SUPREME COURT
EN BANC

THE BOARD OF LIQUIDATORS[1] **representing THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,**
***Plaintiff-Appellant*,**

-versus-

G.R. No. L-18805
August 14, 1967

HEIRS OF MAXIMO M. KALAW,[2] **JUAN BOCAR, ESTATE OF THE DECEASED CASIMIRO GARCIA,**[3] **and LEONOR MOLL,**
Defendants-Appellees.
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D E C I S I O N

SANCHEZ, *J.*:

The National Coconut Corporation (NACOCO, for short) was chartered as a non-profit governmental organization on May 7, 1940

by Commonwealth Act 518 avowedly for the protection, preservation and development of the coconut industry in the Philippines. On August 1, 1946, NACOCO's charter was amended [Republic Act 5] to grant that corporation the express power "to buy, sell, barter, export, and in any other manner deal in, coconut, copra, and dessicated coconut, as well as their by-products, and to act as agent, broker or commission merchant of the producers, dealers or merchants" thereof. The charter amendment was enacted to stabilize copra prices, to serve coconut producers by securing advantageous prices for them, to cut down to a minimum, if not altogether eliminate, the margin of middlemen, mostly aliens.[4]

General manager and board chairman was Maximo M. Kalaw; defendants Juan Bocar and Casimiro Garcia were members of the Board; defendant Leonor Moll became director only on December 22, 1947.

NACOCO, after the passage of Republic Act 5, embarked on copra trading activities. Amongst the scores of contracts executed by general manager Kalaw are the disputed contracts, for the delivery of copra, viz.:

(a) July 30, 1947: Alexander Adamson & Co., for 2,000 long tons, $167.00 per ton, f.o.b., delivery: August and September, 1947. This contract was later assigned to Louis Dreyfus & Co. (Overseas) Ltd.

(b) August 14, 1947: Alexander Adamson & Co., for 3,000 long tons, $145.00 per long ton, f.o.b., Philippine ports, to be shipped: September/October, 1947. This contract was also assigned to Louis Dreyfus & Co. (Overseas) Ltd.

(c) August 22, 1947: Pacific Vegetable Co, for 3,000 tons, $137.50 per ton, delivery: September, 1947.

(d) September 5, 1947: Spencer Kellog & Sons, for 1,000 long tons, $160.00 per ton, c.i.f., Los Angeles, California delivery: November, 1947.

(e) September 9, 1947: Franklin Baker Division of General Foods Corporation, for 1,500 long tons, $164.00 per ton, c.i.f., New York, to be shipped in November, 1947.

(f) September 12, 1947: Louis Dreyfus & Co. (Overseas) Ltd., for 3,000 long tons, $154.00 per ton, f.o.b., 3 Philippine ports, delivery: November, 1947.

(g) September 13, 1947: Juan Cojuangco, for 2,000 tons $175.00 per ton, delivery: November and December, 1947. This contract was assigned to Pacific Vegetable Co.

(h) October 27, 1947: Fairwood & Co., for 1,000 tons $210.00 per short ton, c.i.f., Pacific ports, delivery: December, 1947 and January, 1948. This contract was assigned to Pacific Vegetable Co.

(i) October 28, 1947: Fairwood & Co., for 1,000 tons $210.00 per short ton, c.i.f., Pacific ports, delivery: January, 1948. This contract was assigned to Pacific Vegetable Co.

An unhappy chain of events conspired to deter NACOCO from fulfilling these contracts. Nature supervened. Four devastating typhoons visited the Philippines: the first in October, the second and third in November, and the fourth in December, 1947. Coconut trees throughout the country suffered extensive damage. Copra production decreased. Prices spiralled. Warehouses were destroyed. Cash requirements doubled. Deprivation of export facilities increased the time necessary to accumulate shiploads of copra. Quick turnovers became impossible, financing a problem.

When it became clear that the contracts would be unprofitable Kalaw submitted them to the board for approval. It was not until December 22, 1947 when the membership was completed. Defendant Moll took her oath on that date. A meeting was then held. Kalaw made a full disclosure of the situation, apprised the board of the impending heavy losses. No action was taken on the contracts. Neither did the board vote thereon at the meeting of January 7, 1948 following. Then, on January 11, 1948, President Roxas made a statement that the NACOCO head did his best to avert the losses, emphasized that

government concerns faced the same risks that confronted private companies, that NACOCO was recouping its losses, and that Kalaw was to remain in his post. Not long thereafter, that is, on January 30, 1948, the board met again with Kalaw, Bocar, Garcia and Moll in attendance. They unanimously approved the contracts hereinbefore enumerated.

As was to be expected, NACOCO but partially performed the contracts, as follows:

Buyers	**Tons Delivered**	**Undelivered**
Pacific Vegetable Oil	2,386.45	4,613.55
Spencer Kellog	None	1,000
Franklin Baker	1,000	500
Louis Dreyfus	800	2,200
Louis Dreyfus (Adamson contract of July 30, 1947)	1,150	850
Louis Dreyfus (Adamson contract of August 14, 1947)	1,755	245
T O T A L S	7,091.45	9,408.55
	======	======

The buyers threatened damage suits. Some of the claims were settled, viz.: Pacific Vegetable Oil Co., in copra delivered by NACOCO, P539,000.00; Franklin Baker Corporation, P78,210,00; Spencer Kellog & Sons, P159,040.00.

But one buyer, Louis Dreyfus & Co. (Overseas) Ltd., did in fact sue before the Court of First Instance of Manila, upon claims as follows: For the undelivered copra under the July 30 contract (Civil Case 4459), P287,028.00; for the balance on the August 14, contract (Civil Case 4398, P75,098.63; for that per the September 12 contract reduced to judgment (Civil Case 4322, appealed to this Court in L-2829), P447,904.40. These cases culminated in an out-of-court amicable settlement - when the Kalaw management was already out. The corporation thereunder paid Dreyfus P567,024.52 representing 70% of the total claims. With particular reference to the Dreyfus claims, NACOCO put up the defenses that: (1) the contracts were void because Louis Dreyfus & Co. (Overseas) Ltd. did not have license to do business here; and (2) failure to deliver was due to force majeure,

the typhoons. To project the utter unreasonableness of this compromise, we reproduce in haec verba this finding below:

> "However, in similar cases brought by the same claimant [Louis Dreyfus & Co. (Overseas) Ltd.] against Santiago Syjuco for non-delivery of copra also involving a claim of P345,654.68 wherein defendant set up same defenses as above, plaintiff accepted a promise of P5,000.00 only (Exhs. 31 & 32-Heirs). Following the same proportion, the claim of Dreyfus against NACOCO should have been compromised for only P10,000.00, if at all. Now, why should defendant be held liable for the large sum paid as compromise by the Board of Liquidators? This is just a sample to show how unjust it would be to hold defendants liable for the readiness with which the Board of Liquidators disposed of the NACOCO funds, although there was much possibility of successfully resisting the claims, or at least settlement for nominal sums like what happened in the Syjuco case."[5]

All the settlements sum up to P1,343,274.52.

In this suit started in February, 1949, NACOCO seeks to recover the above sum of P1,343,274.52 from general manager and board chairman Maximo M. Kalaw, and directors Juan Bocar, Casimiro Garcia and Leonor Moll. It charges Kalaw with negligence under Article 1902 of the old Civil Code (now Article 2176, new Civil Code); and defendant board members, including Kalaw, with bad faith and/or breach trust for having approved the contracts. The fifth amended complaint, on which this case was tried, was filed on July 2, 1959. Defendants resisted the action upon defenses hereinafter in this opinion to be discussed.

The lower court came out with a judgment dismissing the complaint without costs as well as defendant's counterclaims, except that plaintiff was ordered to pay the heirs of Maximo Kalaw the sum of P2,601.94 for unpaid salaries and cash deposit due the deceased Kalaw from NACOCO.

Plaintiff appealed direct to this Court.

Plaintiff's brief did not question the judgment on Kalaw's counterclaim for the sum of P2,601.94.

Right at the outset, two preliminary questions raised before, but adversely decided by, the court below, arrest our attention. On appeal, defendants renew their bid. And this, upon established jurisprudence that an appellate court may base its decision of affirmance of the judgment below on a point or points ignored by the trial court or in which said court was in error.[6]

1. First of the threshold questions is that advanced by defendants that plaintiff Board of Liquidators has lost its legal personality to continue with this suit.

   Accepted in this jurisdiction are three methods by which a corporation may wind up its affairs: (1) under Section 3, Rule 104, of the Rules of Court [which superseded Section 66 of the Corporation Law][7] whereby, upon voluntary dissolution of a corporation, the court may direct "such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation;" (2) under Section 77 of the Corporation Law, whereby a corporation whose corporate existence is terminated, "shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established;" and (3) under Section 78 of the Corporation Law, by virtue of which the corporation, within the three-year period just mentioned, "is authorized and empowered to convey all of its property to trustees for the benefit of members, stockholders, creditors, and others interested."[8]

   It is defendants' pose that their case comes within the coverage of the second method. They reason out that suit was commenced in February, 1949; that by Executive Order 372, dated November 24, 1950, NACOCO, together with other government-owned corporations, was abolished, and the Board of Liquidators was entrusted with the function of settling and closing its affairs; and

that, since the three-year period has elapsed, the Board of Liquidators may not now continue with, and prosecute, the present case to its conclusion, because Executive Order 372 provides in Section 1 thereof that —

> "SECTION 1. The National Abaca and Other Fibers Corporation, the National Coconut Corporation, the National Tobacco Corporation, the National Food Products Corporation and the former enemy-owned or controlled corporations or associations, are hereby abolished. The said corporations shall be liquidated in accordance with law, the provisions of this Order, and/or in such manner as the President of the Philippines may direct; Provided, however, That each of the said corporations shall nevertheless be continued as a body corporate for a period of three (3) years from the effective date of this Executive Order for the purpose of prosecuting and defending suits by or against it and of enabling the Board of Liquidators gradually to settle and close its affairs, to dispose of and convey its property in the manner hereinafter provided."

Citing Mr. Justice Fisher, defendants proceed to argue that even where it may be found impossible within the 3-year period to reduce disputed claims to judgment, nonetheless, "suits by or against a corporation abate when it ceases to be an entity capable of suing or being sued" (Fisher, The Philippine Law of Stock Corporations, pp. 390-391). Corpus Juris Secundum likewise is authority for the statement that "[t]he dissolution of a corporation ends its existence so that there must be statutory authority for prolongation of its life even for purposes of pending litigation;"[9] and that suit "cannot be continued or revived; nor can a valid judgment be rendered therein, and a judgment, if rendered, is not only erroneous, but void and subject to collateral attack."[10] So it is, that abatement of pending actions follows as a matter of course upon the expiration of the legal period for liquidation,[11] unless the statute merely requires a commencement of suit within the added time.[12] For, the court cannot extend the time alloted by statute.[13]

We, however, express the view that the executive order abolishing NACOCO and creating the Board of Liquidators should be

examined in context. The proviso in Section 1 of Executive Order 372, whereby the corporate existence of NACOCO was continued for a period of three years from the effectivity of the order for "the purpose of prosecuting and defending suits by or against it and of enabling the Board of Liquidators gradually to settle and close its affairs, to dispose of and convey its property in the manner hereinafter provided," is to be read not as an isolated provision but in conjunction with the whole. So reading, it will be readily observed that no time limit has been tackled to the existence of the Board of Liquidators and its function of closing the affairs of the various government-owned corporations, including NACOCO.

By Section 2 of the executive order, while the boards of directors of the various corporations were abolished, their powers and functions and duties under existing laws were to be assumed and exercised by the Board of Liquidators. The President thought it best to do away with the boards of directors of the defunct corporations; at the same time, however, the President had chosen to see to it that the Board of Liquidators step into the vacuum. And nowhere in the executive order was there any mention of the lifespan of the Board of Liquidators. A glance at the other provisions of the executive order buttresses our conclusion. Thus, liquidation by the Board of Liquidators may, under section 1, proceed in accordance with law, the provisions of the executive order, "and/or in such manner as the President of the Philippines may direct." By Section 4, when any property, fund, or project is transferred to any governmental instrumentality "for administration or continuance of any project," the necessary funds therefor shall be taken from the corresponding special fund created in Section 5. Section 5, in turn, talks of special funds established from the "net proceeds of the liquidation" of the various corporations abolished. And by Section 7, fifty per centum of the fees collected from the copra standardization and inspection service shall accrue "to the special fund created in Section 5 hereof for the rehabilitation and development of the coconut industry." Implicit in all these, is that the term of life of the Board of Liquidators is without time limit. Contemporary history gives us the fact that the Board of Liquidators still exists as an office with officials and numerous employees continuing the job of liquidation and prosecution of several court actions.

Not that our views on the power of the Board of Liquidators to proceed to the final determination of the present case is without jurisprudential support. The first judicial test before this Court is National Abaca and Other Fibers Corporation vs. Pore, L-16779, August 16, 1961. In that case, the corporation, already dissolved, commenced suit within the three-year extended period for liquidation. That suit was for recovery of money advanced to defendant for the purchase of hemp in behalf of the corporation. She failed to account for that money. Defendant moved to dismiss, questioned the corporation's capacity to sue. The lower court ordered plaintiff to include as co- party plaintiff. The Board of Liquidators, to which the corporation's liquidation was entrusted by Executive Order 372. Plaintiff failed to effect inclusion. The lower court dismissed the suit. Plaintiff moved to reconsider. Ground: excusable negligence, in that its counsel prepared the amended complaint, as directed, and instructed the board's incoming and outgoing correspondence clerk, Mrs. Receda Vda. de Ocampo, to mail the original thereof to the court and a copy of the same to defendant's counsel. She mailed the copy to the latter but failed to send the original to the court. This motion was rejected below. Plaintiff came to this Court on appeal. We there said that "the rule appears to be well settled that, in the absence of statutory provision to the contrary, pending actions by or against a corporation are abated upon expiration of the period allowed by law for the liquidation of its affairs." We there noted that "[o]ur Corporation Law contains no provision authorizing a corporation, after three (3) years from the expiration of its lifetime, to continue in its corporate name actions instituted by it within said period of three (3) years."[14] However, these precepts notwithstanding, we, in effect, held in that case that the Board of Liquidators escapes from the operation thereof for the reason that "[o]bviously, the complete loss of plaintiffs corporate existence after the expiration of the period of three (3) years for the settlement of its affairs is what impelled the President to create a Board of Liquidators, to continue the management of such matters as may then be pending."[15] We accordingly directed the record of said case to be returned to the lower court, with instructions to admit plaintiff's amended complaint to include, as party plaintiff, The Board of Liquidators.

Defendant's position is vulnerable to attack from another direction.

By Executive Order 372, the government, the sole stockholder, abolished NACOCO, and placed its assets in the hands of the Board of Liquidators. The Board of Liquidators thus became the trustee on behalf of the government. It was an express trust. The legal interest became vested in the trustee — the Board of Liquidators. The beneficial interest remained with the sole stockholder — the government. At no time had the government withdrawn the property, or the authority to continue the present suit, from the Board of Liquidators. If for this reason alone, we cannot stay the hand of the Board of Liquidators from prosecuting this case to its final conclusion.[16] The provisions of Section 78 of the Corporation Law — the third method of winding up corporate affairs — find application.

We, accordingly, rule that the Board of Liquidators has personality to proceed as party-plaintiff in this case.

2. Defendant's second poser is that the action is unenforceable against the heirs of Kalaw.

Appellee heirs of Kalaw raised in their motion to dismiss,[17] which was overruled, and in their nineteenth special defense, that plaintiffs action is personal to the deceased Maximo M. Kalaw, and may not be deemed to have survived after his death.[18] They say that the controlling statute is Section 5, Rule 87, of the 1940 Rules of Court,[19] which provides that "[a]ll claims for money against the decedent, arising from contract, express or implied," must be filed in the estate proceedings of the deceased. We disagree.

The suit here revolves around the alleged negligent acts of Kalaw for having entered into the questioned contracts without prior approval of the board of directors, to the damage and prejudice of plaintiff; and is against Kalaw and the other directors for having subsequently approved the said contracts in bad faith and/or breach of trust. Clearly then, the present case is not a mere action for the recovery of money nor a claim for money arising from

contract. The suit involves alleged tortious acts. And the action is embraced in suits filed "to recover damages for an injury to person or property, real or personal," which survive.[20]

The leading expositor of the law on this point is Aguas vs. Llemos, L-18107, August 30, 1962. There, plaintiffs sought to recover damages from defendant Llemos. The complaint averred that Llemos had served plaintiff by registered mail with a copy of a petition for a writ of possession in Civil Case 4824 of the Court of First Instance at Catbalogan, Samar, with notice that the same would be submitted to the Samar court on February 23, 1960 at 8:00 am.; that in view of the copy and notice served, plaintiffs proceeded to the said court of Samar from their residence in Manila accompanied by their lawyers, only to discover that no such petition had been filed; and that defendant Llemos maliciously failed to appear in court, so that plaintiffs' expenditure and trouble turned out to be in vain, causing them mental anguish and undue embarrassment. Defendant died before he could answer the complaint. Upon leave of court, plaintiffs amended their complaint to include the heirs of the deceased. The heirs moved to dismiss. The court dismissed the complaint on the ground that the legal representative, and not the heirs, should have been made the party defendant; and that, anyway, the action being for recovery of money, testate or intestate proceedings should be initiated and the claim filed therein. This Court, thru Mr. Justice Jose B. L. Reyes, there declared:

> "Plaintiffs argue with considerable cogency that contrasting the correlated provisions of the Rules of Court, those concerning claims that are barred if not filed in the estate settlement proceedings (Rule 87, sec. 5) and those defining actions that survive and may be prosecuted against the executor or administrator (Rule 88, sec. 1), it is apparent that actions for damages caused by tortious conduct of a defendant (as in the case at bar) survive the death of the latter. Under Rule 87, section 5, the actions that are abated by death are: (1) claims for funeral expenses and those for the last sickness of the decedent; (2) judgments for money; and (3) 'all claims for money against the decedent, arising from contract express or implied.' None of these includes

that of the plaintiffs appellants; for it is not enough that the claim against the deceased party be for money, but it must arise from 'contract express or implied,' and these words (also used by the Rules in connection with attachments and derived from the common law) were construed in Leung Ben vs. O'Brien, 38 Phil., 182, 189-194:

> 'To include all purely personal obligations other than those which have their source in delict or tort.'

Upon the other hand, Rule 88, section 1, enumerates actions that survive against a decedent's executors or administrators, and they are: (1) actions to recover real and personal property from the estate; (2) actions to enforce a lien thereon; and (3) actions to recover damages for an injury to person or property. The present suit is one for damages under the last class, it having been held that 'injury to property' is not limited to injuries to specific property, but extends to other wrongs by which personal estate is injured or diminished (Baker vs. Crandall, 47 Am. Rep. 126; also 171 A.L.R., 1395). To maliciously cause a party to incur unnecessary expenses, as charged in this case, is certainly injury to that party's property (Javier vs. Araneta, 90 Phil. 287).

The ruling in the preceding case was hammered out of facts comparable to those of the present. No cogent reason exists why we should break away from the views just expressed. And, the conclusion remains: Action against the Kalaw heirs and, for that matter, against the Estate of Casimiro Garcia, survives.

The preliminaries out of the way, we now go to the core of the controversy.

3. Plaintiff levelled a major attack on the lower court's holding that Kalaw justifiedly entered into the controverted contracts without the prior approval of the corporation's directorate. Plaintiff leans heavily on NACOCO's corporate by-laws. Article IV (b), Chapter III thereof, recites, as amongst the duties of the general manager, the obligation: "(b) To perform or execute on behalf of the Corporation upon prior approval of the Board, all contracts necessary and

essential to the proper accomplishment for which the Corporation was organized."

Not of de minimis importance in a proper approach to the problem at hand, is the nature of a general manager's position in the corporate structure. A rule that has gained acceptance through the years is that a corporate officer "intrusted with the general management and control of its business, has implied authority to make any contract or do any other act which is necessary or appropriate to the conduct of the ordinary business of the corporation."[21] As such officer, "he may, without any special authority from the Board of Directors, perform all acts of an ordinary nature, which by usage or necessity are incident to his office, and may bind the corporation by contracts in matters arising in the usual course of business."[22]

The problem, therefore, is whether the case at bar is to be taken out of the general concept of the powers of a general manager, given the cited provision of the NACOCO by-laws requiring prior directorate approval of NACOCO contracts.

The peculiar nature of copra trading, at this point, deserves express articulation. Ordinary in this enterprise are copra sales for future delivery. The movement of the market requires that sales agreements be entered into, even though the goods are not yet in the hands of the seller. Known in business parlance as forward sales, it is concededly the practice of the trade. A certain amount of speculation is inherent in the undertaking. NACOCO was much more conservative than the exporters with big capital. This short-selling was inevitable at the time in the light of other factors, such as availability of vessels, the quantity required before being accepted for loading, the labor needed to prepare and sack the copra for market. To NACOCO, forward sales were a necessity. Copra could not stay long in its hands; it would lose weight, its value decrease. Above all, NACOCO'S limited funds necessitated a quick turnover. Copra contracts then had to be executed on short notice — at times within twenty-four hours. To be appreciated then is the difficulty of calling a formal meeting of the board.

Such were the environmental circumstances when Kalaw went into copra trading.

Long before the disputed contracts came into being, Kalaw contracted — by himself alone as general manager — for forward sales of copra. For the fiscal year ending June 30, 1947, Kalaw signed some 60 such contracts for the sale of copra to divers parties. During that period, from those copra sales, NACOCO reaped a gross profit of P3,631,181.48. So pleased was NACOCO's board of directors that, on December 5, 1946, in Kalaw's absence, it voted to grant him a special bonus "in recognition of the signal achievement rendered by him in putting the Corporation's business on a self-sufficient basis within a few months after assuming office, despite numerous handicaps and difficulties."

These previous contracts, it should be stressed, were signed by Kalaw without prior authority from the board. Said contracts were known all along to the board members. Nothing was said by them. The aforesaid contracts stand to prove one thing. Obviously NACOCO board met the difficulties attendant to forward sales by leaving the adoption of means to end, to the sound discretion of NACOCO's general manager Maximo M. Kalaw.

Liberally spread on the record are instances of contracts executed by NACOCO's general manager and submitted to the board after their consummation, not before. These agreements were not Kalaw's alone. One at least was executed by a predecessor way back in 1940, soon after NACOCO was chartered. It was a contract of lease executed on November 16, 1940 by the then general manager and board chairman, Maximo Rodriguez, and A. Soriano y Cia., for the lease of a space in Soriano Building. On November 14, 1946, NACOCO, thru its general manager Kalaw, sold 3,000 tons of copra to the Food Ministry, London, thru Sebastian Palanca. On December 22, 1947, when the controversy over the present contracts cropped up, the board voted to approve a lease contract previously executed between Kalaw and Fidel Isberto and Ulpiana Isberto covering a warehouse of the latter. On the same date, the board gave its nod to a contract for renewal of the services of Dr. Manuel L. Roxas. In fact, also on that date, the board requested Kalaw to report for action all copra contracts

signed by him "at the meeting immediately following the signing of the contracts." This practice was observed in a later instance when, on January 7, 1948, the board approved two previous contracts for the sale of 1,000 tons of copra each to a certain "SCAP" and a certain "GNAPO."

And more. On December 19, 1946, the board resolved to ratify the brokerage commission of 2% of Smith Bell and Co., Ltd., in the sale of 4,300 long tons of copra to the French Government. Such ratification was necessary because, as stated by Kalaw in that same meeting, "under am existing resolution he is authorized to give a brokerage fee of only 1% on sales of copra made through brokers." On January 15, 1947, the brokerage fee agreements of 1 1/2% on three export contracts, and 2% on three others, for the sale of copra were approved by the board with a proviso authorizing the general manager to pay a commission up to the amount of 1 1/2% 'without further action by the Board." On February 5, 1947, the brokerage fee of 2% of J. Cojuangco & Co. on the sale of 2,000 tons of copra was favorably acted upon by the board. On March 19, 1947, a 2% brokerage commission was similarly approved by the board for Pacific Trading Corporation on the sale of 2,000 tons of copra.

It is to be noted in the foregoing cases that only the brokerage fee agreements were passed upon by the board, not the sales contracts themselves. And even those fee agreements were submitted only when the commission exceeded the ceiling fixed by the board.

Knowledge by the board is also discernible from other recorded instances.

When the board met on May 10, 1947, the directors discussed the copra price situation: There was a slow downward trend but belief was entertained that the nadir might have already been reached and an improvement in prices was expected. In view thereof, Kalaw informed the board that "he intends to wait until he has signed contracts to sell before starting to buy copra."[23]

In the board meeting of July 29, 1947, Kalaw reported on the copra price conditions then current: The copra market appeared to have

become fairly steady; it was not expected that copra prices would again rise very high as in the unprecedented boom during January-April, 1947; the prices seemed to oscillate between $140 to $150 per ton; a radical rise or decrease was not indicated by the trends. Kalaw continued to say that "the corporation has been closing contracts for the sale of copra generally with a margin of P5.00 to P7.00 per hundred kilos."[24]

We now lift the following excerpts from the minutes of that same board meeting of July 29, 1947:

> "521. In connection with the buying and selling of copra the Board inquired whether it is the practice of the Management to close contracts of sale first before buying. The General Manager replied that this practice is generally followed but that it is not always possible to do so for two reasons:
>
> (1) The role of the Nacoco to stabilize the prices of copra requires that it should not cease buying even when it does not have actual contracts of sale since the suspension of buying by the Nacoco will result in middlemen taking advantage of the temporary inactivity of the Corporation to lower the prices to the detriment of the producers.
>
> (2) The movement of the market is such that it may not be practical always to wait for the consummation of contracts of sale before beginning to buy copra.
>
> The General Manager explained that in this connection a certain amount of speculation is unavoidable. However he said that the Nacoco is much more conservative than the other big exporters in this respect."[25]

Settled jurisprudence has it that where similar acts have been approved by the directors as a matter of general practice, custom, and policy, the general manager may bind the company without formal authorization of the board of directors.[26] In varying language, existence of such authority is established, by proof of the

course of business, the usages and practices of the company and by the knowledge which the board of directors has, or must be presumed to have, of acts and doings of its subordinates in and about the affairs of the corporation.[27] So also:

> "Authority to act for and bind a corporation may be presumed from acts of recognition in other instances where the power was in fact exercised."[28]

> "Thus, when, in the usual course of business of a corporation, an officer has been allowed in his official capacity to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to manage its business."[29]

In the case at bar, the practice of the corporation has been to allow its general manager to negotiate and execute contracts in its copra trading activities for and in NACOCO's behalf without prior board approval. If the by-laws were to be literally followed, the board should give its stamp of prior approval on all corporate contracts. But that board itself, by its acts and through acquiescence practically laid aside the by-law requirement of prior approval.

Under the given circumstances, the Kalaw contracts are valid corporate acts.

4. But if more were required, we need but turn to the board's ratification of the contracts in dispute on January 30, 1948, though it is our (and the lower court's) belief that ratification here is nothing more than a mere formality.

   Authorities, great in number, are one in the idea that "ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is equivalent to original authority;" and that "[t]he corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time."[30] The language of one case is expressive: "The adoption or ratification of a contract by a corporation is nothing more nor less than the

making of an original contract. The theory of corporate ratification is predicated on the right of a corporation to contract, and any ratification or adoption is equivalent to a grant of prior authority."[31]

Indeed, our law pronounces that "[r]atification cleanses the contract from all its defects from the moment it was constituted."[32] By corporate confirmation, the contracts executed by Kalaw are thus purged of whatever vice or defect they may have.[33]

In sum, a case is here presented whereunder, even in the face of an express by-law requirement of prior approval, the law on corporations is not to be held so rigid and inflexible as to fail to recognize equitable considerations. And, the conclusion inevitably is that the embattled contracts remain valid.

5. It would be difficult, even with hostile eyes, to read the record in terms of "bad faith and/or breach of trust" in the board's ratification of the contracts without prior approval of the board. For, in reality, all that we have on the government's side of the scale is that the board knew that the contracts so confirmed would cause heavy losses.

   As we have earlier expressed, Kalaw had authority to execute the contracts without need of prior approval. Everybody, including Kalaw himself, thought so, and for a long time. Doubts were first thrown on the way only when the contracts turned out to be unprofitable for NACOCO.

   Rightfully had it been said that bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty thru some motive or interest or ill will; it partakes of the nature of fraud.[34] Applying this precept to the given facts herein, we find that there was no "dishonest purpose," or "some moral obliquity," or "conscious doing of wrong," or "breach of a known duty," or "some motive or interest or ill will" that "partakes of the nature of fraud."

Nor was it even intimated here that the NACOCO directors acted for personal reasons, or to serve their own private interests, or to pocket money at the expense of the corporation.[35] We have had occasion to affirm that bad faith contemplates a "state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose."[36] Briggs vs. Spaulding, 141 U.S. 132, 148-149, 35 L. ed. 662, 669, quotes with approval from Judge Sharswood (in Spering's App., 71 Pa. 11), the following: "Upon a close examination of all the reported cases, although there are many dicta not easily reconcilable, yet I have found no judgment or decree which has held directors to account, except when they have themselves been personally guilty of some fraud on the corporation, or have known and connived at some fraud in others, or where such fraud might have been prevented had they given ordinary attention to their duties." Plaintiff did not even dare charge its defendant-directors with any of these malevolent acts.

Obviously, the board thought that to jettison Kalaw's contracts would contravene basic dictates of fairness. They did not think of raising their voice in protest against past contracts which brought in enormous profits to the corporation. By the same token, fair dealing disagrees with the idea that similar contracts, when unprofitable, should not merit the same treatment. Profit or loss resulting from business ventures is no justification for turning one's back on contracts entered into. The truth, then, of the matter is that — in the words of the trial court — the ratification of the contracts was "an act of simple justice and fairness to the general manager and in the best interest of the corporation whose prestige would have been seriously impaired by a rejection by the board of those contracts which proved disadvantageous."[37]

The directors are not liable.[38]

6. To what then may we trace the damage suffered by NACOCO?

The facts yield the answer. Four typhoons wreaked havoc then on our copra-producing regions. Result: Copra production was impaired, prices spiralled, warehouses destroyed. Quick turnovers could not be expected. NACOCO was not alone in this misfortune.

The record discloses that private traders, old, experienced, with bigger facilities, were not spared; also suffered tremendous losses. Roughly estimated, eleven principal trading concerns did run losses to about P10,300,000.00. Plaintiff's witness Sisenando Barretto, head of the copra marketing department of NACOCO, observed that from late 1947 to early 1948 "there were many who lost money in the trade."[39] NACOCO was not immune from such usual business risk.

The typhoons were known to plaintiff. In fact, NACOCO resisted the suits filed by Louis Dreyfus & Co. by pleading in its answers force majeure as an affirmative defense, and there vehemently asserted that "as a result of the said typhoons, extensive damage was caused to the coconut trees in the copra producing regions of the Philippines and according to estimates of competent authorities, it will take about one year until the coconut producing regions will be able to produce their normal coconut yield, and it will take some time until the price of copra will reach normal levels;" and that "it had never been the intention of the contracting parties in entering into the contract in question that, in the event of a sharp rise in the price of copra in the Philippine market produced by force majeure or by causes beyond defendant's control, the defendant should buy the copra contracted for at exorbitant prices far beyond the buying price of the plaintiff under the contract."[40]

A high regard for normal judicial admissions made in court pleadings would suffice to deter us from permitting plaintiff to stray away therefrom, to charge now that the damage suffered was because of Kalaw's negligence, or for that matter, by reason of the board's ratification of the contracts.[41]

Indeed, were it not for the typhoons,[42] NACOCO could have, with ease, met its contractual obligations. Stock accessibility was no problem. NACOCO had 90 buying agencies spread throughout the islands. It could purchase 2,000 tons of copra a day. The various contracts involved delivery of but 16,500 tons over a five-month period. Despite the typhoons, NACOCO was still able to deliver a little short of 50% of the tonnage required under the contracts.

As the trial court correctly observed, this is a case of damnum absque injuria. Conjunction of damage and wrong is here absent. There cannot be an actionable wrong if either one or the other is wanting.[43]

7. On top of all these, is that no assertion is made and no proof is presented which would link Kalaw's acts - ratified by the board — to a matrix for defraudation of the government. Kalaw is clear of the stigma of bad faith. Plaintiff's corporate counsel[44] concedes that Kalaw all along thought that he had authority to enter into the contracts; that he did so in the best interests of the corporation; that he entered into the contracts in pursuance of an over-all policy to stabilize prices, to free the producers from the clutches of the middlemen. The prices for which NACOCO contracted in the disputed agreements, were at a level calculated to produce profits and higher than those prevailing in the local market. Plaintiff's witness, Barretto, categorically stated that "it would be foolish to think that one would sign (a) contract when you are going to lose money" and that no contract was executed "at a price unsafe for the Nacoco."[45] Really, on the basis of prices then prevailing, NACOCO envisioned a profit of around P752,440,00.[46]

   Kalaw's acts were not the result of haphazard decisions either. Kalaw invariably consulted with NACOCO's Chief Buyer, Sisenando Barretto, or the Assistant General Manager. The dailies and quotations from abroad were guideposts to him.

   Of course, Kalaw could not have been an insurer of profits. He could not be expected to predict the coming unpredictable typhoons. And even as typhoons supervened, Kalaw was not remiss in his duty. He exerted efforts to stave off loses. He asked the Philippine National Bank to implement its commitment to extend a P400,000.00 loan. The bank did not release the loan, not even the sum of P200,000.00, which, in October, 1947, was approved by the bank's board of directors. In frustration, on December 12, 1947, Kalaw turned to the President, complained about the bank's short-sighted policy. In the end, nothing came out of the negotiations with the bank. NACOCO eventually faltered in its contractual obligations.

That Kalaw cannot be tagged with crassa negligentia or as much as simple negligence, would seem to be supported by the fact that even as the contracts were being questioned in Congress and in the NACOCO board itself, President Roxas defended the actuations of Kalaw. On December 27, 1947, President Roxas expressed his desire "that the Board of Directors should reelect Hon. Maximo M. Kalaw as General Manager of the National Coconut Corporation."[47] And, on January 7, 1948, at a time when the contracts had already been openly disputed, the board, at its regular meeting, appointed Maximo M. Kalaw as acting general manager of the corporation.

Well may we profit from the following passage from Montelibano vs. Bacolod-Murcia Milling Co., Inc., L-15092, May 18, 1962:

> "They (the directors) hold such office charged with the duty to act for the corporation according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty. Whether the business of a corporation should be operated at a loss during a business depression, or closed down at a smaller loss, is a purely business and economic problem to be determined by the directors of the corporation, and not by the court. It is a well-known rule of law that questions of policy of management are left solely to the honest decision of officers and directors of a corporation, and the court is without authority to substitute its judgment for the judgment of the board of directors; the board is the business manager of the corporation, and so long as it acts in good faith its orders are not reviewable by the courts.' (Fletcher on Corporations, Vol. 2., p. 390)."[48]

Kalaw's good faith, and that of the other directors, clinch the case for defendants.[49]

Viewed in the light of the entire record, the judgment under review must be, as it is hereby, affirmed.

Without costs. So ordered.

Reyes, Makalintal, Bengzon, Zaldivar, Castro and Angeles, *JJ.*, concur.
Concepcion, *C.J.*, and Dizon, *J.*, are on official leave.
Fernando, *J.*, did not take part.

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[1] Original plaintiff, National Coconut Corporation, was dissolved on November 24, 1950 by the President's Executive Order 372 which created the Board of Liquidators. Hence, the substitution of party plaintiff.
[2] Defendant Maximo M. Kalaw died in March of 1955 before trial.
[3] Substituted for defendant Casimiro Garcia, deceased.
[4] Explanatory Note of House Bill 295, 1st Session, 2nd Congress, later Republic Act 5; Congressional Record, House of Representatives, July 22, 1946; Minutes of the NACOCO Directors Meeting of July 2, 1946, Exh. 4-Heirs.
[5] R.A., p. 238; italics supplied.
[6] Garcia Valdez vs. Tuason, 40 Phil. 943, 951-952; Lucero vs. Guzman, 45 Phil. 852, 879; Relativo vs. Castro, 76 Phil. 563, 567-568.
[7] III Agbayani, Corporation Law, 1964 ed., p. 1679.
[8] Government vs. Wise & Co., Ltd. (C.A.), 37 Off. Gaz. No. 26, pp. 545-546.
[9] 10 C.J.S., p. 1503; emphasis supplied.
[10] 1 C.J.S., p. 141.
[11] Id., p. 143; 16 Fletcher, p. 901.
[12] 16 Fletcher, p. 902.
[13] Service & Wright Lumber Co. vs. Sumpter Valley Ry. Co., 152 P 262, 265.
[14] Citing Sumera vs. Valencia, 67 Phil. 721, 726-727.
[15] Italics ours.
[16] See: Section 3, Rule 3, Rules of Court.
[17] Record on Appeal, pp. 21-25.
[18] Id., p. 154.
[19] Now Section 5, Rule 83.
[20] Section 1, Rule 88 of the 1940 Rules of Court; now Section 1, Rule 87.
[21] 2 Fletcher Cyclopedia Corporations, p. 607. See: Uy Chuck vs. Kong Li Po, 46 Phil. 608, 614.
[22] Sparks vs. Despatch Transfer Co., 15 S.W. 417, 419; Pacific Concrete Products Corporation vs. Dimmick, 289, P. 2d 501, 504; Massachusetts Bonding & Ins. Co. vs. Transamerica Freight Lines, 281 N.W. 584, 588-589; Sealy Oil Mill & Mfg. Co. vs. Bishop Mfg. Co., 235 S.W. 850, 852.
[23] Emphasis supplied.
[24] Emphasis supplied.
[25] Emphasis supplied.
[26] Harris vs. H. C. Talton Wholesale Grocery Co., 123 So. 480, 482.
[27] Van Denburgh vs. Tungsten Reef Mines Co., 67 P. (2d) 360, 361, citing First National Fin. Corp. vs. Five-O Drilling Co., 289, P. 844, 845.
[28] McIntosh vs. Dakota Trust Co., 204 N.W. 318, 824.

[29] Murphy vs. W. H. & F. W. Cane, 82 Atl. 854, 856. See Martin vs. Webb, 110 U.S. 7, 14-15, 28 L. ed. 49, 52. See also Victory Investment Corporation vs. Muskogee Electric T. Co., 150 F. 2d 889, 893.
[30] 2 Fletcher, p. 858, citing cases.
[31] Kridelbaugh vs. Aldrehn Theatres Co., 191 N.W. 803, 804, citing cases; emphasis supplied.
[32] Article 1313, old Civil Code; now Article 1396, new Civil Code.
[33] Tagaytay Development Co. vs. Osorio. 69 Phil. 180, 184.
[34] Spiegel vs. Beacon Participations, 8 N.E. (2d) 895, 907, citing cases.
[35] See; 3 Fletcher, Sec. 850, pp. 162-165.
[36] Air France vs. Carrascoso, L-21438, September 28, 1966.
[37] R. A., pp. 234-235.
[38] 3 Fletcher, pp. 450-452, citing cases. CF. Angeles vs. Santos, 64 Phil. 697, 707.
[39] Tr., p. 30, August 29, 1960.
[40] See Exhibit 29-Heirs, NACOCO's Second Amended Answer in Civil Case 4322, Court of First Instance of Manila, entitled "Louis Dreyfus & Co. (Overseas) Limited, plaintiff, versus National Coconut Corporation, defendant."
[41] Section 2, Rule 129, Rules of Court; 20 Am. Jur., pp. 469-470.
[42] The time for delivery of copra under the July 30, 1947 contract was extended. Fifth Amended Complaint, R.A. p. 15. See also Exhibit 26-Heirs.
[43] Churchill and Tait vs. Rafferty, 32 Phil. 580, 605; Ladrera vs. Secretary of Agriculture and Natural Resources, 107 Phil. 794.
[44] Memorandum of Government Corporate Counsel Marcial P. Lichauco dated February 9, 1949, addressed to the Secretary of Justice, 8 days after the original complaint herein was filed in court R.A., pp. 69, 90-112.
[45] Tr., p. 18, 29, August 29, 1960.
[46] See Exhibit 20-Heirs.
[47] Exhibit 25-Heirs.
[48] Emphasis supplied.
[49] 3 Fletcher, pp. 450-452, supra.