Ramirez prepared a Memorandum of Agreement with respect to the transaction of the fifty (50) shares of stock part of the Stock Certificate No. 2 of petitioner, which was submitted to its former owner, Alfonso Tan, but which he purposely did not return. (*Ibid*., p. 18)

On January 29, 1983, during the annual meeting of the corporation, respondent Tan Su Ching was elected as President while petitioner was elected as Vice-President. He, however, did not sign the minutes of said meeting which was submitted to the SEC on March 30, 1983. (*Rollo*, p. 43)

When petitioner was dislodged from his position as president, he withdrew from the corporation on February 27, 1983, on condition that he be paid with stocks-in-trade equivalent to 33.3% in lieu of the stock value of his shares in the amount of ₱35,000.00. After the withdrawal of the stocks, the board of the respondent corporation held a meeting on April 19, 1983, effecting the cancellation of Stock Certificate Nos. 2 and 8 (Exh. 278-C) in the corporate stock and transfer book 1 (Exh. 1-1-A) and submitted the minutes thereof to the SEC on May 18,1983. (*Rollo*, p. 44)

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Five (5) years and nine (9) months after the transfer of 50 shares to Angel S. Tan, brother of petitioner Alfonso S. Tan, and three (3) years and seven (7) months after effecting the transfer of Stock Certificates Nos. 2 and 8 from the original owner (Alfonso S. Tan) in the stock and transfer book of the corporation, the latter filed the case before the Cebu SEC Extension Office under SEC Case No. C-0096, more specifically on December 3, 1983, questioning for the first time, the cancellation of his aforesaid Stock Certificates Nos. 2 and 8. (*Rollo*, p. 44)

The bone of contention raised by the petitioner is that the deprivation of his shares despite the non-endorsement or surrender of his Stock Certificate Nos. 2 and 8, was without due process contrary to the provision of Section 63 of the Corporation Code (*Batas Pambansa Blg*. 68), which requires that:

". . . No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in 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 or certificates and the number of shares transferred."

After hearing, the Cebu SEC Extension Office Hearing Officer, Felix Chan ruled, that:

"a) The cancellation of the complainant's shares of stock with the Visayan Educational Supply Corporation is null and void;

"b) The earlier cancellation of stock certificate No. 2 and the subsequent issuance of stock certificate No. 8 is also hereby declared null and void;

"c) The Secretary of the corporation is hereby ordered to make the necessary corrections in the books of the corporation reinstating thereto complainant's original 400 shares of stock." (*Rollo*, pp. 39-40)

Private respondents in the original complaint went to the Securities and Exchange Commission on appeal, and on October 10, 1990, the Commission *en banc* unanimously overturned the Decision of the Hearing Officer under SEC-AC No. 263. (Order, *Rollo*, pp. 42-49)

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The petition for *certiorari* centered on three major issues, with other issues considered as subordinate to them, to wit:

1. The meaning of shares of stock are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. (*Rollo*, p. 10)

The case of *Nava vs. Peers Marketing Corporation* (74 SCRA 65) was cited by petitioner making the reference to commentaries taken from 18 C.J.S. 928-930, that the transfer by delivery to the transferee of the certificate should be properly indorsed, and that "There should be compliance with the mode of transfer prescribed by law." Using Section 35, now Section 63 of the Corporation Code, the provision of the law, reads:

"SEC. 63. Certificate of stock and transfer of shares. — The capital stock and stock corporations shall be divided into shares for which certificates signed by the president and vice president, countersigned by the secretary or assistant secretary, 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 or certificates 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 recorded in 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 or certificates and the number of shares transferred.

"No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation."

There is no doubt that there was delivery of Stock Certificate No. 2 made by the petitioner to the Corporation before its replacement with Stock Certificate No. 6 for fifty (50) shares to Angel S. Tan and Stock Certificate No. 8 for 350 shares to the petitioner, on March 16, 1981. The problem arose when petitioner was given back Stock Certificate No. 2 for him to endorse and he deliberately withheld it for reasons of his own. That the Stock Certificate in question was returned to him for

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this purpose was attested to by Mr. Buzon in his Affidavit, the pertinent portion of which has been earlier quoted.

The proof that Stock Certificate No. 2 was split into two (2) consisting of Stock Certificate No. 6 for fifty (50) shares and Stock Certificate No. 8 for 350 shares, is the fact that petitioner surrendered the latter stock (No. 8) in lieu of ₱2 million pesos[1] worth of stocks, which the board passed in a resolution in its meeting on April 19, 1983. Thus, on February 27, 1983, petitioner indicated he was withdrawing from the corporation on condition that he be paid with stock-in-trade corresponding to 33.3% (Exh. 294), which had only a par value of ₱35,000.00. In this same meeting, the transfer of Stock Certificates Nos. 2 and 8 from the original owner, Alfonso S. Tan was ordered to be recorded in the corporate stock and transfer book (Exh. "I-1-A") thereafter submitting the minutes of said meeting to the SEC on May 18, 1983 (Exhs. 12 and I). (Order, *Rollo*, p. 44)

It is also doubtless that Stock Certificate No. 8 was exchanged by petitioner for stocks-in-trade since he was operating his own enterprise engaged in the same business, otherwise, why would a businessman be interested in acquiring ₱2,000,000.00 worth of goods which could possibly at that time, fill up a warehouse? In fact, he even padlocked the warehouse of the respondent corporation, after withdrawing the thirty- three and one-third (33 1/3%) percent stocks. Accordingly, the Memorandum of Agreement prepared by the respondents' counsel, Atty. Ramirez evidencing the transaction, was also presented to petitioner for his signature, however, this document was never returned by him to the corporate officer for the signature of the other officers concerned. (*Rollo*, p. 28)

At the time the warehouse was padlocked by the petitioner, the remaining stock inventory was valued at ₱7,454,189.05 of which 66 2/3 percent thereof belonged to the private respondents. (*Ibid.*, p. 28)

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[1] The increase in value of the original ₱35,000 worth of shares to ₱2,000,000 is not surprising for the firm had prospered to a worth of about ₱8,000,000 and because of the moral ascendancy of elder relatives who after all had managed to steer the company's worth to millions.

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It was very obvious that petitioner devised the scheme of not returning the cancelled Stock Certificate No. 2 which was returned to him for his endorsement, to skim off the largesse of the corporation as shown by the trading of his Stock Certificate No. 8 for goods of the corporation valued at ₱2 million when the par value of the same was only worth ₱35,000.00. (*Ibid*., p.47) He also used this scheme to renege on his indebtedness to respondent Tan Su Ching in the amount of ₱1 million. (Decision, p. 6)

It is not remote that if petitioner could have cashed in on Stock Certificate No. 2 with the remainder of the goods that he padlocked, he would have done so, until the respondent corporation was bled entirely.

Along this line, petitioner put up the argument that he was responsible for the growth of the corporation by alleging that during his incumbency, the corporation grew, prospered and flourished in the course of business as evidenced by its audited financial statements, and grossed the following incomes from: 1980 — ₱8,658,414.10, 1981 — ₱8,039,816.67, 1982 — ₱7,306,168.67, 1983 — ₱5,874,453.55, 1984 — ₱3,911,667.76. (*Ibid*., *Rollo*, p. 24)

Moreover, petitioner asserted that he was ousted from the corporation by reason of his efforts to establish fiscal controls and to demand an accounting of corporate funds which were accordingly being transferred and diverted to certain of private respondents' personal accounts which were allegedly misapplied, misappropriated and converted to their own personal use and benefit. (*Ibid*., p. 125)

2. Petitioner further claims that "(T)he cancellation and transfer of petitioner's shares and Certificate of Stock No. 2 (Exh. A) as well as the issuance and cancellation of Certificate of Stock No. 8 (Exh. M) was patently and palpably unlawful, null and void, invalid and fraudulent." (*Rollo*, p. 9) And, that Section 63 of the Corporation Code of the Philippines is "mandatory in nature", meaning that without the actual delivery and endorsement of the certificate in question, there can be no transfer, or that such transfer is null and void. (*Rollo*, p. 10)

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These arguments are all motivated by self-interest, using foreign authorities that are slanted in his favor and even misquoting local authorities to prop up his erroneous posture and all these attempts are intended to stifle justice, truth and equity.

Contrary to the understanding of the petitioner with respect to the use of the word "may", in the case of *Shauf v. Court of Appeals*, (191 SCRA 713, 27 November 1990), this Court held, that "Remedial law statutes are to be construed liberally." The term 'may' as used in adjective rules, is only permissive and not mandatory. In several earlier cases, the usage of the word "may" was described as follows:

"*The word 'may' is an auxiliary verb showing among others, opportunity or possibility. Under ordinary circumstances, the phrase 'may be' implies the possible existence of something*. In this case, the 'something' is a law governing sectoral representation. The phrase in question should, therefore, be understood to mean as prescribed by such law that governs the matter at the time . . . *The phrase does not and cannot, by its very wording, restrict itself to the uncertainty of future legislation*." (*Legaspi v. Estrella*, 189 SCRA 58,24 Aug. 1990, *En Banc*)

Years before the above rulings concerning the interpretation of the word "may", this Court held in *Chua v. Samahang Magsasaka*, that "the word 'may' indicates that the transfer may be effected in a manner different from that provided for in the law." (62 Phil. 472)

Moreover, it is safe to infer from the facts deduced in the instant case that, there was already delivery of the unendorsed Stock Certificate No. 2, which is essential to the issuance of Stock Certificate Nos. 6 and 8 to Angel S. Tan and petitioner Alfonso S. Tan, respectively. What led to the problem was the return of the cancelled certificate (No. 2) to Alfonso S. Tan for his endorsement and his deliberate non-endorsement.

For all intents and purposes, however, since this was already cancelled which cancellation was also reported to the respondent Commission, there was no necessity for the same certificate to be endorsed by the petitioner. All the acts required for the transferee to exercise its rights over the acquired stocks were

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attendant and even the corporation was protected from other parties, considering that said transfer was earlier recorded or registered in the corporate stock and transfer book.

Following the doctrine enunciated in the case of T*uazon v. La Provisora Filipina*, where this Court held, that:

> "But delivery is not essential where it appears that the persons sought to be held as stockholders are officers of the corporation, and have the custody of the stock book . . ." (67 Phil. 36).

Furthermore, there is a necessity to delineate the function of the stock itself from the actual delivery or endorsement of the certificate of stock itself as is the question in the instant case. A certificate of stock is not necessary to render one a stockholder in a corporation.

Nevertheless, a certificate of stock is the paper representative or tangible evidence of the stock itself and of the various interests therein. The certificate is not stock in the corporation but is merely evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby, but is not in law the equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but it is not essential to the existence of a share in stock or the creation of the relation of shareholder to the corporation. (13 Am. Jur. 2d, 769)

Under the instant case, the fact of the matter is, the new holder, Angel S. Tan has already exercised his rights and prerogatives as stockholder and was even elected as member of the board of directors in the respondent corporation with the full knowledge and acquiescence of petitioner. Due to the transfer of fifty (50) shares, Angel S. Tan was clothed with rights and responsibilities in the board of the respondent corporation when he was elected as officer thereof.

Besides, in Philippine jurisprudence, a certificate of stock is not a negotiable instrument. "Although it is sometime regarded as quasi-negotiable, in the sense that it may be transferred by endorsement, coupled with delivery, it is well-settled that it is non-negotiable, because the holder thereof takes it without

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prejudice to such rights or defenses as the registered owner/s or transferor's creditor may have under the law, except insofar as such rights or defenses are subject to the limitations imposed by the principles governing estoppel." (*De los Santos vs. McGrath*, 96 Phil. 577)

To follow the argument put up by petitioner which was upheld by the Cebu SEC Extension Office Hearing Officer, Felix Chan, that the cancellation of Stock Certificate Nos. 2 and 8 was null and void for lack of delivery of the cancelled "mother" Certificate No. 2 whose endorsement was deliberately withheld by petitioner, is to prescribe certain restrictions on the transfer of stock in violation of the corporation law itself as the only law governing transfer of stocks. While Section 47(a) grants to stock corporations the authority to determine in the by-laws "the manner of issuing certificates" of shares of stock, however, the *power to regulate is not the power to prohibit, or to impose unreasonable restrictions of the right of stockholders to transfer their shares*. (Italics supplied)

In *Fleisher v. Botica Nolasco Co., Inc*., it was held that a by- law which prohibits a transfer of stock without the consent or approval of all the stockholders or of the president or board of directors is illegal as constituting undue limitation on the right of ownership and in restraint of trade. (47 Phil. 583)

3. Attempt to mislead — Petitioner should be held guilty of manipulating the provision of Section 63 of the Corporation Law for contumaciously withholding the endorsement of Stock Certificate No. 2 which was returned to him for the purpose, wasting time and resources of the Court, even after he had received the stocks-in-trade equivalent to ₱2,000,000.00 in lieu of his 350 shares of stock with a par value of ₱35,000.00 only, and thereafter withdrawing from the respondent corporation.

Not content with the fantastic return of his investment in the corporation and bent on sucking out the corporate resources by filing the instant case for damages and seeking the nullity of the cancellation of his Certificate of Stock Nos. 2 and 8, petitioner even attempted to mislead the Court by erroneously quoting the ruling of the Court in *C.N. Hedges v. Lezama*, which has

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some parallelism with the instant case as the parties involved therein were also close relatives as in this case.

The quoted portion appearing on p. 11 of the petition, was cut short in such a way that relevant portions thereof were purposely left out in order to impress upon the Court that the unendorsed and uncancelled stock certificate No. 17, was unconditionally declared null and void, flagrantly omitting the justifying circumstances regarding its acquisition and the reason given by the Court why it was declared so. The history of certificate No. 17 is quoted below, showing the reason why the certificate in question was considered null and void, as follows:

"(P)etitioner Hodges did not cause to be entered in the books of the corporation as he had his stock certificate No. 17 which, therefore, had not been endorsed by him to anybody or cancelled and which he considered still subsisting. *On September 18, 1958, petitioner Hodges again sold his aforesaid 2,230 shares of stock covered by his stock certificate No. 17 on installment basis to his co-petitioner Ricardo Gurrea, but continued keeping the stock certificate in his possession without endorsing it to Gurrea or causing the sale to be entered in the books of the corporation, believing that said shares of stock were his until fully paid for. Up to the present, petitioner Hodges has in his possession and under his control his aforesaid stock certificate No. 17, unendorsed and uncancelled (Exhs. A & A-1), a fact known to the respondents*." (14 SCRA p. 1032)

The pertinent misquoted portion follows:

"Before the stockholders' meeting of the La Paz Ice Plant & Cold Storage Co., Inc., — hereinafter referred to as the Corporation — which was scheduled to be held on August 6, 1959, petitioners C.N. Hodges and Ricardo Gurrea filed with the CFI Iloilo, a petition — docketed as Civil Case NO. 5261 of said court — for a writ of prohibition with preliminary injunction, to restrain respondents Jose Manuel Lezama and his wife, Paquita B. Lezama, as president and secretary, respectively, of said corporation from following their brother-in-law and brother, respectively, respondent Benjamin L. Borja, to vote in said meeting on the aforementioned 2,230 shares of stock. Upon the filing of said petition and of a bond in the sum of ₱ 1,000, the writ of preliminary injunction prayed for was issued. After due trial, or on March 28, 1960, (start of petitioner's quotation)

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"The court of origin rendered a decision holding that, in view of the provision in stock certificate No. 17, in the name of Hodges, to the effect that he

> ". . . is the owner of Two Thousand Two Hundred Thirty shares of the capital stock of La Paz Ice Plant & Cold Storage Co., Inc., transferable only on the books of the corporation by the holder thereof in person or by attorney upon surrender of the certificate properly endorsed."

stock certificate No. 18, issued in favor of Borja and the entry thereof at his instance in the books of the corporation without stock certificate No. 17 being properly endorsed, surrendered and cancelled, is null and void. . . ." (end of quotation by petitioner, but the ruling continues without the period after the word void.) "and that it would be unconscionable and unjust for Borja to vote on said shares of stock, knowing that he had ceased to have actual interest therein since September 17, 1958, when Hodges bought such interest at the public auction held in the proceedings for the foreclosure of his chattel was rendered making said preliminary injunction permanent and declaring Hodges as the one entitled to vote on the shares of stock in question."

Petitioner ought to have even included the following which was the reason for declaring the unendorsed, unsurrendered and uncancelled stock certificate, null and void:

". . . It is, moreover, obvious that Hodges retained it (stock certificate No. 17) with Borja's consent. It was evidently part of their agreement, or implied therein, that Hodges would keep the stock certificate and thus remain in the records of the Corporation as owner of the shares, despite the aforementioned sale thereof and the chattel mortgage thereto. *In other words, the parties thereto intended Hodges to continue, for all intents and purposes, as owner of said shares, until Borja shall have fully paid its stipulated price*." (Ibid, pp. 1033-1034)

Other issues raised by the petitioner, subordinate to the principal issues above, (except the ruling by the respondent Commission with respect to the "*pari delicto*" doctrine which is not acceptable to this Court) are of no moment.

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Considering the circumstances of the case, it appearing that petitioner is guilty of manipulation, and high-handedness, circumventing the clear provision of law in shielding himself from his wrongdoing contrary to the protective mantle that the law intended for innocent parties, the Court finds the excuses of the petitioner as unworthy of belief.

WHEREFORE, in view of the foregoing, the Order of the Commission under SEC-AC No. 263 dated October 10, 1990 is hereby AFFIRMED but modified with respect to the "nullity of the sale of 350 shares represented under stock certificate No. 8, pursuant to the "*in pari delicto*" doctrine. The Court holds that the conversion of the 350 shares with a par value of only ₱35,000.00 at ₱100.00 per share into treasury stocks after petitioner exchanged them with ₱2,000,000.00 worth of stocks-in-trade of the corporation, is valid and lawful. With regard to the damages being claimed by the petitioner, the respondent Commission is not empowered to award such, other than the imposition of fine and imprisonment under Section 56 of the Corporation Code of the Philippines, as amended.

SO ORDERED.

Melencio-Herrera (Chairman), Padilla, Regalado, and *Nocon, JJ.,* concur.

EN BANC

[G.R. No. 101753. March 3, 1992.]

CIPRIANO PEÑAFLORIDA, *petitioner, vs.* **COMMISSION ON ELECTIONS, NEW & SPECIAL PROVINCIAL BOARD OF CANVASSERS OF ILOILO AND RAMON DUREMDES,** *respondents.*