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## THE NATIONAL RICE AND CORN CORPORATION, AN ANALYTIC STUDY

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The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large or upon any substantial group of the people.—*Nebbia vs. New York*, 291 U. S. 539.

### I. INTRODUCTION

The Philippines for the past few years has been vexed by the problem of maintaining the price of palay, the staple crop, at a level that is within the reach of the consuming public and at the same time fair to the capital and the farm hands that cooperate in its production. Whenever there is a flood, a drought or any freak of unkind nature, such as the appearance of locusts, or rinderpest, and what not, the supply of rice runs short and following the simple law of supply and demand, an inadequate supply means simply a rise in the price of this principal cereal. Coupled with the evil effects of an inconstant nature we have to reckon with the manipulations of the unscrupulous middlemen and you will see the necessity for government intervention. We are not in this short work favoring the government's engaging in business. We are certainly against too much bureaucracy in our Commonwealth because a bureaucracy creates a caste, dependents of the public treasury, which in many ways, does more harm than good. But to us the protection of the national welfare is paramount and we shall not be the ones to oppose the government's attempt to go into business if that would be the most auspicious way of advancing the public interest. As said by the Supreme Court of the United States, while emergency does not create power, it may furnish the occasion for the exercise of power. (*House Bldg. Asso. v. Blaisdell*, 290 U. S. 426.) In another case the same Supreme Court said that although an emergency may not call into life a power which has never lived

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nevertheless emergency may afford a reason for the exertion of a living power already enjoyed. (Wilson v. New, 243 U. S. 332.)

In this short work we aim to discuss the National Rice and Corn Corporation in the following order: Background of the National Rice and Corn Corporation; Laws and Executive Orders Involved; The Legal Aspects of the Corporation; and Conclusion.

## II. BACKGROUND OF THE CORPORATION

To provide a long range solution of the rice problem, an extensive study of the rice industry is necessary. We have to touch on recent laws passed to combat the problem, the situation of the industry and its place in the scheme of our national life; and what we term the "necessities of the case", or that which require the creation of a corporation as the most feasible means under the circumstances to do away with the recurrence of the problem, and the fitting into the National Development Company of this subsidiary whose tremendous benefits have been already felt by both the producer and the consumer of our staple crop.

### A. ACT 2868

Way back in 1919 our Philippine Legislature passed Act 2868 whose aim is to "penalize the monopoly and hoarding of, and speculation in, palay, rice, and corn under extraordinary circumstances, regulating the distribution and sale thereof, and authorizing the Governor-General, with the consent of the Council of State, to issue the necessary rules and regulations therefor, and making an appropriation for this purpose."

It can be readily seen, judging from the provisions of the act that it can be said to be the remote ancestor of the National Rice and Corn Corporation. It may be recalled that section I of said Act was declared unconstitutional as conferring upon the executive an undue delegation of legislative power because the act itself, even if it provides a penalty for the violation of the administrative ordinances does not furnish an appreciable standard by which it could be determined whether an act is criminal or not. In other words the grant of power to the executive was unduly broad. (U. S. vs. Ang Tang Ho, 43 Phil. 1.)

Subsection (b) of Section 1 recites as one of the purposes of the act "the establishment and maintenance of a government control of the distribution or sale of the commodities referred to or have such distribution or sale made by the Government itself". Subsection (d) of the same section provides "to purchase, if nec-

essary, through any company established by the government or through any other agency that the government may designate, the amounts of rice, palay, or corn that may be necessary for distribution and resale, preferably and as far as possible at the centers of production." It can be readily seen that the working principle of the present National Rice and Corn Corporation was already embodied in said Act 2868. This Act 2868 was put in full force and effect last September 1935 and this was reenforced by Executive Order No. 872, dated March 19, 1936. This executive order provided temporary rules and regulations with reference to the purchase, sale, and hoarding of palay and rice. The principal object of this executive order was to check hoarding by rice profiteers by requiring them to report the amount of rice in stock and to report the disposition of the same from time to time. There was also placed a maximum limit which could not be exceeded by those engaged in rice retailing. This was of course to protect the consuming public from being victimized by unscrupulous profiteers.

#### I. ACT 3918 OR RICE TARIFF ACT

It is not only the protection of the consumer that is baffling the rice industry, for coupled with this intent to provide an adequate supply to the buying public, is the desire to protect the "kasamas" that are vital in their production and to give the landlord reasonable return on his invested capital. Obviously the preceding Act 2868 was for the protection of the consuming public. The law designed to protect the factors of production came in 1932 when the then Philippine Legislature passed Act 3918 to serve as a protection against the competition offered by imported rice coming from Saigon, Siam, and Indo-China. The effectiveness of this protective tariff was amply demonstrated when in 1934, the Insular Collector of Customs reported the lowest level in rice imported into this country for a period of over 25 years. Sometime in September of 1935 the Governor-General almost reduced the tariff fixed by this law because of the rice crisis but fortunately this was not done because if it had been executed as planned, the low tariff rate would remain fix and stationary, as the same cannot be raised to the present level when times of prosperity and abundance come. The reason is simple. Act 3918 very clearly provides that the Governor-General may reduce but may not raise the tariff on rice. The government, however, found a happy solution by purchasing rice free of duty and selling them to consumers at reasonable normal

prices. Fortunately this solved the problem to the satisfaction of all concerned, at least temporarily.

The government to protect again the producers from being duped by owners of warehouses passed the Bonded Warehouse Law to secure the deposits of depositors. Experience has shown that hundreds of these depositors have been helplessly deprived by criminally minded warehousemen who sell the palay in their custody and appropriated to their own private use and benefit the proceeds of the same. This Act has secured for the palay depositors safety in their deposits.

## B. THE "NECESSITIES OF THE CASE"

### 1. *The Rice Crisis of 1935-1936*

As the rice harvest was nearing its end in the early part of 1935, reports received in the Bureau of Commerce from its field agents indicated that there would be a decline in the new crop and the Bureau took steps with the cooperation of the executive and the secretary of agriculture and commerce to handle the situation. Statistics were taken to determine the extent of the decline and the fluctuation in prices was keenly watched. The available stock of palay in the Central Luzon provinces was taken so as to determine how much carry over there would be for the next year's use.

### 2. *Government Intervention*

Late in August 1935 the price of rice per ganta in Manila soared to ₱.28. There was a clamor against the continuing rise in the price of the commodity. The matter was brought before the Cabinet and measures were considered to meet the situation. On August 30th, the Director of Commerce invited rice producers, millers, and merchants to a conference in his office in order to seek their cooperation in keeping the price of rice on a reasonable level and in preventing the hoarding of the supply for purposes of speculation. The rice producers and middlemen pledged their cooperation but in spite of this the price of rice continued to rise. The Director of Commerce recommended that the Manila Trading Center be authorized to buy and sell rice as a measure to help the poor people and to some extent influence the trend of prices. This was authorized by the Cabinet and later on a state of emergency was proclaimed under Act 4198, the Bureau of Commerce being designated as the relief organiza-

tion. Also another proclamation was issued putting into effect Act 2868 to do away with speculation and the hoarding of supply.

The announcement of the decision of the government to import rice produced a sudden effect on the trade. Opposition was voiced by leading rice producers who contended that they should be permitted to dispose of their large stocks without the competition of government imported rice. The Government believed, however, that importation was the only solution to remedy the situation and so it did. This caused the price of rice to go down to as much as ₱6.10 per cavan of 57-1/2 kilos in October, whereas the price during the preceding September was as much as ₱7.10.

In meeting however the emergency the Government took into account the interests of all concerned. While it wanted to protect the interest of the consumer by insuring a sufficient supply of the article and its being sold at a reasonable price, the Government did not overlook the interest of the producer. The government wanted to give the bona fide dealer an opportunity to get fair profit. Towards these ends were the policies of the Bureau of Commerce directed. From its operations as a relief organization in connection with the rice crisis of 1935, the Bureau made a net profit for the Government of ₱159,012.91. This profit represents what the Department of Agriculture and Commerce describes as the savings and economies in the sale of the imported rice. This profit was made possible because the relief work was entrusted to the Bureau without additional personnel and because of the use of government warehouses and equipment which have not been accounted for. But as we have said before, we need a long range solution of the problem and therefore what was adopted in 1935 may prove inadequate to meet the future emergencies which may arise.

### 3. *Relation of Landowner and Tenant*

The two most important factors in the production of palay are the landowner and the tenant. The former represents capital, the latter, labor. The relationship between this two is denominated as the "aparceria" system. There are several forms controlling the relation between landlord and tenant but the most common form is that one where the crop is equally divided between the tenant and the landlord, the tenant paying one-half of the expenses of production in addition to the labor while the landlord furnishes the land to be tilled and bearing the other

half of the expenses. But no less important in the relation of landlord and tenant are the practices followed in connection with lending money by the landlord to the tenant. Generally the tenant finds it necessary to borrow in cash or in kind to meet his needs and those of his family before harvest. It is in connection with these lending and borrowing practices that the tenants have suffered from certain abuses. This is the sociological side of the rice problem and the most important. As Mr. Joaquin Elizalde of the National Development Company said, "I assume, however, that the biggest problem of this industry now is that the primary producer of the palay (the kasama) does not get or is not compensated by the landowner to the extent commensurate with the value of his product. He is not paid proportionately to the price that the palay actually brings in the market or the value of the rice actually produced. Over and above all this, the kasama is exploited through usury, high rentals, constant uncertainty as to the stability of his reinvestments besides the usual worries that the farming industry has to suffer regularly because of unfavorable weather conditions, failure of crops, pests, losses of work animals, etc. *It is, therefore, of extreme importance to this country, where according to figures one-half of the population is dependent on the rice industry, to choose a system, through legislation, of control of the industry to afford the farmer, the actual producer of the palay a means to earn a reasonable living wage including amortization, and to prevent this all important class (which up to now has been most orderly) from being driven by desperation into an agrarian revolution as in other countries.*" (Memorandum of Mr. Joaquin Elizalde to the President of the Philippines, dated February 3, 1936.)

As we see it one of the most important problems affecting the industry is the stabilization of the price of palay. A stabilized price would mean a better chance for adjustment and more liberal terms to kasamas can be extended by the landlords. Usually as shown by experience, the prices of rice at harvest time drops down to about ₱1.70 or ₱1.80 a cavan of 44 kilos and going up to as high as ₱3.00 a few months afterwards. Most of the obligations, if not all, of the tenant mature at harvest time and he has to meet his obligations, if ever, under such a miserable price for his produce. No doubt the poor kasama will remain in eternal bondage. Having no sophisticated theories of economics to help him, or, even if he has a vague understanding about them, his own poverty makes him helpless. In fact

he is a sure victim whichever way the price goes, under the old conditions. He sells his palay at the lowest price and during hard times he buys for his own family consumption at a price that is too high. The farmer is too honest in meeting his obligations. He does not know of the exemptions allowed him by law and the landlord gets the whole produce. It is not surprising to find a tenant a month or two after harvest not only having nothing of his produce but again going to his landlord for the "ration" as they call it in the rice producing regions.

#### 4. *National Attention Gained*

It was to meet these many problems that the President of the Philippines on December 19, 1935, sent the following message to the National Assembly then in session:

Gentlemen of the Assembly:

One of the most serious and immediate problems which confronts our new government is that which concerns the supply and price of rice and corn, the two main staple foods of our people. It is essential that we devise ways and means whereby we may insure at all times an ample supply of these commodities at reasonable prices to the consumer while at the same time enabling the producer to receive an adequate return for his investment and efforts so as to encourage him to continue producing locally these products thereby making our country self-sufficing in this respect. Especially during the year 1936 will this problem become more acute owing to the drought, typhoons, and plant pests which prevailed during the year 1935. Immediate action must therefore be taken to insure a sufficient supply of said commodities and give relief in the matter of prices to the hard pressed small farmers and "kasamas".

I consider that the solution to this problem is most urgent and bring to your attention for the enactment of the corresponding legislation. For the purposes of Article VI, Section 12, paragraph (2) of the Constitution I hereby certify to the necessity of the immediate enactment of this measure.

Respectfully,

(Sgd.) MANUEL L. QUEZON

The National Assembly, however, failed to act although the Honorable Felipe Buencamino, Jr., Assemblyman from Nueva Ecija, presented House Bill No. 153 which provides for the creation of a Rice and Corn Stabilization Board which shall have for its functions the administration, control, and investment of two million pesos to start with, for the purchase, sale, barter, and distribution of husked and unhusked rice and corn, to carry out

the objectives of said bill to stabilize the supply and price of rice and corn in the Philippines so as to insure to the producer a fair and equitable profit, and to the consumer, an adequate supply, at a reasonable price. This contemplated Board is to be vested with all the powers that a corporation, copartnership, or a natural person is empowered and authorized to have under the laws of the land. This Board shall set for itself a certain yearly standard of maximum and minimum price levels of rice and corn. When prices go below the minimum so set due to over-production, it shall enter the market by purchasing rice, as much as its funds will permit until such time as prices return to the normal levels within the standard so fixed. This solution as acknowledged by the author himself has been found to have succeeded in Japan where it has already passed the experimental stage.

#### C. THE NATIONAL DEVELOPMENT COMPANY

In a letter to the Board of Directors of the National Development Company last January 1936, the President of the Philippines urged that corporation to form a subsidiary corporation to handle the rice relief problem. That was of course after the President has designated the National Development Company as the relief organization to handle the rice emergency. The President's letter reads in part: "I believe that under the broad and general terms of Act 2849 you have ample powers to organize a subsidiary unit to embark in the rice business. This may be capitalized with an initial sum of ₱2,000,000. Once organized, this unit can be delegated by you to handle the relief work and to carry on the purposes contemplated by the Executive Order hereinabove referred to."

The National Development Company was created by Act 2849 to exist for a period of fifty years after the approval of said Act. Said company is capitalized at ₱50,000,000. The President of the National Development Company, in his letter of February 3, 1936, suggested, in accord with the idea of the Commonwealth President, the organization of a subsidiary corporation under the National Development Company, capitalized and controlled by it, to immediately take over the functions of rice importation, of the regulation and stabilization of the rice market; in other words to perform, in general, the work that has been done by the Bureau of Commerce. This was the state of things when the President issued Executive Order No. 18 creating the Rice Commission.

## III. LAWS AND EXECUTIVE ORDERS INVOLVED

A. *The Rice Commission*

On February 17, 1936, the President of the Philippines issued Executive Order No. 18 creating the Rice Commission. Said Executive Order reads in full:

## EXECUTIVE ORDER NO. 18

Creating a rice commission for the purpose of studying and making recommendations on ways and means to solve the present rice crisis and to insure a permanent supply of rice at reasonable prices.

Whereas during the last special session of the National Assembly the President in a special message proposed to that Body the enactment of legislation looking to the solution of problems affecting the rice industry, with particular reference to the impending rice shortage for the current year;

Whereas the National Assembly for lack of time failed to enact the necessary legislation;

Whereas the Secretary of Agriculture and Commerce has certified that the rice shortage this year is such that immediate action is necessary;

Whereas the production and proper distribution of rice is one of the most important problems of this government; and

Whereas it is necessary to provide adequate means for a steady and sufficient supply of this commodity at prices reasonable to consumer, producer, and trader and thereby afford relief to hard pressed small farmers and "kasamas", and the large body of consumers;

Now, therefore, I, Manuel L. Quezon, President of the Philippines, by virtue of the powers in me vested by law, hereby constitute and create a Rice Commission to consist of the following:

Hon. Manuel Roxas, chairman; Hon. Felipe Buencamino, member; the Director of Commerce, member; Hon. Vicente Singson Encarnación, member; and Dr. Nicanor Jacinto, member, whose duty shall be to make a careful investigation and study of the rice problem and recommend measures for immediate relief, including the proper distribution of rice throughout the Philippines at reasonable prices. This Commission shall study further ways and means to insure at all times a steady and sufficient supply of this commodity so as to prevent the recurrence of a rice shortage, and shall make a report of its findings and recommendations to the President of the Philippines at earliest practicable date.

The Commission is hereby authorized to requisition the services of employees of any Department, Bureau, or Office of the Government which it may consider necessary to accomplish the requirements of this Order.

Done at the City of Manila this 17th day of February, in the year of our Lord, 1936, of the Commonwealth of the Philippines, the first.

MANUEL L. QUEZON  
President of the Philippines

By the President :

ELPIDIO QUIRINO  
Secretary of the Interior

Said Rice Commission after several days of session, the different branches of the work being apportioned to the different members, submitted on March 6, 1936 to the President of the Philippines its report the gist of which is as follows :

1. That for the purpose of stabilizing prices of palay and rice (and corn), a corporation subsidiary to the National Development Company, to be known as the National Rice and Corn Corporation, be organized to engage in the business of buying and selling palay and rice.

(a) In order to maintain prices at a level profitable to producers, this corporation will buy palay or rice at a price to be determined from time sufficient to cover average production cost plus a reasonable profit; and

(b) To prevent an excessive rise in the price of the cereal, the corporation will sell palay or rice at prices reasonable to the consumer, considering general economic conditions and consumers' purchasing power, and when necessary this corporation will import rice, free of duty, to be sold through regular trade channels.

2. That, to meet the emergency during the current year caused by shortage of supply, the President in accordance with Act No. 4198 designated by Executive Order the National Rice and Corn Corporation as the relief organization provided in said Act, and in pursuance thereof the corporation to import such quantities of rice, free of duty, as may be needed to meet the emergency.

3. That the Philippine National Bank, the National Loan and Investment Board and other financial institutions grant crop loans and other credit facilities to rice tenants and landowners to relieve them from usurious practices.

4. That, in order to prevent overproductions, the Government adopt a land policy in relation to the production of rice, and for the present withhold from occupation, except through homesteads, such portions of the public lands as may be peculiarly adapted to lowland rice culture.

5. That the Government through its different research organizations undertake to discover new commercial uses for palay, rice, and their by-products.

6. That, effective January 1, 1937, a tax of three centavos be imposed per cavan of palay milled in any power-driven mill, payable by the miller, the fund to be exclusively used for the

benefit of the rice industry and to finance exports of rice if when, because the successive abundant harvests, unmanageable surpluses should occur.

7. That a careful and systematic investigation be made of prevailing relations between landlord and tenant in the rice industry throughout the Islands to be made with a view to the enactment of appropriate legislation to place such relationship as far as possible on a basis fair and equitable to both parties.

8. That uniform standards of weights and measures for palay and rice be established so that a cavan of palay be standardized at 44 kilos weight, and a cavan of rice at 57 kilos; and likewise an official standard for different grades of palay and rice be adopted.

9. That Act No. 4198 and other laws dealing with rice emergencies be revised and amended to obviate any doubt as to the legal authority to carry out the above recommendations.

10. That the above recommendations be applied to corn, should an emergency arise in relation to that cereal.

It can be seen from the above recommendations of the Rice Commission that it also recommended the creation of an agency, government controlled and owned, to engage in the business of buying and selling rice. It is not within the range of this short study to cover all the phases of the report. Suffice it to say that the Commission itself recognized the importance of the rice industry in our national economy, the total value of investments totalling the staggering sum of ₱1,500,000,000 which is about one-half of the total investment in all agricultural industries in the Philippines. The people dependent on the industry number about four millions and the total area planted to palay is about 1,900,000 hectares or about one-half of the total cultivated area of the Philippines. The rice industry is, therefore, the basic industry sustaining Philippine national economy, providing purchasing power to a large percentage of the population. Upon the prosperity of the rice industry depend in great measure favorable business conditions and the well being of the masses.

The Rice Commission in its report also dwelt on the relationship of landlord and tenant. To quote in part, the report cited, "This tenancy system needs revision and regulation. It requires humanization. The tenant should be protected against the exploitation of the unscrupulous. The Constitution of the Philippines gives authority to the government to regulate the relationship between landowner and tenant. Such social legislation is of urgent importance but it can only be enacted after a careful and thorough study of the problems involved, and any formula adopted must be made adjustable to varying conditions

in different sections of the country." Continuing, the report stated, "to improve materially social and economic conditions among a great portion of the population of the Philippines, a plan should be devised whereby the tenant and the small farmer may obtain for their produce shortly after harvest a reasonable price for their crop, sufficient to provide them and their families with a living incomes."

Stabilization is not intended to be a panacea for all ills but it is considered as a major problem and its realization would mean a long way towards the tenants' welfare.

*B. Designation of the Corporation As Relief Organization*

It can be readily seen that one of the recommendations of the Rice Commission was that the President should by executive order designate the National Rice and Corn Corporation as the relief organization provided for in Act 1418 so that the Corporation may import rice free of duty. In accordance with this recommendation, the Commonwealth President issued Proclamation No. 58 designating the National Rice and Corn Corporation as the relief organization under Act No. 4198. The proclamation reads as follows:

PROCLAMATION NO. 58

Designating the National Rice and Corn Corporation as a relief organization to import rice, free of duty.

Whereas official reports show that there exists a serious shortage of rice and there is imminent danger of inflation of prices as a result of manipulations resorted to by those in control of the limited stock at present available for the local needs;

Now, therefore, I, Manuel L. Quezon, President of the Philippines, do hereby declare, under the provisions of Act 4198, an emergency to exist, and do hereby designate the National Rice and Corn Corporation as a relief organization for the purpose of importing rice, free of duty, in such quantities as may be necessary to relieve the situation; in accordance with Proclamation No. 11 dated November 30, 1935.

The duties and responsibilities of the Director of Commerce as prescribed by Executive Order No. 21 dated March 5, 1936, with reference to the issuance of rules and regulations regarding the purchase, sale, and hoarding of palay and rice are hereby transferred to the National Rice and Corn Corporation.

All Government officials and employees, particularly the Director of Commerce and provincial and municipal treasurers, are hereby enjoined to extend to the National Rice and Corn Corporation such assistance as the latter may require for the proper execution of its relief work.

All executive orders and proclamations inconsistent with the provisions of this proclamation are hereby repealed.

In witness whereof, I have hereunto set my hand and caused the Seal of the Commonwealth of the Philippines to be affixed.

The National Rice and Corn Corporation, to accomplish the purposes for which it was created, has a purchase plan. The corporation buys rice at a price deemed sufficient to cover cost of production and under a reasonable profit to producers. At harvest time the corporation buys in the market at the price set by the Board of Directors of the corporation. In this way the price of palay cannot go down. Great fluctuations in the price of the cereal is thereby avoided. At the time supply is about to be exhausted the corporation will unload what it had previously bought to keep the market on an even keel.

#### IV. LEGAL ASPECT OF THE CORPORATION

##### *A. Legality of Its Existence*

It is difficult to assail the legality of the existence of the Corporation as the purposes for which it was organized, and as enumerated in its Articles of Incorporation, answer exactly the letter and spirit of the Act (No. 2849) which created the National Development Company.

Section 2 of the said law provides as follows:

“Sec. 2. The said corporation shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent with the provisions of this Act, and shall have the general powers mentioned in said law and such other powers mentioned in said law and such other powers as may be necessary to enable it to promote, and maintain a sufficient general production by an efficient coordination of the productive forces of the country, or otherwise, and to secure a stable market for the Philippine products, without restricting in any manner any of the aims and purposes of the corporation as set forth in this Section and in the Section next following, it is hereby expressly declared and provided that the National Development Company may engage in commercial, industrial, and other enterprises which may be necessary or contributory to the economic development of the country or important to the public interest; to acquire, hold, mortgage, and alienate personal and real property in the Philippine Islands or elsewhere; to issue bonds and other obligations in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any shares, stocks, bonds, or other obligations, or any property which may be acquired by it, to secure any bonds by it issued or incurred, to make contracts of any kind and description; to purchase, hold, alienate, mortgage, pledge, or otherwise dispose of

the shares of the capital stock of or any bonds, securities or other evidencies of indebtedness created by any other corporation or corporations, copartnership or copartnerships, of this or any other country, and while owner of said stock, to exercise all the rights of ownership, including the right to vote thereon; and in carrying on its business, or for the purpose of attaining or furthering any of its object, as authorized in this Act, to perform any and all acts which a copartnership or natural person is authorized to perform under the laws now existing or which may be enacted hereafter."

It is obvious that the National Rice and Corn Corporation with its objectives which as stated in its Articles:

Second—That the purposes for which said corporation is formed are:

a. To insure a permanent, steady and sufficient supply of rice and corn for domestic consumption.

b. To prevent inordinate speculation in rice and corn and to stabilize the rice prices at a point which shall be sufficient to cover production costs plus a reasonable profit, and guard the consumer at all times against prohibitive prices.

c. To ameliorate the condition of rice and corn producers, especially tenants and small land owners.

d. To aid the government in planning both against scarcity and large unmanageable surpluses of rice and corn, and to serve in either case as the agency to prevent social distress and save those engaged in the industry from avoidable losses.

The foregoing shows clearly that the Corporation falls within the scope of the National Development Company as created by Act 2849.

#### *B. Assemblymen As Members of the Board of Directors*

There is no denying the fact that under our new constitution, the theory of separation of powers as understood in American constitutional law is even more strict. Says Professor Sinco in his book, "The New Constitution of the Philippines cut short that natural development, (meaning departure from separation of powers). It departs radically from the law and the practice observed in this country from the very first days of American administration. Whether or not the framers of our Constitution realized the full import of what they did, the fact is that under the provisions of our fundamental law there is established in our governmental system the doctrine of separation of powers in an even stricter form than that obtaining in the Federal Government of the United States." (Sinco's Philippine Government and Political Law, 4th Edition, p. 175.) It cannot be denied that even before the adoption of our Constitution the doctrine of separation of powers has been held to exist in the

Philippines. As it has been held in several cases the doctrine is firmly imbedded in Philippine jurisprudence to be debatable (See cases of *Barcelon v. Baker*, 5 Phil. 87; *U. S. v. Bull*, 15 Phil. 7; *Severino v. Gov. Gen. and Prov. Bd. of Occ. Negros*, 16 Phil. 366; *Forbes v. Chuoco Tiaco*, 16 Phil. 534; *Province of Tarlac v. Gale*, 26 Phil. 338; *Concepcion v. Paredes*, 42 Phil. 599; *Abueva v. Wood*, 45 Phil. 612; *Aleandrino v. Quezon*, 46 Phil. 83; *Gov't. of the P. I. v. Springer*, 50 Phil. 259; see also *Manila Electric Co. v. Pasay Transportation*, G. R. 27878 (132). With all due respect to the two assemblymen who are members of the Board of Directors of the Corporation, we believe that they are holding their posts in violation of the Constitution. The pertinent part of our Constitution, Article VI, Section 8, paragraph (1) says: "No member of the National Assembly may hold any other office or employment in the government without forfeiting his seat." In the United States Constitution we find the counterpart of that provision of our Constitution as follows: "No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States; and no person holding any office under the United States shall be a member of either house during his continuance in office."

If we compare these two provisions we can readily see that the prohibition in our Constitution is much broader in scope because it expressly refers not only to "office" but also to "employment." Furthermore it makes no distinction whatever as to offices or employments with compensation on the one hand and those without on the other.

It may be argued on the other hand that our constitutional provision refers only to holding any other office or employment in the government and that membership in the Board of Directors of a government owned corporation is not an employment or office coming within the constitutional prohibition. It may be even argued that a corporation has a distinct personality and existence from the government that finances and controls it. To that argument we cannot subscribe "for that would be a remarkable case of evasion to avoid the purpose of the Constitution and still keep within its terms." (*People v. Albertson*, 55 N. Y. 50.) In that case it would be very easy to lure away from their duties in the Assembly and perhaps destroy their independence of thought, which we so fondly cherish, by these assemblymen being appointed to the different boards of government owned or at least government controlled corporations as the National Devel-

opment Company, Manila Railroad, Philippine National Bank, etc. by the executive. We are aware of the fact that even the so-called trinity of executive, legislative, and judicial powers are bound by an indissoluble bond of union and amity. "That deficiencies in human language are such that even if written instruments were always prepared carefully by persons skilled in the use of words, we should still expect to find their meaning often drawn in question, or at least to meet with difficulties in their practical application." Granting that these are all true let us concede that the membership of members of the Assembly in the Board of Directors of the National Rice and Corn Corporation is one of doubtful constitutionality, still we remember that great judge in American Constitutional law, Judge Cooley, who said that "when all the legitimate lights for ascertaining the meaning of the constitution have been made use of, it may still happen that the construction remains a matter of doubt. In such a case it seems clear that everyone called upon to act, where, in his opinion, the proposed action would be of doubtful constitutionality is bound upon the doubt alone to abstain from acting. Whoever derives power from the constitution to perform any public function is disloyal to that instrument, and grossly derelict in duty, if he does that which he is not reasonably satisfied the constitution permits. Whether the power be legislative, executive, or judicial, there is manifest disregard of constitutional and moral obligation by one who having taken an oath to observe that instrument takes part in an action which he cannot say he believes to be no violation of its provisions." (Constitutional Limitation, Eighth Edition, Vol. I, p. 153.)

*C. The Legality of the Exemption From Tariff of National Rice and Corn Corporation*

The only law authorizing the importation of rice free of duty is Act 4198 known as the Emergency Law (see 33 O. G. p. 66) which adds a new paragraph at the end of Section 11 of the Act of Congress of August 5, 1909 entitled an "Act to raise revenue for the Philippine Islands, and for other purposes." The pertinent provision of said Act provides:

"Food, clothing, house-building and sanitary construction materials, and medical, surgical, and other supplies for use in emergency relief work, when imported by or directly for the account of any victim, sufferer, refugee, survivor, or any other person affected thereby, or by or for the account of any relief organization, *not operated for profit, for distribution among the distressed individuals, whenever the Governor-General shall by*

*proclamation declare an emergency to exist by reason of a state of war, pestilence, cholera, plague, famine, drought, typhoon, earthquake, fire, flood, and similar conditions, subject to such regulations as the Insular Collector of Customs may prescribe with the approval of the Secretary of Finance: Provided, That the importation free of duty of articles, goods, wares, or merchandise described herein shall continue only during the existence of such emergency, or within such limits and subject to such conditions as the Governor-General may, by his proclamation, deem necessary to meet the emergency."*

We are not aware of any law passed during the previous session of the National Assembly amending this so as to allow the National Rice and Corn Corporation to be exempted from paying duty and still be allowed to sell rice at profit. A law to this effect was one of the recommendations of the Rice Commission and we hope that would be done. But this necessitates the approval of the United States President as required by the Independence Law. Nevertheless, if it was not done it should be done.

Act 4198 clearly provides that the importation of the goods referred to therein free of duty "shall continue only during the existence of such emergency or within such limits and subject to such conditions as the Governor-General may by his proclamation deem necessary to meet the emergency." Executive Proclamation No. 58, we submit, does not comply with the requirements of this Act because it does not set a definite period of duration for the importation of rice free of duty, neither are the limits and conditions as to such importation clearly defined in said proclamation.

#### V. CONCLUSION

We think the National Rice and Corn Corporation really fills a public need. The recommendations of the Rice Commission should be complied with especially the humanization of the relationship of landlord and tenant. The rice industry should be closely studied to avoid a crisis in the industry especially the limitation of rice production to prevent an oversupply.

We also recommend that members of the National Assembly be not permitted to sit in the Board of Directors of the corporation as that, we believe, contravenes the well-known doctrine of separation of powers, and under our Constitution would mean a forfeiture of their seats in the Assembly. We also recommend, like the Rice Commission, the amendment of Act 4198 to put the importation of rice free of duty which is sold at profit within the pale of legality.