

NOTES *and* COMMENT

Philippine Judges Not Subject to Income Tax

By NORBERTO J. QUISUMBING

Philippine Constitution, Article VIII Section 9:

"... They (Judges. . .) shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office. . ."

This provision has been adopted from the Constitution of the United States. (Art. III sec. 1.)

I.

"**I**F a state, in enacting a statute, . . . borrows from a statute previously existing in another state a provision, clause, or phrase, the same having received a settled judicial interpretation in the state of its origin, it is presumed that the enactment was made with knowledge of such interpretation, and that it was the design of the . . . (state) that the act should be understood and applied according to that interpretation." (Black, *Interpretation of Laws*, p. 597)

Article III, Section 1 of the Constitution of the United States had received a settled judicial interpretation when in 1935 we incorporated it into our Constitution. The interpretation was as follows:

(1) The compensation paid to a judge appointed *before* the passage of the taxing act was not taxable. (*Evans vs. Gore*, 253 U. S. 245, 40 S. Ct. 550, in 1920)

(2) The compensation paid to a judge appointed *after* the taxing act was not taxable. (*Miles vs. Graham*, 268 U. S. 501, 45 S. Ct. 601 in 1925)

This construction had been consistently followed in the Philippines until a few months ago, so that Philippine judges had never paid income tax on their salaries.

This was the settled construction of the provision now incorporated in our Constitution when on February 8, 1935 the Constitution was adopted. It must be therefore presumed that the Constitution was adopted with the knowledge of such interpretation, and that it was the design of the Constitutional Convention that that provision should be understood and applied according to that interpretation.

II.

Four years after the adoption of the Philippine Constitution, the United States Supreme Court in the case of *O'Malley v. Woodrough* (U. S. 1939) 6 U. S. Law Week 1356 reversed its stand in the *Miles vs. Graham* case. The Court left for another day the overruling of *Evans vs. Gore*. That day should not be far away.

The question then arises— Does this American decision over-

ruling a construction of a clause in the American Constitution affect the construction of a similar clause in the Philippine Constitution?

It is submitted that it does not. The Supreme Court in that case was construing the United States Constitution, not the Philippine Constitution. The Court was determining the intent of the American Constituent Assembly, not the intent of the Philippine Constitutional Convention. The Court could properly say that the United States Constituent Assembly had not intended to exempt judges from indirect diminution in the form of income taxes on their salaries. But could we properly say that the Philippine Constitutional Convention had also not intended to exempt judges from income tax? Is it not more proper to presume that if the Constitutional Convention had not intended to exempt judges, it would not have adopted the exact wording of the United States Constitution, which at that time (1935) had been authoritatively construed

to wholly exempt all judges from income tax? It should have—considering the law at that time—expressly declared judges to be liable to income taxes; or, at least, it should have rejected the wording of the United States Constitution. Since it copied the provision of the United States Constitution, it seems reasonable to presume that our Constitutional Convention intended to follow the law as then construed by the United States Supreme Court.

But it may be claimed that such construction has been modified, if not overruled, by the case of *O'Malley v. Woodrough*. It may be claimed that the particular provision of the United States Constitution under study had been (until 1935) erroneously construed. But even admitting that the Constitutional Convention had adopted an erroneous construction, the fact remains that it had adopted it—and its constitutional intent, erroneous or not, is the law of the land. (*In re McCulloch Dick*, 38 Phil. 41, 77)

TRAPPINGS AND TRUTH

“BUT equity is not beguiled by appearances. The outward show and trappings of things give no necessary assurance of their true nature.—CHANCELLOR CAMPBELL.