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ACCORDINGLY, for having violated Article 1491 of the Civil Code, respondent is hereby ordered suspended from the practice of law for a period of six (6) months, and, for having stated falsehoods in the four (4) deeds of absolute sale she prepared and notarized in violation of the lawyer's oath and Rule 10.01 of the Code of Professional Responsibility, respondent is also ordered suspended from the practice of law for a period of another six (6) months, resulting in a total period of one year, effective from the date this judgment becomes final.

SUSPENSION ORDERED.

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

THIRD DIVISION

[G.R. No. 74306. March 16, 1992]

ENRIQUE RAZON, *petitioner, vs.* **INTERMEDIATE APPELLATE COURT and VICENTE B. CHUIDIAN, in his capacity as Administrator of the Estate of the Deceased JUAN T. CHUIDIAN,** *respondents.*

[G.R. No. 74315. March 16, 1992.]

VICENTE B. CHUIDIAN, *petitioner, vs.* **INTERMEDIATE APPELLATE COURT, ENRIQUE RAZON, and E. RAZON, INC.,** *respondents.*

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SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULES ON ADMISSIBILITY; QUALIFICATION OF WITNESSES; DISQUALIFICATION BY REASON OF INTEREST OR RELATIONSHIP; RULE.— "Section 20 (a) Rule 130 of the Rules of Court (Section 23 of the Revised Rules on Evidence) states: "SEC. 20. *Disqualification by reason of interest or relationship*. — The following persons cannot testify as to matters in which they are interested directly or indirectly, as herein enumerated. (a) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, *against an executor or administrator* or other representative of a deceased person, or against a person of unsound mind, *upon a claim or demand against the estate of such deceased person* or against such person of unsound mind, cannot testify as to any matter of fact accruing before the death of such deceased person or before such person became of unsound mind."

2. ID.; ID.; ID.; ID.; ID.; ID.; PURPOSE THEREOF. — The purpose of "Section 20(a) Rule 130 of the Rules of Court (Section 23 of the Revised Rules on Evidence)" has been explained by this Court in this wise: "The reason for the rule is that if persons having a claim against the estate of the deceased or his properties were allowed to testify as to the supposed statements made by him (deceased person), many would be tempted to falsely impute statements to deceased persons as the latter can no longer deny or refute them, thus unjustly subjecting their properties or rights to false or unscrupulous claims or demands. The purpose of the law is to 'guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party.' (*Tongco v. Vianzon*, 50 Phil. 698; *Go Chi Gun, et al. v. Co Cho, et al*., 622 [1955]).

3. ID.; ID.; ID.; ID.; ID.; ID.; DELIMITATION. — The "Section 20(a) Rule 130 of the Rules of Court (Section 23 of the Revised Rules on Evidence),"however, delimits the prohibition it contemplates in that it is applicable to a case *against* the administrator or its representative of an estate upon a claim *against* the estate of the deceased person.

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4. ID.; ID.; ID.; ID.; ID.; CASE AT BAR NOT WITHIN PROHIBITION.— In the instant case, the testimony excluded by the appellate court is that of the defendant (petitioner herein) to the effect that the late Juan Chuidian, (the father of private respondent Vicente Chuidian, the administrator of the estate of Juan Chuidian) and the defendant agreed in the lifetime of Juan Chuidian that the 1,500 shares of stock in E. Razon, Inc. are actually owned by the defendant unless the deceased Juan Chuidian opted to pay the same which never happened. The case was filed by the *administrator* of the estate of the late Juan Chuidian to recover shares of stock in E. Razon, Inc. allegedly owned by the late Juan T. Chuidian. It is clear, therefore, that the testimony of the petitioner is not within the prohibition of the rule. The case was not filed *against* the administrator of the estate, nor was it filed upon claims *against* the estate.

5. ID.; ID.; ID.; ID.; NON-OBJECTION THERETO; DEEMED A WAIVER OF THE RULE; CASE AT BAR.— Furthermore, the records show that the private respondent never objected to the testimony of the petitioner as regards the true nature of his transaction with the late elder Chuidian. The petitioner's testimony was subject to cross-examination by the private respondent's counsel. Hence, granting that the petitioner's testimony is within the prohibition of Section 20(a) Rule 130 of the Rules of Court, the private respondent is deemed to have waived the rule. We ruled in the case of *Cruz v. Court of Appeals* (192 SCRA 209 [1990]): "It is also settled that the court cannot disregard evidence which would ordinarily be incompetent under the rules but has been rendered admissible by the failure of a party to object thereto. Thus: "'. . . The acceptance of an incompetent witness to testify in a civil suit, as well as the allowance of improper questions that may be put to him while on the stand is a matter resting in the discretion of the litigant. He may assert his right by timely objection or he may waive it, expressly or by silence. In any case the option rests with him. Once *admitted, the testimony is in the case for what it is worth and the judge has no power to disregard it for the sole reason that it could have been excluded, if it had been objected to, nor to strike it out on its own motion.* (*Marella vs. Reyes*, 12 Phil. 1.)"

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6. COMMERCIAL LAW; CORPORATIONS; SHARES OF STOCK; MODE AND MANNER OF TRANSFERRING SHARES OF STOCKS.— In the case of *Embassy Farms, Inc. v. Court of Appeals* (188 SCRA 492 [1990]) we ruled: ". . . For an effective transfer of shares of stock the mode and manner of transfer as prescribed by law must be followed (*Navea v. Peers Marketing Corp*., 74 SCRA 65). As provided under Section 3 of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. Title may be vested in the transferee by the delivery of the duly indorsed certificate of stock (18 C.J.S. 928, cited in *Rivera v. Florendo*, 144 SCRA 643). However, no transfer shall be valid except as between the parties until the transfer is properly recorded in the books of the corporation" (Sec. 63, Corporation Code of the Philippines; Section 35 of the Corporation Law)

7. ID.; ID.; ID.; ID.; NOT COMPLIED WITH IN CASE AT BAR. — In the instant case, there is no dispute the questioned 1,5000 shares of stock of E. Razon, Inc. are in the name of the late Juan Chuidian in the books of the corporation. Moreover, the records show that during his lifetime Chuidian was elected member of the Board of Directors of the corporation which clearly shows that he was a stockholder of the corporation. (See Section 30, Corporation Code) From the point of view of the corporation, therefore, Chuidian was the owner of the 1,500 shares of stock. In such a case, the petitioner who claims ownership over the questioned shares of stock must show that the same were transferred to him by proving that all the requirements for the effective transfer of shares of stock in accordance with the corporation's by laws, if any, were followed (See *Nava v. Peers Marketing Corporation*, 74 SCRA 65 [1976]) or in accordance with the provisions of law. The petitioner failed in both instances. The petitioner did not present any by-laws which could show that the 1,500 shares of stock were effectively transferred to him. In the absence of the corporation's by-laws or rules governing effective transfer of shares of stock, the provisions of the Corporation Law are made applicable to the instant case.

8. ID.; ID.; ID.; ID.; CERTIFICATE OF STOCK MUST BE DULY INDORSED FOR EFFECTIVE TRANSFER.— The

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law is clear that in order for a transfer of stock certificate to be effective, the certificate must be properly *indorsed* and that title to such certificate of stock is vested in the transferee by the delivery of the *duly indorsed* certificate of stock. (Section 35, Corporation Code) Since the certificate of stock covering the questioned 1,500 shares of stock registered in the name of the late Juan Chuidian was never indorsed to the petitioner, the inevitable conclusion is that the questioned shares of stock belong to Chuidian. The petitioner's asseveration that he did not require an indorsement of the certificate of stock in view of his intimate friendship with the late Juan Chuidian can not overcome the failure to follow the procedure required by law or the proper conduct of business even among friends. To reiterate, indorsement of the certificate of stock is a mandatory requirement of law for an effective transfer of a certificate of stock.

9. ID.; ID.; ID.; INCLUDES ALL CASH AND STOCK DIVIDENDS AND ALL PRE-EMPTIVE RIGHTS ACCRUING THERETO.— In G.R. No. 74315, petitioner Vicente B. Chuidian insists that the appellate court's decision declaring his deceased father Juan T. Chuidian as owner of the 1,500 shares of stock of E. Razon, Inc. should have included all cash and stock dividends and all the pre-emptive rights accruing to the said 1,500 shares of stock. The petition is impressed with merit. The cash and stock dividends and all the pre-emptive rights are all incidents of stock ownership. The rights of stockholders are generally enumerated as follows: ". . . [F]irst, to have a certificate or other evidence of his status as stockholder issued to him; second, to vote at meetings of the corporation; third, to receive his proportionate share of the profits of the corporation; and lastly, to participate proportionately in the distribution of the corporate assets upon the dissolution or winding up.

APPEARANCES OF COUNSEL

Rafael T. Durian for Enrique Razon.
Manuel R. Singson for Vicente B. Chuidian.

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D E C I S I O N

GUTIERREZ, JR., *J.*:

The main issue in these consolidated petitions centers on the ownership of 1,500 shares of stock in E. Razon, Inc. covered by the Stock Certificate No. 003 issued on April 23, 1966 and registered under the name of Juan T. Chuidian in the books of the corporation. The then Court of First Instance of Manila, now Regional Trial Court of Manila, declared that Enrique Razon, the petitioner in G.R. No. 74306 is the owner of the said shares of stock. The then Intermediate Appellate Court, now Court of Appeals, however, reversed the trial court's decision and ruled that Juan T. Chuidian, the deceased father of petitioner Vicente B. Chuidian in G.R. No. 74315 is the owner of the shares of stock. Both parties filed separate motions for reconsideration. Enrique Razon wanted the appellate court's decision reversed and the trial court's decision affirmed while Vicente Chuidian asked that all cash and stock dividends and all the pre-emptive rights accruing to the 1,500 shares of stock be delivered to him. The appellate court denied both motions. Hence, these petitions.

The relevant antecedent facts are follows:

"In his complaint filed on June 29, 1971, and amended on November 16, 1971, Vicente B. Chuidian prayed that defendants Enrique B. Razon, E. Razon, Inc., Geronimo Velasco, Francisco de Borja, Jose Francisco, Alfredo B. de Leon, Jr., Gabriel Llamas and Luis M. de Razon be ordered to deliver certificates of stocks representing the shareholdings of the deceased Juan T. Chuidian in the E. Razon, Inc. with a prayer for an order to restrain the defendants from disposing of the said shares of stock, for a writ of preliminary attachment v. properties of defendants having possession of shares of stock and for receivership of the properties of defendant corporation . . ..

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In their answer filed on June 18, 1973, defendants alleged that all the shares of stock in the name of stockholders of record of the corporation were fully paid for by defendant, Razon; that said shares

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are subject to the agreement between defendants and incorporators; that the shares of stock were actually owned and remained in the possession of Razon. Appellees also alleged . . . that neither the late Juan T. Chuidian nor the appellant had paid any amount whatsoever for the 1,500 shares of stock in question . . ..

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The evidence of the plaintiff shows that he is the administrator of the intestate estate of Juan Telesforo Chuidian in Special Proceedings No. 71054, Court of First Instance of Manila.

Sometime in 1962, Enrique Razon organized the E. Razon, Inc. for the purpose of bidding for the arrastre services in South Harbor, Manila. The incorporators consisted of Enrique Razon, Enrique Valles, Luisa M. de Razon, Jose Tuason, Jr., Victor Lim, Jose F. Castro and Salvador Perez de Tagle.

On April 23, 1966, stock certificate No. 003 for 1,500 shares of stock of defendant corporation was issued in the name of Juan T. Chuidian.

On the basis of the 1,500 shares of stock, the late Juan T. Chuidian and after him, the plaintiff-appellant, were elected as directors of E. Razon, Inc. Both of them actually served and were paid compensation as directors of E. Razon, Inc.

"From the time the certificate of stock was issued on April 1966 up to April 1971, Enrique Razon had not questioned the ownership by Juan T. Chuidian of the shares of stock in question and had not brought any action to have the certificate of stock over the said shares cancelled.

The certificate of stock was in the possession of defendant Razon who refused to deliver said shares to the plaintiff, until the same was surrendered by defendant Razon and deposited in a safety box in Philippine Bank of Commerce.

Defendants allege that after organizing the E. Razon, Inc., Enrique Razon distributed shares of stock previously placed in the names of the withdrawing nominal incorporators to some friends including Juan T. Chuidian.

Stock Certificate No. 003 covering 1,500 shares of stock upon instruction of the late Chuidian on April 23, 1966 was personally delivered by Chuidian on July 1, 1966 to the Corporate Secretary

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of Attorney Silverio B. de Leon who was himself an associate of the Chuidian Law Office (Exhs. C & 11). Since then, Enrique Razon was in possession of said stock certificate even during the lifetime of the late Chuidian, from the time the late Chuidian delivered the said stock certificate to defendant Razon until the time (sic) of defendant Razon. By agreement of the parties (sic) delivered it for deposit with the bank under the joint custody of the parties as confirmed by the trial court in its order of August 7, 1971.

Thus, the 1,500 shares of stock under Stock Certificate No. 003 were delivered by the late Chuidian to Enrique because it was the latter who paid for all the subscription on the shares of stock in the defendant corporation and the understanding was that he (defendant Razon) was the owner of the said shares of stock and was to have possession thereof until such time as he was paid therefor by the other nominal incorporators/stockholders (TSN., pp. 4, 8, 10, 24-25, 25-26, 28-31, 31-32, 60, 66-68, July 22, 1980, Exhs. "C", "11", "13" "14")." (*Rollo* — 74306, pp. 66-68).

In G.R. No. 74306, petitioner Enrique Razon assails the appellate court's decision on its alleged misapplication of the dead man's statute rule under Section 20 (a) Rule 130 of the Rules of Court. According to him, the "dead man's statute" rule is not applicable to the instant case. Moreover, the private respondent, as plaintiff in the case did not object to his oral testimony regarding the oral agreement between him and the deceased Juan T. Chuidian that the ownership of the shares of stock was actually vested in the petitioner unless the deceased opted to pay the same; and that the petitioner was subjected to a rigid cross examination regarding such testimony.

Section 20 (a) Rule 130 of the Rules of Court (Section 23 of the Revised Rules on Evidence) states:

"SEC. 20. *Disqualification by reason of interest or relationship.* — The following persons cannot testify as to matters in which they are interested directly or indirectly, as herein enumerated.

(a) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, *against an executor or administrator* or other representative of a deceased person, or against a person of unsound mind, *upon a claim or demand against the estate of such*

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deceased person or against such person of unsound mind, cannot testify as to any matter of fact accruing before the death of such deceased person or before such person became of unsound mind." (Italics supplied).

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The purpose of the rule has been explained by this Court in this wise:

"The reason for the rule is that if persons having a claim against the estate of the deceased or his properties were allowed to testify as to the supposed statements made by him (deceased person), many would be tempted to falsely impute statements to deceased persons as the latter can no longer deny or refute them, thus unjustly subjecting their properties or rights to false or unscrupulous claims or demands. The purpose of the law is to 'guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party.' (*Tongco v. Vianzon*, 50 Phil. 698; *Go Chi Gun, et al. v. Co Cho, et al.*, 622 [1955])

The rule, however, delimits the prohibition it contemplates in that it is applicable to a case *against* the administrator or its representative of an estate upon a claim *against* the estate of the deceased person. (See *Tongco v. Vianzon*, 50 Phil. 698 [1927]).

In the instant case, the testimony excluded by the appellate court is that of the defendant (petitioner herein) to the effect that the late Juan Chuidian, (the father of private respondent Vicente Chuidian, the administrator of the estate of Juan Chuidian) and the defendant agreed in the lifetime of Juan Chuidian that the 1,500 shares of stock in E. Razon, Inc. are actually owned by the defendant unless the deceased Juan Chuidian opted to pay the same which never happened. The case was filed by the *administrator* of the estate of the late Juan Chuidian to recover shares of stock in E. Razon, Inc. allegedly owned by the late Juan T. Chuidian.

It is clear, therefore, that the testimony of the petitioner is not within the prohibition of the rule. The case was not filed

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against the administrator of the estate, nor was it filed upon claims *against* the estate.

Furthermore, the records show that the private respondent never objected to the testimony of the petitioner as regards the true nature of his transaction with the late elder Chuidian. The petitioner's testimony was subject to cross-examination by the private respondents' counsel. Hence, granting that the petitioner's testimony is within the prohibition of Section 20 (a), Rule 130 of the Rules of Court, the private respondent is deemed to have waived the rule. We ruled in the case of *Cruz v. Court of Appeals* (192 SCRA 209 [1990]):

"It is also settled that the court cannot disregard evidence which would ordinarily be incompetent under the rules but has been rendered admissible by the failure of a party to object thereto. Thus:

> "'. . . The acceptance of an incompetent witness to testify in a civil suit, as well as the allowance of improper questions that may be put to him while on the stand is a matter resting in the discretion of the litigant. He may assert his right by timely objection or he may waive it, expressly or by silence. In any case the option rests with him. Once *admitted, the testimony is in the case for what it is worth and the judge has no power to disregard it for the sole reason that it could have been excluded, if it had been objected to, nor to strike it out on its own motion* (Italics supplied). (*Marella vs. Reyes*, 12 Phil. 1.)"

The issue as to whether or not the petitioner's testimony is admissible having been settled, we now proceed to discuss the fundamental issue on the ownership of the 1,500 shares of stock in E. Razon, Inc.

E. Razon, Inc. was organized in 1962 by petitioner Enrique Razon for the purpose of participating in the bidding for the arrastre services in South Harbor, Manila. The incorporators were Enrique Razon, Enrique Valles, Luisa M. de Razon, Jose Tuazon, Jr., Victor L. Lim, Jose F. Castro and Salvador Perez de Tagle. The business, however, did not start operations until 1966. According to the petitioner, some of the incorporators

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withdrew from the said corporation. The petitioner then distributed the stocks previously placed in the names of the withdrawing nominal incorporators to some friends, among them the late Juan T. Chuidian to whom he gave 1,500 shares of stock. The shares of stock were registered in the name of Chuidian only as nominal stockholder and with the agreement that the said shares of stock were owned and held by the petitioner but Chuidian was given the option to buy the same. In view of this arrangement, Chuidian in 1966 delivered to the petitioner the stock certificate covering the 1,500 shares of stock of E. Razon, Inc. Since then, the petitioner had in his possession the certificate of stock until the time, he delivered it for deposit with the Philippine Bank of Commerce under the parties' joint custody pursuant to their agreement as embodied in the trial court's order.

The petitioner maintains that his aforesaid oral testimony as regards the true nature of his agreement with the late Juan Chuidian on the 1,500 shares of stock of E. Razon, Inc. is sufficient to prove his ownership over the said 1,500 shares of stock.

The petitioner's contention is not correct.

In the case of *Embassy Farms, Inc. v. Court of Appeals* (188 SCRA 492 [1990] we ruled:

". . . For an effective transfer of shares of stock the mode and manner of transfer as prescribed by law must be followed (*Navea v. Peers Marketing Corp.*, 74 SCRA 65). As provided under Section 3 of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, shares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. Title may be vested in the transferee by the delivery of the duly indorsed certificate of stock (18 C.J.S. 928, cited in *Rivera v. Florendo*, 144 SCRA 643). However, no transfer shall be valid, except between the parties until the transfer is properly recorded in the books of the corporation" (Sec. 63, Corporation Code of the Philippines; Section 35 of the Corporation Law)

In the instant case, there is no dispute the questioned 1,500 shares of stock of E. Razon, Inc. are in the name of the late

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Juan Chuidian in the books of the corporation. Moreover, the records show that during his lifetime Chuidian was elected member of the Board of Directors of the corporation which clearly shows that he was a stockholder of the corporation. (See Section 30, Corporation Code) From the point of view of the corporation, therefore, Chuidian was the owner of the 1,500 shares of stock. In such a case, the petitioner who claims ownership over the questioned shares of stock must show that the same were transferred to him by proving that all the requirements for the effective transfer of shares of stock in accordance with the corporation's by laws, if any, were followed (See *Nava v. Peers Marketing Corporation*, 74 SCRA 65 [1976]) or in accordance with the provisions of law.

The petitioner failed in both instances. The petitioner did not present any by-laws which could show that the 1,500 shares of stock were effectively transferred to him. In the absence of the corporation's by-laws or rules governing effective transfer of shares of stock, the provisions of the Corporation Law are made applicable to the instant case.

The law is clear that in order for a transfer of stock certificate to be effective, the certificate must be properly *indorsed* and that title to such certificate of stock is vested in the transferee by the delivery of the *duly indorsed* certificate of stock. (Section 35, Corporation Code) Since the certificate of stock covering the questioned 1,500 shares of stock registered in the name of the late Juan Chuidian was never indorsed to the petitioner, the inevitable conclusion is that the questioned shares of stock belong to Chuidian. The petitioner's asseveration that he did not require an indorsement of the certificate of stock in view of his intimate friendship with the late Juan Chuidian can not overcome the failure to follow the procedure required by law or the proper conduct of business even among friends. To reiterate, indorsement of the certificate of stock is a mandatory requirement of law for an effective transfer of a certificate of stock.

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Moreover, the preponderance of evidence supports the appellate court's factual findings that the shares of stock were given to Juan T. Chuidian for value. Juan T. Chuidian was the legal counsel who handled the legal affairs of the corporation. We give credence to the testimony of the private respondent that the shares of stock were given to Juan T. Chuidian in payment of his legal services to the corporation. Petitioner Razon failed to overcome this testimony.

In G.R. No. 74315, petitioner Vicente B. Chuidian insists that the appellate court's decision declaring his deceased father Juan T. Chuidian as owner of the 1,500 shares of stock of E. Razon, Inc. should have included all cash and stock dividends and all the pre-emptive rights accruing to the said 1,500 shares of stock.

The petition is impressed with merit.

The cash and stock dividends and all the pre-emptive rights are all incidents of stock ownership.

The rights of stockholders are generally enumerated as follows:

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". . . [F]irst, to have a certificate or other evidence of his status as stockholder issued to him; second, to vote at meetings of the corporation; third, to receive his proportionate share of the profits of the corporation; and lastly, to participate proportionately in the distribution of the corporate assets upon the dissolution or winding up. (Purdy's Beach on Private Corporations, sec. 554)" (*Pascual v. Del Saz Orozco*, 19 Phil. 82, 87)

WHEREFORE, judgment is rendered as follows:

a) In G.R. No. 74306, the petition is *DISMISSED*. The questioned decision and resolution of the then Intermediate Appellate Court, now the Court of Appeals, are *AFFIRMED*. Costs against the petitioner.

b) In G.R. No. 74315, the petition is *GRANTED*. The questioned Resolution insofar as it denied the petitioner's motion to clarify the dispositive portion of the decision of the then

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Intermediate Appellate Court, now Court of Appeals is *REVERSED* and *SET ASIDE*. The decision of the appellate court is *MODIFIED* in that all cash and stock dividends as well as all pre-emptive rights that have accrued and attached to the 1,500 shares in E. Razon, Inc., since 1966 are declared to belong to the estate of Juan T. Chuidian.

SO ORDERED.

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

Feliciano, J., on leave.

SECOND DIVISION

[G.R. No. 91122. March 16, 1992]

DIONY RAPIZ, NELSON GESTOPA & ANATALIO ONA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and MODERN ASIA SHIPPING CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF NATIONAL LABOR RELATIONS COMMISSION, GENERALLY UPHELD ON APPEAL, CASE AT BAR, AN EXCEPTION. — We are tasked to scrutinize the whole record of the case including the evidence presented since the findings of the POEA and the NLRC are contrary to each other (*Quality Tobacco Corporation v. Intermediate Appellate Court*, 187 SCRA 210). A careful study of this case reveals that the POEA exerted much diligence and came out with an impartial analysis in investigating, hearing and deciding POEA Case No. (M) 86-10-933 (*Diony Rapiz, et al., complainants, versus Modern*