

DECISIONS OF THE DIRECTOR OF PATENTS

DEPARTMENT OF COMMERCE AND
INDUSTRY

PHILIPPINE PATENT OFFICE
MANILA

DECISIONS OF THE DIRECTOR OF
PATENTS IN TRADEMARK CASES

Series of 1949

No. 1

Application No. 985
(Bureau of Commerce)
Filed September 30, 1946

EX PARTE JOSE
TAN CHAU
Jose Tan Chau, Petitioner

Petitioner pro se

PETITION FOR RECONSIDERATION

DECISION

This is a petition of JOSE TAN CHAU, a citizen of the Republic of China, domiciled in the Philippines, and doing business at Badeo 4, Malabon, in the Province of Rizal, praying that the decision of the Director of Commerce, denying the registration of his trademark LIBERTY, be set aside and that his application be given due course in the Patent Office.

The records of this case show that the petitioner filed with the Director of Commerce on September 30, 1946, an application for the registration under Act No. 666 of the trademark LIBERTY used on *bagu-ong* and *patis*, which are articles of salty food in general use, derived from small fish. Without giving any definite date, the petitioner alleged in his application that he had employed the trademark "since American liberation" (meaning liberation of Manila by Gen. MacArthur's forces). He further alleged that the trademark was applied to the "bottles or tins containing the goods."

The records further show that, in a brief one-paragraph decision rendered April 23, 1947, the Director of Commerce rejected the application —

"on the ground that said trademark is identical with the trademark LIBERTY for edible oil, lard, margarine, belonging to *the same class* as registered in this Office in favor of Tan Khok Chioh, 538 T. Pinpin, this City, on September 13, 1946. No. Republic 538. Use claimed 'definitely' since June 1, 1945."

The records disclose that the application of Tan Khok Chioh stated that his trademark LIBERTY was applied to "tins, bottles or other containers containing the goods."

The records also disclose that on May 3, 1947, the applicant filed a motion for reconsideration, upon which the Director of Commerce was unable to act in view of the transfer a short time thereafter of the func-

tion of trademark registration from him to the Director of Patents.

The provisions of Act No. 666 upon the authority of which the Director of Commerce refused registration of the petitioner's trademark LIBERTY read as follows:

"Sec. 13. * * * no alleged trademark * * * shall be registered * * * which is identical with a registered or known trademark owned by another and appropriated to the same class of merchandise * * *"

This provision is similar to Sec. 5 of the U.S. Trademark Act of 1905, which was in force until the enactment of the Trademark Act of 1946, which is popularly referred to as the Lanham Act. It reads as follows:

"* * * Provided, That trademarks which are identical with a registered or known trademark owned and in use by another and appropriated to merchandise of the same descriptive properties * * * shall not be registered."

As interpreted by U.S. courts, the phrase "merchandise of the same descriptive properties" means "goods of the same class." *Philadelphia Inquirer Co. v. Coe, Comm. of Patents, 55 USPQ 433*. The phrase "the same class of merchandise," as used in Sec. 13 of Act No. 666, and "goods of the same descriptive properties," as used in Sec. 5 of the U.S. Act of 1905, have, therefore, the same significance.

As the trademark sought to be registered and the one already registered are admittedly identical, the only question before the Director of Commerce was whether *bagu-ong* and *patis* on which petitioner's trademark is used, and edible oil, lard, and margarine on which the registered trademark is employed, belong to the same class of merchandise or, using the equivalent phrase of the U.S. Act of 1905, whether they are merchandise of the same descriptive properties. If they do not belong to the same class, the petitioner's trademark is registrable under the cited section 13 of Act No. 666, and the Director of Commerce was wrong in refusing it registration. But, if they do belong to the same class, the said section prohibits its registration, and the Director of Commerce was right in refusing registration.

United States courts have set up a number of tests by which the question whether or not two items of merchandise are of the same descriptive properties (belong to the same class) may be determined. It is not necessary that the items under consideration pass all the tests, or a majority of them, in order to be adjudged to belong to the same class. These are the tests. If the question in each case is answerable in the affirmative, the goods involved are considered to be of the same descriptive properties (the same class).

1. Can the two items be put under a group capable of general definition, such as groceries,

- canned goods, men's furnishings? *Check-Neal Coffee Co. v. Hall Dick Mfg. Co., 40 F (2) 106; Oppenheim, Oberndorf & Co. v. President Susper Co., 3 F (2) 81; In re Indriecien Canning Co., 27 Fed. 613.*
2. Are the two items used for the same general purpose, as baking soda and baking powder? *Layton Pure Food v. Church and Dwight Co., 182 Fed. 35; Emerson Electric v. Emerson Radio & Phonograph Corp., 90 F (2) 331.*
 3. Are the items capable of conjoint use, as a shirt and a collar button for a shirt? *Cluett, Peabody & Co. v. Hartogensis, 41 F (2) 94; Rosenberg Bros. v. Elliot 7 F (2) 962.*
 4. Are the items sold in the same stores to the same class of customers? *Cluett, Peabody & Co. v. Hartogensis; Rosenberg Bros. v. Elliot, supra.*
 5. Are the items marketed by the same method, as in barrels, boxes, cartons, bottles, or tins? *Cracker Jack Co. v. Blanton Citrus, 81 F (2) 153.*
 6. Have the items been manufactured in the past by the same manufacturer? *Bech-Nut Packing v. Lorillard Co., 7 F (2) 967; Pittsburgh Brewery v. Rubin 3 F (2) 342.*
 7. Have the items the same active element or ingredient? *Layton Pure Food v. Church & Dwight, supra; B. F. Goodrich Co. v. Clograd Wardrobe Co., 37 F (2) 418.*
 8. Are the items manufactured from the same raw material? *Kushner & Gillman v. Mayflower Worsted, 11 F (2) 462; Ralston Purina v. Sanitax Paper, 26 F (2) 941; Denver Gas & Electric v. Alexander Lumber Co., 269 Fed. 859.*

Petitioner's *bagu-ong* and *patis* and the goods of the owner of the registered trademark—edible oil, lard and margarine—

- a. belong to the same group capable of a general definition—groceries.
- b. are capable of conjoint use—*patis* and *bagu-ong* and edible oil or lard are often mixed together in the preparation of dishes for the dinner table.
- c. are sold in the same stores to the same customers.
- d. are marketed by the same method—retailed in bottles or tins.

By one-half of the tests, petitioner's goods and the goods of the owner of the registered trademark are merchandise of the same descriptive properties or, in the words of the cited Sec. 13 of Act No. 666, merchandise of the same class. This being the case, I am of the opinion that the Director of Commerce did not err in refusing registration to petitioner's trademark. There is a rule in trademark law and practice that all doubts are resolved against the newcomer. "The reason for this (rule) is * * * that the field from which a person may select a trademark is practically unlimited, and hence there is no excuse for him impinging upon, or even closely approaching the mark of his business rival * * * (*William Walke & Co. v. Geo. Schaffer & Co., 263 Fed. 650*). So that, if it be urged that the classification of *bagu-ong* and *patis* and of edible oil, lard and margarine in the same class is at best doubtful, the decision of the Director of Commerce would still be correct, for he had resolved the doubt against the petitioner, who is the newcomer.

His decision is, therefore, affirmed. In this connection, it is interesting to note the following decision of the U. S. Commissioner of Patents rendered on April 9, 1947,

interpreting the above cited Sec. 5 of the U.S. Act of 1905:

"This is an appeal from the refusal of the Examiner of Trade Marks to register the notation 'PINE TREE' as a trade mark for 'natural bulk American Cheese.' The application was rejected in view of prior registration of the same mark for canned vegetables and under—

"In a carefully prepared and elaborate brief, applicant presents the argument that likelihood of confusion is the 'only acceptable test' in determining whether goods possess the same descriptive properties; and that since confusion is here unlikely, the proposed registration should be granted. But, while such argument might once have been persuasive, it comes too late. For both the Court of Customs and Patent Appeals and the Court of Appeals for the District of Columbia are committed to the rule that identical marks may not be registered for merchandise of the same class, regardless of confusion. In re Laskin Brothers, Inc., 32 C.C.P.A. 820, 146 F. 2d 108 (64 USPQ 227); Philadelphia Inquirer Co. v. Coe, 77 App. D.C. 39, 133 F. 2d 585 (55 USPQ 435). And that cheese and canned goods are broadly of the same descriptive properties, there is no longer room for doubt. W.B. Roddenberry Co. v. Kalich (C.C.P.A.), 158 F. 2d 289, 72 USPQ 138.

"The decision is affirmed." Ex parte Laabs Cheese Co., 73 USPQ 85.

The foregoing decision shows that the law of the United States under the Act of 1905, and the law of the Philippines under Act No. 666 are the same. In both cases, when the mark sought to be registered and the already registered trademark are identical, the only inquiry required to be made is, Do the goods, on which the two identical trademarks are used, belong to the same class? If the inquiry shows that they belong to the same class, then the mark sought to be registered is refused. Any actual difference between the goods of the applicant and the merchandise of the registrant and any consideration that this difference may not actually cause confusion and deceive the purchasers as to the origin of the applicant's goods, are immaterial. If the goods are found to be of the same class, the law, in both countries, simply presumes that confusion and deception of the purchasers will follow, and the trademark of the newcomer is refused.

The present trademark law has changed this method of approach to the problem. For comparative purposes I quote in full Sec. 13 of Act No. 666 and the corresponding provision of Republic Act No. 166, which is Sec. 4 (d):

ACT 666

"SEC. 13. The time of the receipt of any such application shall be noted and recorded. But no alleged trademark or tradename shall be registered which is merely the name, quality, or description of the merchandise upon which it is to be used or the geographical place of its production or origin, or which is identical with a sign or the known trademark owned by another and appropriated to the same class of merchandise, or which so nearly resembles another person's lawful trade-mark or trade-name as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers. In an application for registration the Director of the Bureau of Commerce and Industry shall decide the presumptive lawfulness of signs or the alleged trademark. (As amended by Act No. 1407, sec. 3 (D), and modified by Act No. 2728.)"

May 31, 1949

REPUBLIC ACT 166

"SEC. 4. Registration of trade-marks, trade-names, and service-marks.—The owner of a trade-mark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same, unless it:

"(d) Consists of or comprises a mark or tradename which so resembles a mark or tradename registered in the Philippines or a mark or tradename previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or service of the applicant, to cause confusion or mistake or to deceive purchasers;"

The foregoing provision of Republic Act No. 166 was taken from Sec. 2 of the U.S. Trademark Act of 1946 (Lanham Act), which replaced the Act of 1905. It reads as follows:

"Sec. 2. No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

"(d) Consists of or comprises a mark which so resembles a mark registered in the Patent Office or a mark or tradename previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive purchasers: * * *

It will be seen that the new trademark law (Sec. 4 (d)) omits all reference to identical trademarks and to the phrase "the same class of merchandise" which are employed in Act No. 666. The new law simply provides that, if the mark sought to be registered is so similar to another's trademark that, when used on the applicant's goods, it would be likely to cause confusion and deception among the buyers of such goods, its registration shall be refused. Because of the omission of the phrase "the same class of merchandise," the inquiry in the new Act, in the case of identical marks, has shifted from "Do the goods of the applicant and those of the owner of the registered trademark belong to the same class of merchandise?" to "Will the concurrent use of the same trademark by the applicant and by the owner of the registered trademark likely to cause confusion and to deceive the buyers, so that they would think the applicant's goods originated from the owner of the registered trademark?"

In determining whether such confusion and deception as to the origin of the applicant's goods are likely to take place, the nature of the trademark used is taken into account. In cases of this kind, U.S. courts have recognized two classes of trademarks—(a) the fanciful, or arbitrary, or arbitrarily coined trademarks, which they term "strong marks"; and (b) marks consisting of common, ordinary, and well known words, which they denominate "weak marks." The courts believe that the liability to confusion as to the origin of the goods of the newcomer in the field is greater when the mark of the first user is fanciful and arbitrary, and less when the first user's mark consists

of common, ordinary word. In suits for infringement the courts have accorded greater protection to "strong marks" than to "weak marks." To put it in another way, the courts have been willing to concede to the first user of a "strong mark" a wider range of goods upon which he may place his mark to the exclusion of others. To the first user of a "weak mark" they have been inclined to give only a limited scope. This is especially true when the "weak mark" is being used by a multiplicity of traders for various articles. In such cases, the courts believe that the likelihood of confusion as to the origin of the goods of each trader using the mark is insignificant, and they have usually restricted trademark protection for each trader to the specific goods which each actually manufactures and sells. France Milling v. Washburn-Crosby Co., 7F(2) 304; Pabst Brewing v. Decatur Brewing, 284 Fed. 110; Anheuser-Busch v. Budweiser Malt Products, 295 Fed. 306.

"To take another view of the matter, the degree of exclusiveness of appropriation accorded to the originator of a trade-name often varies with the kind of name he originates. If the name or mark be truly arbitrary, strange, and fanciful, it is more specially and peculiarly significant and suggestive of one man's goods, than when it is frequently used by many and in many differing kinds of business. Of this 'Kodak' is a famous example, and the English courts have prevented one from putting forth Kodak bicycles, at the suit of the originator of the name for a totally different article. Eastman v. Kodak Cycle Co., 15 R.P.C. 105; cf. Re Dunn's Trade-Mark, 7 R.P.C. 311, and Dunlop v. Dunlop, 16 R. P.C. 12. In this court the same result was seen in Aunt Jemima Mills Co. v. Rigney, 287 F. 407, 159 C.C.A. 461, L.R.A. 1918, 1019, where the above line of cases is quoted and relied upon.

"The phrase 'Gold Medal' is distinctly not in the same class of original, arbitrary, or fanciful words as 'Kodak' and 'Aunt Jemima.' It is a laudatory phrase, suggestive of merit, recognized by some organization of authority awarding a prize. It is only allied to some particular business or person by insistent, persistent advertising. Washburn's flour has been so advertised, and the proof is ample that publicity efforts have been fruit, so that Gold Medal flour means among purchasers Washburn's flour. Yet it must always be remembered that there is nothing original about the name per se; it is exactly like the phrase 'Blue Ribbon', and has been as extensively and variously applied. One who devises a new name, 'catching' word to describe his wares may and often has by timely suit prevented others from taking his word or set of words to gild the reputé of even wholly different goods (cases supra); but one who takes a phrase which is the commonplace of self-praise like 'Blue Ribbon' or 'Gold Medal' must be content with that special field which he labels with so undistinctive a name. Of this Pabst, etc., Co. v. Decatur, etc., Co. (C.C.A.) 284 F. 110; and Anheuser, etc., Co. v. Budweiser, etc., Co. (C.C.A.) 295 F. 306, constitute a perfect illustration. In the first decision Blue Ribbon was restricted to the single product with which plaintiff had associated it, while in the second it was given a wider sphere of influence. In the present case Washburn has been known by advertising Gold Medal not a line of products, nor any product of a varied business, but one separate, well-known commodity—pure wheat flour, and with that it must be content.

"Result is: Washburn, by persistent and pushing use of a well-known and nondistinctive name has on

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JOSE ABAD SANTOS: AN APOTHEOSIS

By ABRAHAM F. SARMIENTO

The selfish principle, that infirmity too often of great as well as of little minds, seemed never to have reached him. It was entirely incompatible with the purity of his taste and the grandeur of his ambition. Everything appeared to be at once extinguished, when it came in competition with his devotion to his country's welfare and glory. He was a most faithful friend to the cause of civil liberty throughout the world, but he was a still greater friend to truth and justice. — CHANCELLOR KENT speaking of Alexander Hamilton.

I

Jose Abad Santos was a victim of a wanon war, of pitiless destruction. Like the many other victims, he died in the service of his country. Unlike most of them, however, he chose his manner of dying. And unlike most of them, he could have lived had he wished to. But he preferred to die; his death has now become one of the glorious epics of our age.

At the outbreak of the war, Jose Abad Santos was an Associate Justice of the Supreme Court; he had been continuously serving in that capacity since his appointment on June 18, 1932, interrupted only when he was drafted by President Quezon as Secretary of Justice from December 6, 1938 to May 23, 1941. On December 24, 1941, he was appointed Chief Justice. Concurrently, he performed all the functions pertaining to the Department of Justice, pursuant to Executive Order No. 396, issued on the same date of his appointment. In accordance with the said order which reorganized the Executive Department of the Commonwealth, Chief Justice Abad Santos was also designated acting Secretary of Finance, Agriculture, and Commerce. President Quezon later took him to Corregidor with Vice-President Osmeña, General Basilio Valdes, Major Manuel Nieto, and Father Pacifico Ortiz. While there, Abad Santos assisted President Quezon and the Commonwealth officials with him in disposing of and securing the funds of the Government that were deposited in the vault in Corregidor.

At the inauguration of President Quezon for his second term on December 30, 1941, Chief Justice Abad Santos administered to him in Corregidor the oath of office. Together with Quezon and his party, he stayed in Malinta Tunnel until February 22, 1942, when he left with them by submarine for the Visayas, arriving in Occidental Negros two days later. The presidential party shuttled from place to place as a precautionary pressure, sojourning first at Talisay in the home of Governor Lizares, and from there to the Del Rosario hacienda. Then

they moved to a place called Buenos Aires and later to the government sugar mill at Binalbagan. Cognizant of the risk and difficulty of moving in a big group, the party split two ways, the Chief Justice staying most of the while with Vice-President Osmeña.

Jose Abad Santos was in bad health at the time. He was suffering from asthma. Nevertheless, although physically unfit for strenuous duty, he did not relax in his work. He continued indefatigably to discharge the duties of his triple position, i.e., Chief Justice, Secretary of Justice, and Secretary of Finance, Agriculture, and Commerce over the unoccupied territory. The departure of President Quezon for the United States via Australia in the latter part of March, 1942, multiplied not only the tasks of Abad Santos but also the dangers to which he was exposed. The President offered Abad Santos the choice to go with him or to remain in the Philippines. Indeed, the thought of America with its promise of haven at the time of great danger could have enticed the mind of an ordinary man. But Jose Abad Santos was not the common run of men. He told President Quezon: "I prefer to remain, carry on my work here, and stay with my family."

There has been much controversy as to who was appointed by President Quezon to represent him in the Philippines. During the occupation, not a few designing men presumptuously claimed the honor. President Quezon is dead and his lips are forever closed. Nonetheless, he wrote a letter dated March 17, 1942, addressed to Chief Justice Abad Santos. The letter settles the question and belies the claims of opportunists. It reads in full:

March 17, 1942

My dear Chief Justice Santos:

In addition to your duties as Chief Justice and acting Secretary of Finance, Agriculture, and Commerce, I hereby designate you as my delegate with power to act on all matters of government which involve no change in the fundamental policies of my administration of which you are quite familiar. Where circumstances are such as to preclude previous consultation with me, you may act on urgent questions of local administration without my previous approval. In such cases, you are to use your own best judgment and sound discretion.

With reference to the government-owned corporations, you are also authorized to take such steps as will protect the interest of the government either by continuing, curtailing or terminating their operations as circumstances may warrant.

Sincerely yours,

(Sgd.) MANUEL L. QUEZON

The responsibility placed upon Abad Santos was enormous. But he proved equal to the situation. The many years of service to his credit were more than ample preparation for the trust suddenly reposed upon him. At this juncture it is proper to digress and trace briefly his early life.

II

Jose Abad Santos was born in San Fernando, Pampanga, on February 19, 1886, the sixth of the ten children of Vicente Abad Santos and Terribida Basco. When only eighteen years old, he went to America as a government pensionado to complete his education. He studied for sometime in the Santa Clara College at San Jose, California, and then enrolled at Northwestern University where he obtained the degree of Bachelor of Laws. He pursued further studies in the George Washington University, where he was granted the degree of Master of Laws. Upon his return to the Philippines, he became on December 1, 1909, a clerk in the Executive Bureau with a salary of P960 per annum.

On July 31, 1914, he was appointed assistant attorney of the Bureau of Justice, after which he became attorney for the Philippine National Bank. He was the technical adviser and ex-officio member of the first Independence Mission to the United States in 1919. In 1922, he served for three months as Under-Secretary of Justice, immediately after which he became the Secretary. Because of the cabinet crisis under the Wood administration, he resigned on July 17, 1923. In 1926 he headed the Philippine Educational Mission to America. He resumed in 1928 the Justice portfolio under Governor-General Stimson, which position he occupied until his appointment to the Supreme Court in 1932.

Jose Abad Santos devoted the best years of his life to the public service. He was President of the Philippine Bar Association and of the Young Men's Christian Association, member of the Abiertas House of Friendship, educational adviser of the Columbian Institute, and Chairman of the Board of Trustees of the Philippine Women's University. He was actively identified with the Protestant movement of the Philippines and was prominent in Masonic circles.

III

And now we go back to the last days of this great man. The nature of his position necessitated communication with the capitals of the different provinces not yet under enemy control. Therefore, he had to travel by ferryboat and car through the length and breadth of Negros, Iloilo, and Cebu. On Ascension Day, April 11, 1942, while traveling somewhere around Carcar, Cebu, with his son, Jose, Jr., Colonel Valeriano of the Philippine Constabulary, and some enlisted men, he and his party met truckloads of soldiers. Unaware that the enemy had landed in the vicinity, they stopped the trucks, thinking all the time that the passengers therein were USAFFE soldiers. Finding out too late that the soldiers were Japanese, Jose Abad

Santos and his companions calmly went down from their cars. They were ordered to surrender. Upon inquiry, Abad Santos identified himself as the Chief Justice of the Philippines. The Japanese confiscated the pistol of Colonel Valeriano and those of the enlisted men. The captives were then taken to the Japanese concentration camp in Cebu City. For the first time, the Japanese learned that Jose Abad Santos was actually the head of the Commonwealth Government. Evidently, because of the importance of their prisoner and fearing rescue or escape, father and son were moved from one camp to another. The senior officers of the Japanese Army in Cebu, General Kawagutsu and Colonel Kawakami, "played the role of high priest and Pontius Pilate," respectively, towards Jose Abad Santos, Jr. For almost twenty days, he was subjected to grueling and mortifying inquisition. The exact nature of the investigation is still shrouded in secrecy. Jose Abad Santos, Jr., the only available witness was never present on the spot whenever his father was interrogated. One significant remark, overheard by the son from his father on one occasion,

revealed the man's indomitable courage and unflinching loyalty to a cause he served long and well. He said: "I cannot possibly do that because if I do so I would be violating my oath of allegiance to the United States. What the Japanese asked him to do is still a matter of conjecture. Previously, however, he had been asked to contact General Roxas somewhere in Mindanao who up to that time had not yet surrendered. In all probability, the Japanese wanted him to induce General Roxas to surrender. Apparently, the very idea was revolting to Abad Santos' conscience. There is ground to believe that this demand prompted the utterance of those brave words of defiance by a prisoner in the face of his captor. That refusal cost Jose Abad Santos his life.

On or about May 1, 1942, father and son were taken from Cebu to Mindanao on a Japanese transport which formed part of a convoy sent on a military expedition to Mindanao. They landed at Parang, Cota-bato, under fire from the USAFFE. About this last portion of their fateful odyssey, Jose, Jr. relates:

"We were placed together with the troops in one of the landing barges. While we were moving toward the beach, the USAFFE forces entrenched on the shore were firing at the landing barges. At that moment, I recall that my father was standing straight and the Japanese shouted at him: 'Hey! you get down!' and they signaled him to lie low. I also told him but he had an indifferent attitude at that time. After landing, we hiked for about three hours through mud and heavy luggage until we reached the Constabulary barracks at Parang. After one night in Parang, in the afternoon they placed us in a truck. We were not able to proceed farther that day because they had not cleared up the other parts to which they were supposed to be headed."

On or about May 4, 1942, they reached Malabang. For three days father and son were confined in a school house. For three days, they waited for further developments, doing nothing but read whatever they could get hold of.

The fatal stroke of fate was slow in coming. But slow as it was, there was that tragic inevitability, that powerful surge of destiny noticeable even from the dry, humid air of that summer afternoon. At approximately two o'clock in the afternoon of May 7, 1942, the Japanese interpreter, Keiji Fukui, went to the Chief Justice to summon him to the Japanese Headquarters. After a few minutes, Jose Abad Santos returned and called for his son. Both went into a small hut nearby and there the father stoically informed his son: "I have been condemned to be executed." Thereupon, Jose, Jr. broke down and wept. But the father smilingly and affectionately reproved the son: "Don't cry. What is the matter with you? Show these people that you are brave. It is a rare opportunity to die for one's country and not everybody has that chance." What brave words, what sublime soul was thereby revealed by their utterance!

After exhorting all of his family to live up to his name, father and son said a short prayer. In final parting, they embraced each other. And in a few minutes the son heard a volley of shots. Jose Abad Santos was dead, martyr to a very worthy cause.

No less than an enemy, the Japanese interpreter who witnessed the execution, admired the courage and stoical unconcern with which Jose Abad Santos confronted his end. Pointing out later to the son the father's grave, Keiji Fukui remarked: "Your father died a glorious death."

Ostensibly, Jose Abad Santos was executed upon the imputation of having been responsible for the destruction of the bridges and other public works in Cebu. The charge was entirely unfounded, nay malicious. But he was never given an opportunity to disprove the accusation. In truth, the acts imputed to him had nothing to do with his duties; he was a civilian and it is too well-known that demolition activities more properly belonged to the military.

The Filipino people—and the rest of the world—stand aghast at the horror of such brutal sadism. Caught in the cruel circumstance of a violent war, Abad Santos was too rare a man to have been sacrificed at the altar of human destruction. But irreplaceable and rare as he was, his very act of supreme dedication has consigned him to immortality. Jose Abad Santos stands now as a towering monument to the idolatrous devotion of our people to the ideals of democracy, justice, and liberty; a shining obelisk that rises to the altitudes of the skies.

Human justice may not be able to devise a means to avenge fully the crime committed by the Japanese murderers. But at this time, our concern is not so much any more to return in retribution whatever injustice may have been committed; but more, we are interested to perpetuate the things for which he died. For only in doing so may we hope to justify his supreme love to the Fatherland.

Selfishness and demagoguery take advantage of liberty... Free speech voices the appeals of hate and envy as well as those of justice and charity. A free press is made the instrument of cunning, greed, and ambition, as well as the agency of enlightened and independent opinion. How shall we preserve the supremacy of virtue and the soundness of the common judgment? How shall we buttress Democracy? The peril of this Nation is not in any foreign foe! We, the people, are its power, its peril, and its hope!—CHARLES EVANS HUGHES.

PATENTS . . .

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this record made it a good trade-mark for just what it was applied to, pure or straight wheat flour; to that commodity France never applied the name, but did apply it to a commercially distinct article as he had good right to do.

"Both parties are entitled to be protected in their several businesses. France has no attached Washburn; therefore the latter needs not relief. Washburn has deliberately attached France; therefore the decree below was right, and is affirmed with costs." *France Milling Co., Inc., v. Washburn-Crosby Co., Inc.*, 7F(2) 304."

The trademark LIBERTY herein applied for appears to me to belong to the class of "weak marks." It further appears to be of the sub-class which involves employment by a number of traders for different commodities. The records of the Patent Office show that, in addition to Tan Khok Chioik, LIBERTY is registered to four other persons for as many classes of goods—for cornstarch, laundry soap, lemons and soft drinks, and for the manufacture of bread. In view of these circumstances, I believe that the petitioner's application should be reinstated in the active files of the Patent Office, upon the condition, however, that there be submitted in place of the original application a new one prepared in accordance with the new Act and with the Rules of Practice issued thereunder, the new application to be given proper priority of action, and all fees paid upon the original application to be credited to the new one.

Manila, April 19, 1949.

(Sgd.) CELEDONIO AGRAVA
Director of Patents

Civil Code

of the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his cod debtors, in proportion to the debt of each. (1145a)

ART. 1238. Payment by a solidary debtor shall not entitle him to reimbursement from his cod debtors if such payment is made after the obligation has prescribed or become illegal. (n)

ART. 1239. The remission made by the creditor of the share which affects one of the solidary debtors does not release the latter from his responsibility towards the cod debtors, in case the debt had been totally paid by anyone of them before the remission was effected. (1146a)

ART. 1240. The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his cod debtors. (n)

ART. 1241. If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.

If there was fault on the part of any one of them, all shall be responsible to the creditor, for the price and the payment of damages and interest, without prejudice to their action, against the guilty or negligent debtor.

If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extra-judicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply. (1147a)

ART. 1242. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible. (1148a)

SECTION 5.—Divisible and Indivisible Obligations

ART. 1243. The divisibility or indivisibility of the things that are the object of obligations in which there is only one debtor and only one creditor does not alter or modify the provisions of Chapter 2 of this Title. (1149)

ART. 1244. A joint indivisible obligation gives rise to indemnity for damages from the time any one of the debtors does not comply with his undertaking. The debtors who may have been ready to fulfill their promises shall not contribute to the indemnity beyond the corresponding portion of the price of the thing or of the value of the service in which the obligation consists. (1150)

ART. 1245. For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by mechanical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties. In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in each particular case. (1151a)

SECTION 6.—Obligations with a Penal Clause

ART. 1246. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interest in case of non-compliance, if there is no stipulation to the con-

trary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code. (1152a)

ART. 1247. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced. (1153a)

ART. 1248. Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded. (n)

ART. 1249. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. (1154a)

ART. 1250. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause. (1155)

CHAPTER 4

EXTINGUISHMENT OF OBLIGATIONS

General Provisions

ART. 1251. Obligations are extinguished:

- (1) By payment or performance;
- (2) By the loss of the thing due;
- (3) By the condonation or remission of the debt;
- (4) By the confusion or merger of the rights of creditor and debtor;
- (5) By compensation;
- (6) By novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolatory condition, and prescription, are governed elsewhere in this Code. (1156a)

SECTION 1.—Payment or Performance

ART. 1252. Payment means not only the delivery of money but also the performance, in any other manner, of an obligation. (n)

ART. 1253. A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be. (1157)

ART. 1254. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligor. (n)

ART. 1255. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with. (n)

ART. 1256. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. (1158a)

ART. 1257. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subordinate him in his rights, such as those arising from a mortgage, guaranty, or penalty. (1159a)

ART. 1258. Payment made by a third person who does not intend to be reimbursed by the

debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it. (n)

ART. 1259. In obligations to give, payment made by one who does not have the free disposal of the thing due and capacity to alienate it shall not be valid, without prejudice to the provisions of article 1447 under the Title on "Natural Obligations." (1160a)

ART. 1260. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it. (1162a)

ART. 1261. Payment to a person who is incapacitated to administer his property shall be valid if he has kept the thing delivered, or insofar as the payment has been beneficial to him.

Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

- (1) If after the payment, the third person acquires the creditor's rights;
- (2) If the creditor ratifies the payment to the third person;
- (3) If by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment. (1163a)

ART. 1262. Payment made in good faith to any person in possession of the credit shall release the debtor. (1164)

ART. 1263. Payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt shall not be valid. (1165)

ART. 1264. The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than, the thing due.

In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will. (1166a)

ART. 1265. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money shall be governed by the law of sales. (n)

ART. 1266. When the obligation consists in the delivery of an indeterminate or generic thing, whose quality and circumstances have not been stated, the creditor cannot demand a thing of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration. (1167a)

ART. 1267. Unless it is otherwise stipulated, the extra-judicial expenses required by the payment shall be for the account of the debtor. With regard to judicial costs, the Rules of Court shall govern. (1168a)

ART. 1268. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter. (1169a)

ART. 1269. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines. (n)

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired. (n)

In the meantime, the action derived from the original obligation shall be held in abeyance. (1170)

ART. 1270. In case an extraordinary inflation or deflation of the currency stipulated should su-