might not suffice to satisfy this price. When the price is more than covered by the rents and profits, there would appear to be no legal justification to hold that the redemption has not taken place *ipso facto*, the purchaser being already in possession of more than what he is entitled to receive. *Alberto vs. De los Santos et al., CA-G.R. No.* 5741-*R, promulgated July* 28, 1953.

ID.; LAW GOVERNING EXECUTION SALES. — Execution sales are governed, primarily, not by the law on sales incorporated into the Civil Code, but by the Rules of Court, which are based upon the principles, not of the Roman Law (after which the Civil Code is mainly patterned), but of the Common Law. *Alberto vs. De los Santos et al., CA-G.R. No.* 5741-*R, promulgated July* 28, 1953.

ID.; PURCHASER IN EXECUTION SALE DOES NOT ACQUIRE TITLE TO THE PROPERTY NOR RIGHT TO ITS POSSESSION. — The buyer in an ordinary execution sale, unlike a *pacto de retro* purchaser, does not acquire title to the property subject to a resolutory condition — the redemption. Neither does he acquire the right to its possession. The title remains in the judgment debtor, who, likewise, retains the right to continue in possession of the property, if he holds the same, and to receive the rents and/or profits thereof, without any obligation to turn them over, or to account therefor, to the buyer, irrespective of whether the right of redemption is exercised or not. *Alberto vs. De los Santos et al., CA-G.R. No.* 5741-*R, promulgated July* 28, 1953.

ID.; RENTS AND PROFITS PENDING REDEMPTION. — The buyer at the auction sale is not entitled to receive the rents bought, except where the property is held by the tenant. But even then said purchaser is bound to credit such rents and profits "upon the redemption money to be paid." Thus, he becomes a debtor for those rents and profits, in relation to the owner of the property, who, in turn, is his debtor for the amount, either of the judgment (if the buyer is the judgment creditor), or of the price paid at the execution sale, *with interest* thereon at the rate of 1% per month, which, by the way, clearly indicates that buyer does not own the property and *has no right to appropriate the fruits thereof*, prior to the expiration of the period of redemption. *Alberto vs. De los Santos et al., CA-G.R. No.* 5741-*R, promulgated July* 28, 1953.

ID.; EXECUTION SALE; COMPENSATION IN CASE OF REDEMPTION. — The conditions essential to compensation being, accordingly, present (see Articles 1278, 1279 and 1290, Civil Code of the Philippines), the same takes place and the obligations involved are extinguished to the extent of the concurrence thereof. *Alberto vs. De los Santos et al., CA-G.R. No.* 5741-*R, promulgated July* 28, 1953.

ID.; DEMAND FOR ACCOUNTING OR AN OFFER TO REDEEM UNNECESSARY. — The theory of the lower court, to the effect that a demand for accounting or an offer to redeem must be made before the expiration of the period of redemption, as a prerequisite to the compensation, is borne out, neither by the provisions of the Civil Code concerning compensation nor by those of the Rules of Court. What is more, said theory has been impliedly, but, clearly, rejected by the Supreme Court in the case of Syquia vs. Jacinto (60 Phil. 861). *Alberto vs. De los Santos et al., CA-G.R. No.* 5741-*R, promulgated July* 28, 1953.

CORPORATION LAW; WHEN THE JURIDICAL PERSONALITY OF A CORPORATION MAY BE DISREGARDED. — While, normally, courts regard that entity, they disregard it "to prevent injustice, or the distortion or hiding of the truth, or to let in a just defense" (Fletcher, Cyclopedia of Corporations, Permanent Edition, pages 139-140), and also when "the corporation is the mere alter ego or business conduit of a person (Idem, page 136). It is also well-settled that, although a corporation does not lose its entity or sepa-

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DECISION OF THE COURT OF INDUSTRIAL RELATIONS

Pepsi-Cola Bottling Co., versus Almeda et al., Cases Nos. 679-(1) & 679-V (2), *Judge Yanson.*

1. ILLEGAL STRIKE; ITS EFFECTS ON THE EMPLOYMENT STRIKERS. — As of the time the order declaring the strike illegal, has become final, the relationship between management and the strikers, *ipso facto*, is terminated. Since the workers were not dismissed, but, by operation of law, they lost their right to return to work by reason of their own acts, the relationship of the parties may be again renewed if and when a new contract of employment is entered into.
2. IBID; WHO ARE RESPONSIBLE THEREOF. — When a strike is declared illegal because of violence committed by some of the strikers, all the strikers, not only those who committed the illegal acts in furtherance of the strike, must be held responsible thereof.

Atty. Vicente J. Francisco for petitioner. *Attys. Cid, Rafael, Villaluz* for respondents.

RESOLUTION

Both parties filed a motion each for the reconsideration of the order of the trial court, dated June 12, 1953, the dispositive portion of which reads as follows, to wit:

> "WHEREFORE, in order to restore and maintain the status quo provided by Section 19, the Company is hereby ordered to reinstate in the meanwhile the said thirty-two (32) laborers, without back pay, considering that the employer offered re-employment, although temporary in nature: and to submit to this Court the names of the strikers who committed the illegal acts in furtherance of the strike, for proper action."

The facts upon which this order was based are: On March 12, 1953, respondents presented to the company president, J. P. Clarkin, certain labor demands (Exhibit "A"). They were, thereafter, invited to a conference by Management (Exhibit "B") but the parties, however, did not meet until Mr. Clarkin left the Philippines on April 12, 1952. On April 23, 1952, new demands were presented by respondents to Mr. J. Pascual, Treasurer of the Company, giving the Management two (2) days within which to answer them. The workers, assisted by the Union President and counsel, had, however, agreed to wait, until April 28, 1952, when they were made to understand that the President was out for the reply of Mr. Pascual. The matter of collective bargaining and the grant of the demands of the laborers had to be delayed.

In the meanwhile, the company, on April 30, 1952, filed in the Court a petition, requesting the issuance of an order to enjoin the union from declaring a strike. In the conference before the Court the labor leaders made assurance, after they had manifested that the union did not have any intention of declaring a strike, that they will not declare one. The injunction prayed for was not issued in view of this assurance. On May 3, 1952, new demands consisting of five (5) items, which demands are similar to that presented by the union to the company on April 23, 1952, were presented to the company. These demands were transmitted to the company's President by means of a telegranm.

In a general meeting held for the purpose of hearing the report of Mr. Laguian, the members of the union unanimously voted and decided to stage a strike, which, in fact, they declared on May 8, 1952. As a consequence of this strike, the syrup which was already prepared and placed in the tanks of the plant costing ₱2,000.00, among others, was spoiled; and, on the following day, a picket line was maintained and the employees, brokers, distributors and drivers were, by means of threat, prevented from getting into the premises of the Company. Under these facts, the Court after one hearing, in an order issued, declared the strike not only unjustified, but also illegal. The Court says:

> "x x x unjustified because all the strikers know beforehand that Treasurer Pascual had no authority to act on their demands and consequently they should have waited for Clarkin's answer before staging the strike; unjustified, because it was declared after Respondents, through their legitimate representatives, had

promised and assured the Court that they would not go on strike before May 15. The picketing which is the means employed in carrying it on is illegal, because the strikers resorted to threat and intimidation."

This case was brought to the Supreme Court on appeal but same was not given due course.

On May 16, 1952, the officer in charge of the company, knowing as he did the Court's order declaring the strike illegal, invited the workers to work by telling them that they could work if they desire to work, but on a temporary basis. Notice for the laborers to return to work within 48 hours was served them, and a copy thereof, on May 5, 1952, was posted at the company's premises. This notice informed those who desire to go back or to be reinstated to work with the company to see the Officer-in-Charge not later than 4:00 o'clock in the afternoon of May 26, 1952. And 50 workers, out of 82 who staged the strike, returned to work by signing a contract embodying all the terms and conditions of previous work agreement, the difference, however, of the new contract of employment from the contract previous to the strike was that the status under the former is temporary for the reason that the Company President, the only person with authority to hire, was out of the country. Because of the temporary nature of employment of the new contract signed by the workers returning after the strike, 32 workers, the subject of this Incidental Case, did not return to work. This case came to Court as an incident to the main case. In the hearing of this Incidental Case, these workers informed the Court that, so that their status prior to the strike may be maintained, they were willing to resume work under conditions existing prior to May 8, 1952. The trial Court found nothing wrong with the temporary nature of the contract signed by the workers after the strike, as in fact it found the execution thereof justified. It will be noted that, after the expiration of the time given in the notice for the striking workers to return and after the workers, the subject of this Incidental Case, had refused to sign the contract because of the conditions therein provided, the company, in view of the refusal of these workers and the present volume of business at the time, hired new workers to replace these subject workers.

Under these facts, it is believed that the position taken by the trial Court in its order of June 12, 1953, particularly Incidental Case No. 697-V(2) is without basis in fact and in law. After the Court had declared the strike staged by the union on May 8, 1952, not only unjustified but also illegal, and since the strike was unanimously voted upon by the workers, the employer-employee relationship of the parties was, as of May 3, 1952, doubtless, severed. In fact, it is said in one Supreme Court case that the consequence of an illegal strike is the dismissal of the laborers responsible in the illegal strike. As of the time the order declaring the strike illegal, has become final, the relationship between management and the strikers, *ipso facto*, is terminated. Since the workers were not dismissed, but, by operation of law, they lost their right to return to work by reason of their very own acts, the relationship of the parties may be again renewed if and when a new contract of employment is entered into.

We hold that, not only the strikers who committed the illegal acts in the furtherance of the strike but also — and all of them are included because they unanimously voted for the declaration of the strike of May 8, 1952 — the workers are to be held responsible therefor. Since all of them, including the thirty-two (32), the subject of this incidental case, should be made to suffer the adverse consequences of their illegal acts, the beneficent mantle of Section 19 of Commonwealth Act No. 103, as amended, could not extend to them. Since, as of May 8, 1952, when the strike was declared, there was nothing more to maintain, insofar as the employment-relationship between petitioner and the thirty-two (32) employees is concerned because the effect of the strike of May 8, 1952, was complete severance from work of all those responsible are concerned, then the "status quo" which the Trial Judge wanted to preserve does not exist. The declaration of the unjustifiableness and illegality of the strike of May 8, 1952, has to retroact, insofar as its adverse consequences are concerned, from the date of the strike. From that date, there is nothing more to maintain in "status quo" because the relationship of petitioner with the thirty-two (32) workers has already been severed by the illegal strike itself. To hold otherwise would, to our mind, run counter to what the Constitution and the law seek to avoid and give protection to those who, by their voiled conduct, have forfeited their rights thereto (National Labor Union vs. Philippine Match Company 70 Phil. 303).

In view of the foregoing considerations, the order of the Trial Court of June 12, 1953, should be, as it is hereby, reconsidered.

IT IS SO ORDERED.

Manila, Philippines, January 4, 1954.

(SGD.) ARSENIO C. ROLDAN
Presiding Judge
(SGD.) MODESTO CASTILLO
Associate Judge
(SGD.) JUAN L. LANTING
Associate Judge

BAUTISTA, J., dissenting—

The two incidental cases before this Court pertain to the reinstatement of certain unionists (32 workers in Incidental Case No. 1 and 19 workers in Incidental Case No. 2) who were dismissed by respondent company.

The facts in these incidental cases substantially differ from those already adjudicated in the main Case No. 697-V on May 16, 1952, involving the same parties, which declared the strike led by the Pepsi-Cola Labor Organization (respondents) as illegal.

In the first incidental case, the respondents (unionists) filed on May 19, 1952 with both this Court and the company, a notification expressing willingness to resume work immediately pending their appeal of this Court's Order of May 16th. The respondents reiterated their compliance with the *status quo* imposed upon the parties by Commonwealth Act 103, as amended. They notified the Court (Exh. "1", Case No. 697-V) that they have obeyed the order and have dissolved their strike and picket. This order was duly appealed to the Court *en banc* and became final only three months later in August, 1952, when the Supreme Court declined to review the questions of facts.

Meanwhile, between May 19 and May 26, 1952, despite the pending appeal on the strike's legality, the respondent company's acting manager, Mr. Jose Pascual, required all strikers to interview him prior to their reinstatement. Evidence concurrently shows that the company admitted strikers who were non-unionist and independent, but required those with union loyalty to sign certain papers as prerequisite to resumption of work.

Thus, on May 20, 1952, the respondents petitioned this Court for a restraining order against alleged unfair labor practices and urged their return to their permanent jobs. But the company continued hiring newcomers. The company admitted, later, having hired a total of 68 newcomers.

And on May 26, 1952, the unionists filed another petition for contempt against the company for hiring outsiders and for dismissing oldtimers, both without court knowledge and authority. The 32 unionists unaccepted by the company thence entrusted their fate with this court.

On the other hand, the company answered on June 10, 1952 and June 20, 1952, and alleged that this Court's order of May 16, 1952, which declared unjustified the strike led by these unionists on May

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rate juridical personality because the bulk or even the whole of its stock is owned by another corporation (Monongahela Co. vs. Pittsburg Co., 196 Pa., 26; 46 Atl., 99; 79 Am. St. Rep., 685), courts will look beyond the mere artificial personality which incorporation confers, and if necessary to work out equitable ends, will ignore corporate forms (Colonial Trust Co. vs. Montello Brick Works, 172 Fed. 310). In the case of Koppel (Phil.), Inc. vs. Yatco et al., our Supreme Court, applying the principles just stated, ruled that there is every reason to ignore and disregard the corporate entity where the corporation is so organized and controlled and its affairs are so conducted, as to make it merely an instrumentality of another, and the legal fiction will also be completely disregarded when it is invoked or used to defeat public convenience, justify wrong, protect fraud, or defend crime (43 Off. Gaz. No. 11, p. 4604). In the earlier case of Cagayan Fishing Development et al, vs. Sandico, 36 Off. Gaz., p. 1118 the same principles were sustained and applied. *People vs. Dollente, CA-G.R. Nos.* 7723-*R*, 7724-*R*, 7725-*R*, 7726-*R*, 7727-*R*, 7728-*R* & 7729-*R*, *promulgated February* 26, 1953.

8, 1952) automatically gave the company authority to dismiss the strikers and to hire replacements, without any knowledge or application to this Court.

We differ with these uncalled for and dangerous assumptions especially on such sacred and fundamental questions as job security and wholesale punishment without specific individual just causes. This tribunal, indeed, is under obligation to give protection to labor. (Art. XIV, Phil. Constitution). For the ruling of May 16, 1952, merely declared the strike as illegal based on circumstances then exposed by the company. The order could not, and did not, authorize therein that the several hundred strikers would be dismissed at the whim of the company; it did not authorize discrimination against leaders of the Pepsi-Cola Labor Organization. The order was clear—what is not written, is not authorized.

Significantly, the company on May 9, 1952, petitioned this court *for authority not to admit* (or to dismiss) the strikers; it likewise sought *authority to hire new outside laborers as replacements.* This Court refused to grant the requests and found no justification to dislodge these permanent workers most of whom served over five years in their jobs. This Court would not abet with whatever errors individual strikers may have committed nor utilize alleged individual mischiefs as capricious weapons to punish union membership, and indiscriminately against all strikers. But the company went ahead with the firing and hiring without any knowledge or permission from this Court, and despite unfavorable action on its requests of May 9, 1952.

On August 15, 1952, October 20, 1952, and November 7, 1952, the respondents gave supporting evidence in the persons of Eduardo Laguian, Onofre Rivera and Lamberto Ramos. Laquian, as union secretary acting for the union, first applied to Mr. Pascual immediately on May 16, 1952 for reinstatement under *status quo and* reiterated formal application on May 19, 1952 (Exhibit "1" of Case No. 697-V). Rivera testified on the "conditional contracts" imposed upon unionists who presented themselves for reinstatement. Ramos likewise applied to sign any agreement under any condition, but Mr. Pascual refused to accept him because he was one of those black-listed by the company. Ramos asked Pascual the reasons for the black-list but the latter gave none. (p. 45, t.s.n., Nov. 7, 1952). No witnesses testified for the company nor evidence submitted to repudiate these testimonies.

The principal question raised in this case is whether this Court's order of May 16, 1952, automatically authorized the dismissal of striking unionists and likewise authorized the employment of new laborers during the pendency of the Order, and without prior application to and permission from this Court.

We maintain that the order did not authorize the outright dismissal of all the strikers; neither did it authorize any prejudicial move in violation of the due process clause of the Constitution. No law exists that authorizes the automatic dismissal of strikers while the order or illegality is pending appeal. Neither does any statute permit *ipso facto* dismissal of all the strikers irrespective of their individual participation or non-participation in the unwarranted acts during the strike.

Of the several hundred strikers, no showing was exposed to this Court why 32 petitioners were picked out for "automatic discharge" despite their notice and application of May 19, 1952 to resume work. No evidence is on record that each of the 32 petitioners committed individual misconduct to justify their sudden dismissal. The causes of action in the petition to declare the strike illegal is different from the petition for reinstatement due to unjust cause.

This Court on June 12, 1953, finally decided to reinstate the 32 workers concerned, upon evaluation of the facts adduced.

Section 19, Commonwealth Act 103, as amended, says pertinently "that the employer shall refrain from accepting other employees, under the last terms and conditions existing before the dispute arose." Likewise, "during the pendency of an industrial dispute before the Court of Industrial Relations, the employer cannot lay off and much less dismiss the employee without the permission of the Court." (Luzon Marine Department Union vs. Arsenio Roldan, GR L-2660, May 30, 1950). "Permission must have been obtained first before an employer can discharge an employee during the existence of an industrial dispute before the Court of Industrial Relations." (Manila Trading vs. PLU, 40 Off. Gaz. 9th Suppl. p. 57).

It is therefore the duty of this Court to be vigilant when one of the parties is at a disadvantage due to indigence or other handicap. (Art. 24, Civil Code of the Philippines). Moreover, such dismissal of laborers is subject to the supervision of the Government. (Art. 1710, Civil Code of the Philippines). This means that the employer is not vested absolute power as sole arbiter on dismissal of strikers, taking into account that the company through its counsel, Atty. Vicente J. Francisco, brought this question to this Court on May 9, 1952.

The Supreme Court pointed out in the case of National Labor Union versus Philippine Match (70 Phil. 303) that not all the strikers could be punished but only those who commit specific unwarranted acts.

The ruling of this Court on June 12, 1953, considering the facts established, justly ordered the reinstatement of the 32 petitioners who were refused reinstatement by the company since May 19, 1952.

We vote to affirm their reinstatement.

Manila, January 14, 1954.

JIMENEZ YANSON, J., dissenting:

I dissent from the majority opinion of the Court *in banc,* reconsidering the order of the trial court, dated June 12, 1953, issued in Cases Nos. 697-V(1) and 697-V(2).

I agree entirely with the view of Judge Bautista as stated in the order issued on June 12, 1953 in said two cases, but as there seems to be, among the other Judges of this Court, divergence of opinion, with respect to the resolution of Case No. 697-V(1), I understand I should express my points of view therefor.

I agree that the mere declaration by the Court of Industrial Relations that the strike declared by the employees on May 8, 1952 was illegal does not necessarily carry with it the dismissal of all the striking employees. There must be a showing, after proper hearing, who are the ones responsible for such illegal strike before the Court could authorize the dismissal of the employees responsible of such illegal strike.

The real purpose of the law (Section 19 of Commonwealth Act 103, as amended) is "to maintain the parties in *status quo* during the pendency of the dispute in order to safeguard the public interest and to enable the Court to settle such dispute effectively (Manila Trading & Supply Co. vs. Philippine Labor Union, G.R. No. 47233).

And the above view has been reaffirmed in the case of the Luzon Marine Department Union vs. Arsenio C. Roldan, et al., G. R. No. L-2660, when the Supreme Court stated: "Under the law, during the pendency of an industrial dispute before the Court of Industrial Relations, the employer cannot lay off, much less dismiss, the employees without the permission of the Court."

The evident purpose of the law, as above stated, is to place in the hands of the Court of Industrial Relations, and not on the employer, the power to dismiss the employees, who participated in an illegal strike (Republic Steel Corporation vs. National Labor Relations Board, 107 F2d 472, No. 8, 1939) and also Resolution of the Court of Industrial Relations *in banc,* dated January 5, 1952, in Case No. 448-V(2); Filipino Labor Union vs. National City Bank Employees' Union, Case No. 500-V; Manila Oriental Saw Mill Co., National Labor Union; and Case No. 788-V Talisay-Silay Milling Co., Inc., vs. Talisay Employees and Laborers Association, August 12, 1953.