Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ALLIED BANKING CORPORATION, Petitioner,	**G.R. No. 163116**
	Present:
-versus-	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
JESUS S. YUJUICO (DECEASED), REPRESENTED BY BRENDON V. YUJUICO, Respondent.	Promulgated: JUN 29 2015

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DECISION

BERSAMIN, *J.*:

This appeal assails the decision promulgated on May 30, 2003,[1] whereby the Court of Appeals (CA) affirmed the decision rendered on November 19, 1997 by the Regional Trial Court (RTC), Branch 13, in Manila dismissing its complaint for the collection of a debt brought against respondent Jesus S. Yujuico and several others (docketed as Civil Case No. R-82-8211 entitled *Allied Banking Corporation v. Yujuico Logging & Trading Corporation, Clarencio S. Yujuico, Jesus S. Yujuico and Gregoria Y. Paredes*).[2]

Civil Case No. R-82-8211 was commenced in the Court of First Instance of Manila on November 7, 1978[3] to demand the principal sum of ₱6,020,000.00 representing the total obligations of Yujuico Logging & Trading Corporation (YLTC) under five promissory notes. In their answer,[4] Jesus S. Yujuico and Gregoria Y. Paredes denied that they were parties to the loan agreements of YLTC; and averred that any liability each could incur

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1 *Rollo*, pp. 9-15; penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice/deceased) and Associate Justice Mercedes Gozo-Dadole (retired).

2 Id. at 127-133; penned by Judge Mario Guariña III (later Associate Justice of the CA/retired).

3 Records, pp. 5-16.

4 *Rollo*, pp. 94-100.

under the continuing guaranties had been extinguished or revoked through payment, novation, and prescription. Each presented a counterclaim for damages against the plaintiff.

In the course of the proceedings, the RTC, which in the meantime replaced the defunct Court of First Instance, dismissed the action against YLTC and Clarencio S. Yujuico because the summons could not be successfully served upon them despite the lapse of 13 years, and there was no prospect of making a successful service thereafter. The RTC also dismissed the case against Gregoria Y. Paredes because of her intervening demise, without prejudice to the bringing of the proper claim against her estate. The trial continued only against Jesus S. Yujuico.

On September 22, 2003, Jesus died in San Mateo, California, United States of America.[5] On February 28, 2005, the Court noted the "confirmation of authority of Brendon V. Yujuico to represent all the legal heirs of Jesus S. Yujuico" in this case.[6]

Antecedents

The CA summed up the following factual antecedents,[7] *viz.*:

> On January 10, 1966, the board of directors of General Bank & Trust Company (Genbank, for brevity) approved a resolution granting YLTC an Omnibus Credit Line in the amount of ₱800,000.00 to be made available by overdrafts, loans and advances upon condition that the principals of YLTC would personally bind themselves in a Continuing Guarantee to secure payment of obligations drawn on said credit extended by Genbank. On February 6, 1968, in order to secure punctual payment at maturity of YLTC's obligations, defendants-appellees Gregoria Y. Paredes, Clarencio S. Yujuico and defendant-appellee Jesus S. Yujuico, principal stockholders of YLTC as sureties, executed a Continuing Guarantee for the amount of ₱800,000 binding themselves in their personal capacities as required by Genbank.
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> Following the expiration of the first credit line, on January 9, 1967, Genbank passed a board resolution granting YLTC a credit line of ₱1.5M which included the preceding ₱800,000-credit line. Pursuant to bank requirements, defendant-appellee Jesus S. Yujuico, Gregoria S. Paredes and Clarencio S. Yujuico again executed a Continuing Guarantee for the entire amount of ₱1.5M. This replaced the previous Continuing Guarantee.
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> After the second credit line expired, Genbank passed a board resolution on April 4, 1968 approving the renewal of YLTC's credit line of ₱1.5 M for another year or "up to statutory limits" and "under existing terms and conditions" covered again by the Continuing Guarantee of

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5 Id. at 206.
6 Id. at 209.
7 Id. at 10-11.

₱1.5M. YLTC's credit line was renewed successively for the following years 1969, 1970, 1971, 1972 and 1973.

On January 7, 1974, Genbank's board of directors passed a resolution granting YLTC a credit line of ₱5 M or "up to statutory limits", whichever is higher. To cover that credit line, on February 6, 1974, Clarence S. Yujuico, as lone surety, executed a Continuing Guarantee to secure payment of YLTC's loan obligations in an amount not exceeding ₱5M or up to statutory limits allowed by law, whichever is higher. Said credit line included the previous ₱1.5M credit accommodation. On January 7, 1975, Genbank passed a board resolution which continued the effectivity of YLTC's ₱5M-credit line for the year 1975. On December 8, 1975, Genbank passed a board resolution renewing the time loan of ₱5.2M for another year or up to December 31, 1976.

Meanwhile, loans contracted by YLTC in 1975 and 1976 evidenced by the following promissory notes became due and demandable:

Date	Amount	Maturity Date
April 30, 1975	₱5.2 M	December 31, 1975
June 4, 1976	₱0.4 M	December 1, 1976
July 8, 1976	₱0.2 M	October 6, 1976
October 5, 1976	₱0.2 M	January 4, 1977
December 1, 1976	₱20,184.90	March 1, 1977
Total	₱6,020,18[4].90	

In 1977, Genbank was placed under liquidation by the Monetary Board. Pursuant to a Memorandum of Agreement executed between the duly appointed bank liquidator and here plaintiff-appellant Allied Banking Corporation, the latter acquired all assets and liabilities of Genbank. Plaintiff-appellant, as successor-in-interest of Genbank, sought to collect the amount covered by the promissory notes. YLTC failed to pay constraining plaintiff-appellant to file the instant collection suit in court.

Judgment of the RTC

On November 19, 1997, the RTC rendered judgment dismissing the complaint against Jesus, as well as his counterclaim.[8] It considered Exhibit B, the second continuing guarantee executed by Jesus on February 22, 1967, as pivotal inasmuch as the credit guaranteed by the first continuing guarantee executed on February 8, 1966 had become "part of the credit under the second agreement," observing that Jesus had not been sued "for any availment by YLTC under Exhibit B, but for those obtained by YLTC after the third guaranty agreement, Exhibit CC, was executed," to which Jesus was not a signatory. It found:

There is on record a xerox copy of a letter dated November 27, 1973 signed by Teodoro Presa for defendant Yujuico and addressed to the Board of Directors of Genbank and received by Atty. Rodolfo Santiago

[8] Id. at 127-133.

> (Exh. 4, previously marked Exhibit 1, appearing as page 393 of Vol. 1 of the records). The paper bore the title "notice of revocation of continuing guaranty" and stated that defendant Yujuico was revoking the continuing guaranty of ₱800,000 (Exhibit A), and of the ₱1.5 million (Exhibit B) that was said to have absorbed and cancelled the former. Mr. Presa was a financial consultant of defendant Yujuico on the date specified in the letter, being under him in a company known as General Textiles (Gentex). Presa testified that upon his advice, defendant Yujuico decided to revoke all his outstanding guaranties as a means to improve his credit standing with the banks and enable him to support Gentex's expansion program. Yujuico specifically instructed him to prepare the letter Exhibit 4 which revoked the latter's guaranty in favor of YLTC (tsn March 25, 1996, at 5). Atty. Santiago, Genbank's corporate secretary, admitted receiving this letter and said that he had presented it to the board of directors which proceeded to renew YLTC's loan without defendant Yujuico's signature (tsn July 9, 1996, at 10, 15). Atty. Rafael Durian, defendant's counsel, stated that he had custody of the carbon original of Exhibit 4, but it was mistakenly included among the old records of their office and destroyed. He affirmed that Exhibit 4 was the xerox copy of the carbon original (tsn April 16, 1996, at 3-4). On the strength of these testimonies, the Court is satisfied of the <u>existence</u> of a letter of revocation sent by defendant Yujuico to Genbank in 1973 and that the xerox copy (sic) Exhibit 4 was a faithful reproduction of that lost communication. Against this evidence plaintiff merely raised the speculation that Atty. Santiago is biased in favor of defendant became (sic) the latter is the uncle of his (Atty. Santiago's) wife. But relationship alone is not enough to discredit the testimony of a witness if it is otherwise clear and convincing, and corroborated by other facts and circumstances, in this case by the testimonies of Mr. Presa and Atty. Durian, People vs. Puesca 87 SCRA 130.[9]

In view of the revocation letter executed by Teodoro Presa in the name and behalf of Jesus being considered existing and valid, the RTC laid down the following consequences of the revocation letter:

> In the continuing guaranty Exhibit B, the following is stated:
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> > "This is a continuing guaranty and shall remain in full force and effect until written notice shall have been received by you that it has been revoked by the undersigned (referring to the guarantors), but any such notice shall not release the undersigned from any liability as to any instruments, loans, advances or other obligations hereby guaranteed, which may be held by you, or in which you may have any interest, <u>at the time of the receipt of such notice</u>" (underscoring supplied.)
>
> Pursuant to this provision, defendant Yujuico may continue to be held responsible only for loans and obligations of YLTC already contacted (sic) as of the time the letter or revocation Exhibit 4 was sent. But the accounts sued upon by plaintiff, that is, Exhibit D, E, F, G, H, came into

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9 Id. at 131.

existence in 1975 and 1976, after the revocations (sic) was made. It follows that defendant Yujuico cannot be held liable for them.[10]

The RTC also ruled that the increase in credit line had novated the continuing guaranty executed by Jesus, to wit:

It is clear, moreover, that as a result of the increase of the credit line of YLTC from ₱1,500,000 to ₱5,000,000, a novation of the loan agreement of YLTC with Genbank had taken place. This because the old obligations had been merged into the new one, the amount increased, and new date specified for its performance. There is, in effect, a new contract that substitutes and replaces the old, and becomes the sole source of the rights and obligations of the parties. In such a juridical situation, the accessory obligations under the old contracts, such as those of guarantors and sureties, are deemed released unless the latter agree to the change. Tolentino, Civil Code of the Philippines Vol. IV, 1962, at 365. Since, in the case at bar, defendant Yujuico as a guarantor did not consent to the novation of the credit agreement between Genbank and YLTC, but on the contrary, revoked his guaranty under the old credit line, he should be released from his undertaking.[11]

Decision of the CA

On appeal, the petitioner assigned the following errors, namely:

I

THE TRIAL COURT ERRED IN FINDING THAT APPELLEE HAD ALREADY REVOKED HIS CONTINUING GUARANTEES AND NOTIFIED GENBANK OF SUCH REVOCATION, HENCE, COULD NO LONGER BE HELD LIABLE AS A SURETY OF THE OBLIGATIONS SUED UPON.

II

THE TRIAL COURT ERRED IN FINDING THAT APPELLEE'S OBLIGATION AS A SURETY UNDER THE CONTINUING GUARANTY DATED FEBRUARY 22, 1967 WAS EXTINGUISHED BY NOVATION WHEN YLTC'S CREDIT LINE WAS INCREASED FROM ₱1,500,000.00 TO ₱5,000,000.00 PURSUANT TO THE CONTINUING GUARANTY DATED FEBRUARY 6, 1974.[12]

By its assailed decision, the CA affirmed the RTC, to wit:

The appeal has no merit.

On the first error assigned by plaintiff-appellant, it is urged that the record is bereft of credible evidence that Genbank received the letter of

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10 Id. at 132.
11 Id.
12 Id. at 12-13.

> revocation. Furthermore, the letter of revocation was signed by Mr. Teodoro Presa, a financial consultant of General Textiles, a company that had nothing to do with the debtor YLTC, and hence was ineffectual as a letter of revocation.
>
> The contention deserves no consideration. We are convinced that Mr. Presa wrote the letter of revocation under the express instructions of defendant-appellee for the latter would not have presented the letter of revocation in his defense had he not actually authorized its preparation. Corroborative of this is Atty. Santiago's testimony that he received such a letter and that at a meeting attended by him, Genbank's board of directors allowed the revocation of the Continuing Guarantee defendant-appellee signed in 1967. Defendant-appellee was no longer required to execute a continuing guarantee thereafter. In civil cases, it is a well settled rule that the appellate court will not reverse a finding of fact by the trial court depending largely upon the credibility of witnesses who testified in the presence of the court, unless the court failed to take into consideration some material fact or circumstance or to weigh accurately all of the material facts and circumstances presented to it for consideration. In the instant case, We do not see any reason for the application of the exception to the just cited rule.
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> On the second assigned error, it is contended that defendant-appellee Jesus Yujuico should not have been discharged from liability as a surety because there was no indication that the Continuing Guarantee executed by Clarence Yujuico alone was intended to replace the Continuing Guarantee defendant-appellee, Clarencio Yujuico and Gregoria Paredes had executed in 1967. The non-inclusion of defendant-appellee in suretyship agreements subsequent to the revocation made at his instance and the absorption of the ₱1.5 M credit line in the subsequent P5M credit line, clearly evince the intent of superseding the previous surety agreement under the ₱1.5M-credit line. In 1974, it was Clarence Yujuico alone who executed a Continuing Guarantee to secure payment of loans contracted under the ₱5M-credit line. Notably, in the course of his testimony, Francis Pasatiempo, a bank officer of plaintiff-appellant bank and formerly connected with Genbank, admitted that the ₱5M-credit line already absorbed the ₱1.5M credit line under which defendant-appellee was previously held bound. Thus, the lower court seasonably held that defendant-appellee is not bound to answer as surety for loans contracted after the revocation such as those sought to be collected by plaintiff-appellant in this case.
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> WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby AFFIRMED.
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> SO ORDERED.[13]

On March 31, 2004, the CA denied the petitioner's motion for reconsideration.[14]

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13 Id. at 13-14.

14 Id. at 64.

Issues

The petitioner charges the CA with grave error for declaring that: (*a*) the revocation letter had released Jesus from his obligations as surety; and (*b*) there was competent evidence to show that the continuing guaranty was extinguished by novation. It contends that the CA, in pointing out that Jesus "would not have presented the letter of revocation in his defense had he not actually authorized its preparation," ignored that Jesus "never testified under oath to affirm that the letter of revocation signed by Mr. Teodoro Presa had been executed pursuant to his instructions." It argues that the testimony of Presa on the revocation letter was self-serving; hence, the CA erred in giving such testimony due weight and consideration. It stresses that there was no competent showing that the revocation letter had emanated from Jesus.[15]

The petitioner argues that the CA erred in holding that the revocation letter was executed upon the instruction of Jesus because there was no evidence that he had executed a special power of attorney in favor of Presa; that Jesus did not present the original copy of the revocation letter to show its receipt by the petitioner; that there was no proof showing that the original copy of the revocation letter had been lost; that Atty. Santiago was a biased witness whose testimony should not be given full faith and credit considering that Jesus was the uncle of his wife; that Atty. Santiago also had no personal knowledge of the actual receipt of the revocation letter by the petitioner; and that Presa was not even certain on who had received the revocation letter.

Ruling of the Court

The appeal lacks merit.

I
The undertaking of Jesus was that of a surety, not a guarantor

Written on Genbank letterhead, the continuing guaranty dated February 8, 1966[16] and the continuing guaranty dated February 22, 1967[17] contained identical principal provisions to the effect that: (*a*) he had guaranteed the "punctual payment at maturity" of the loans secured by the continuing guaranty; (*b*) Genbank, as the creditor bank of YLTC, could "make or cause" payments under the terms and conditions of their loan agreement; (*c*) under paragraph II, Jesus had offered as security for the loans of YLTC his own properties in the possession of Genbank or for which

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15 Id. at 30.
16 Records (Volume 1), p. 19
17 Id. at 20.

Genbank had attached a lien, which, upon default by YLTC in paying the loan, Genbank, "without demand or notice" upon respondent, would have the full power and authority to sell; (*d*) should YLTC incur in default in the payment of the loans, Genbank could "proceed directly" against Jesus "without exhausting the property" of YLTC; and (*e*) paragraph XII expressly stated that the liability of the signatory or signatories to the continuing guaranty would be "joint and several."

It is apparent that the courts below, as well as the petitioner, interchangeably used the terms *guaranty* and *surety* in characterizing the undertakings of Jesus under the continuing guaranties. The terms are distinct from each other, however, and the distinction is expressly delineated in the *Civil Code*, to wit:

> Article 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
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> If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

Thus, in *guaranty*, the guarantor "binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so." The liability of the *guarantor* is secondary to that of the principal debtor because he "cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor."[18] In contrast, the *surety* is solidarily bound to the obligation of the principal debtor.[19]

Although the first part of the continuing guaranties showed that Jesus as the signatory had agreed to be bound "either as guarantor or otherwise,"[20] the usage of term *guaranty* or *guarantee* in the caption of the documents, or of the word *guarantor* in the contents of the documents did not conclusively characterize the nature of the obligations assumed therein. What properly characterized and defined the undertakings were the contents of the documents and the intention of the parties.[21] In holding that the continuing guaranty executed in *E. Zobel, Inc. v. Court of Appeals* was a surety instead of a guaranty, the Court accented the distinctions between them, *viz.*:

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[18] Civil Code, Article 2058.

[19] *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244, 274-275.

[20] Supra notes 16 and 17.

[21] *E. Zobel, Inc. v. Court of Appeals*, G.R. No. 113931, May 6, 1998, 290 SCRA 1, 10, with the Court pointing out: "The use of the term "*guarantee*" does not *ipso facto* mean that the contract is one of guaranty. Authorities recognize that the word "*guarantee*" is frequently employed in business transactions to describe not the security of the debt but an intention to be bound by a primary or independent obligation. As aptly observed by the trial court, **the interpretation of a contract is not limited to the title alone but to the contents and intention of the parties**."

> A contract of surety is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation if the debtor does not. A contract of guaranty, on the other hand, is a collateral undertaking to pay the debt of another in case the latter does not pay the debt.
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> Strictly speaking, guaranty and surety are nearly related, and many of the principles are common to both. However, under our civil law, they may be distinguished thus: A **surety** is usually bound with his principal by the same instrument, executed at the same time, and on the same consideration. He is an original promissor and debtor from the beginning, and is held, ordinarily, to know every default of his principal. ***Usually, he will not be discharged, either by the mere indulgence of the creditor to the principal, or by want of notice of the default of the principal, no matter how much he may be injured thereby***. On the other hand, the contract of **guaranty** is the guarantor's own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often supported on a separate consideration from that supporting the contract of the principal. The original contract of his principal is not his contract, and he is not bound to take notice of its non-performance. He is often discharged by the mere indulgence of the creditor to the principal, and is usually not liable unless notified of the default of the principal.
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> Simply put, a surety is distinguished from a guaranty in that a guarantor is the insurer of the solvency of the debtor and thus binds himself to pay if the principal is *unable to pay* while a surety is the insurer of the debt, and he obligates himself to pay if the principal *does not pay*. [22] (Italics in the original; emphasis and bold italics supplied.)

With the stipulations in the continuing guaranties indicating that he was the *surety* of the credit line extended to YLTC, Jesus was solidarily liable to Genbank for the indebtedness of YLTC. In other words, he thereby rendered himself "directly and primarily responsible" with YLTC, "without reference to the solvency of the principal."[23]

II
Jesus was no longer liable as a surety due to the non-renewal of the continuing guaranties

Be that as it may, the continuing guaranties could not answer for the promissory notes amounting to ₱6,020,184.90 that the petitioner sought to judicially recover from Jesus as surety.

The courts below found and declared that the continuing guaranties of February 8, 1966 and February 22, 1967 were not renewed after the

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[22] Id. at 6-7.

[23] *Palmares v. Court of Appeals*, G.R. No. 126490, March, 3, 1998, 288 SCRA 422, 436, citing *Erbelding v. Noland Co., Inc.*, 64 S.E. 2d 218 (1951).

expiration of the credit line.[24] The petitioner did not establish that another suretyship by Jesus ensured the payment of the credit line issued on April 4, 1968 upon the expiration of the credit line for 1967. What was shown instead is that on February 6, 1974,[25] or about seven years after the expiration of the continuing guaranty of February 22, 1967, it was Clarencio who executed a continuing guaranty for ₱5,000,000.00. Since Genbank accepted the promissory note of ₱5,200,000.00 on April 30, 1975,[26] the continuing guaranty that Clarencio executed about two months earlier covered that amount.

Based on the records, the practice was for the sureties to ensure credit lines issued by Genbank annually with the new sureties absorbing the earlier surety agreements. Considering that no new sureties covered the credit lines from 1968 to 1974, and in view of the fact that the suretyships were continuing, Jesus was solidarily liable for the credit lines Genbank issued for seven years, or until February 6, 1974 when Clarencio assumed the suretyship. Hence, Clarencio, not Jesus, was the party solidarily liable for the indebtedness incurred after February 6, 1974 starting with the promissory note dated April 30, 1975.

Obviously, the petitioner sued to recover the indebtedness of YLTC from Jesus because he was the only available surety after one had died and the other had absconded. Yet, it could not recover from Jesus whose suretyship had been superseded by Clarencio's continuing guaranty for the promissory notes executed subsequent to the new suretyship.

In view of the result reached, the Court will not dwell anymore on the other issues raised for our consideration.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 30, 2003 absolving the estate of the late Jesus S. Yujuico from liability under the continuing guaranties executed on February 8, 1966 and February 22, 1967; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[24] Records, pp. 19-20.
[25] Id. at 21.
[26] Id. at 22.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice