DIGEST OF CURRENT CASES

CONSTITUTIONAL LAW. — Separation of powers, Political Question—validity of congressional resolution proposing an amendment to the Constitution.

Alejo Mabanag et al. v. Jose Lopez Vito et al, SC-G.R. No. L-1123 March 5, 1947. This is a petition for prohibition to prevent the enforcement of a congressional resolution proposing the "parity" amendment to the Constitution, the validity of which resolution is attacked as contrary to the Constitution, having been passed allegedly without the necessary three-fourths vote in either branch of Congress. The affirmative votes in favor of the proposed amendment would have been short of the necessary three-fourths if the petitioners had been counted. Their votes were not counted, they having been suspended by the Senate or not having been allowed to sit in the lower house on account of alleged irregularities in their election, although they had been proclaimed by a majority vote of the Commission on Elections as having been elected senators and representatives in the elections held on April 23, 1946. But the Supreme Court dismissed the petition, holding: (1) that a proposal to amend the Constitution is a highly political function performed by the Congress in its sovereign legislative capacity committed to its charge by the Constitution itself and the validity of such proposal is a political question not within the province of the judiciary; and (2) that a duly authenticated bill or resolution imports absolute verity and is binding on the courts.

The doctrine that political questions are not within the province of the judiciary, except to the extent that power to deal with such questions has been conferred upon the courts by express constitutional or statutory provision (16 C. J. S. 431), is well established. This doctrine is predicated on the principle of the separation of powers. The problem presented by the petition for prohibition was the determination of what matters fall within the meaning of political question, a term not susceptible of exact definition. Precedents and authorities are not always in full harmony as to the scope of the restrictions, on this ground, on the courts to meddle with the actions of the political departments of the government. Relying on the majority and concurring opinions rendered in Coleman v. Miller, 122 A.L.R. 625, which held that the efficacy of ratification by state legislature of a proposed amendment to the Federal Constitution a political question and hence not justiciable and that the decision by Congress, in its control of the Secretary of State, of the questions whether an amendement has been adopted within a reasonable time from the date of submission to the state legislature, is not subject to review by the court, the Philippine Supreme Court reasoned that, if ratification of an amendment is a political question, a proposal which leads to ratification has to be a political question.

On the question whether or not a duly authenticated bill or resolution imports absolute verity and is binding on the courts, a great number of decisions were rendered and commentaries written. In the United States, "In point of numbers, the jurisdictions are divided almost equally *pro* and *con* the general principle (of these, two or three have changed from their original position), two or three adopted a special variety of view, (as in Illinois), three or four are not clear, and one or two have not yet made their decisions". (IV Wigmore on Evidence, 3rd. ed., 685 footnote). The Philippine Supreme Court reduced its labor to an intelligent selection and borrowing of materials and arguments under the criterion of adaptability to a sound public policy. The rule of conclusiveness it adopted is also that prevailing in England and that adopted by the United States Supreme Court (Harwood v.. Wentworth, 40 L. ed. 1069; Lyons v. Wood, 38 L. ed. 854; Field v. Clark, 36 L. ed 294). The Philippine Supreme Court voted six justices to three. —*Briefed by* EMMA QUISUMBING.

POLITICAL LAW.—Treason—Theory of Suspended Sovereignty rejected.

Anastacio Laurel v. Eriberto Misa et al, SC-G.R. No. L-409 January 30, 1947. This is a petition for *habeas corpus* based on the theory that a Filipino citizen who adhered to the enemy giving the latter aid and comfort during the Japanese occupation can not be prosecuted for the crime of treason defined and penalized by article 114 of the Revised Penal Code, for the reason (1) that the sovereignty of the legitimate government in the Philippines and the correlative allegiance of Filipino citizens thereto were then suspended and (2) that there was a change of sovereignty over these Islands upon the proclamation of the Philippine Republic. The Supreme Court denied the petition, holding (1) that a citizen or subject owes, not a qualified and temporary, but an absolute and permanent allegiance, which consists in the obligation of fidelity and obedience to his government or sovereign; that this absolute and permanent allegiance should not be confused with the qualified and temporary allegiance which a foreigner owes to the government or sovereign of the territory wherein he resides, so long as he remains there, in return for the protection he receives, and which consists in the obedience to the laws of the government or sovereign, that the absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate government or sovereign is not abrogated or severed by the enemy occupation, because the sovereignty of government or sovereign *de jure* is not transferred thereby to the occupier, and if it is not transferred to the occupant it must necessarily remain vested in the legitimate government; that the sovereignty vested in the titular government (which is the supreme power which governs a body politic or society which constitutes the state) must be distinguished from the exercise of the rights inherent thereto, and may be destroyed, or severed and trans-

ferred to another, but it can not be suspended because the existence of sovereignty can not be suspended without putting it out of existence or divesting the possessor thereof at least during the so-called period of suspension; that what may be suspended is the exercise of the rights of sovereignty when the control and government of the territory occupied by the enemy passes temporarily to the occupant; and that, as a corollary of the conclusion that the sovereignty itself is not suspended and subsists during the enemy occupation, the allegiance of the inhabitants to their legitimate government or sovereign subsists, and therefore there is no such thing as suspended allegiance; and (2) that the change of our form of government from Commonwealth to Republic does not affect the prosecution of those charged with the crime of treason committed during the Commonwealth, because it is an offense against the same government and the same sovereign people, for article XVIII of our Constitution provides that "The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of the Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines."

The theory of the subsistence of the sovereignty of the legitimate government in a territory occupied by the military forces of the enemy during a war, "although the former is in fact prevented from exercising the supremacy over them", is one of the "rules of international law of our times" (II Oppenheim 6th Lauterpacht ed. 1944 p. 482), recognized, by necessary implication, in articles 25, 44, 45 and 52 of the Hague Regulations of 1907. The conclusion that the sovereignty of the United States was suspended in Castine set forth in the decision in the case of United States v. Rice, 4 Wheaton 246, 253 (1810), was therefore construed by the Philippine Supreme Court to mean either that the word "sovereignty" meant the exercise of the rights of sovereignty which exercise was suspended or that, if the said conclusion referred to the suspension of the sovereignty itself, it has become obsolete after the adoption of the Hague Regulations in 1907 and cannot be applied to the present case. The decision in this case does not involve the reversal of the doctrines laid down in Co Kim Cham v. Valdez (41 O. G. 779, XXII P L. J. No. 1 pp. 18) and Peralta v. Director of Prisons (42 O. G. 198 XXII P. L. J. No. 1 pp. 26-32), which related to the question, not of sovereignty, but of the existence of a government *de facto* and its power to promulgate rules and laws in the occupied territory.

The Supreme Court held that the Commonwealth of the Philippines was a sovereign government, though not absolute but subject to certain limitations imposed in the Indepedence Act and incorporated as Ordinance appended to our Constitution, because it was recognized not only by the Legislative Department or Congress of the United States in approving the Inde-

pendence Law and the Constitution of the Philippines, which contains the declaration that "Sovereignty resides in the people and all government authority emanates from them" (sec. 1 Art. II), but also by the the Executive Department of the United States, when the late President Roosevelt in one of his messages to Congress said, among others, "As I stated on August 12, 1943, the United States in practice regards the Philippines as having now the status as a government of other independent nations—in fact all the attributes of complete and respected nationhood" (Congressional Record, vol. 29 part 6 page 8173), and because the question of sovereignty is "a purely political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizen and subjects of the country" (Jones v. United States, 137 U.S. 202, 34 L. ed. 691, 696). It is believed that the ruling that the Commonwealth of the Philippines was a sovereign government, is not necessary, and should not have been made, in the resolution of the right to prosecute the offense of treason committed during the Commonwealth regime. It may be said to be dicta.—*Briefed by* TROADIO T. QUIAZON, JR.

NATURALIZATION LAW.—Legal right to oppose petition for naturalization, "Anti-Chinise League of the Philippines".

Anti-Chinese League of the Philippines v. Felix et al, SC-G.R. No. L-998 February 20, 1947. This is a petition for *mandamus* instituted by the "Anti-Chinese League of the Philippines" on the ground that the respondent judge of the court of first instance has refused and refuses to allow said league to appear and oppose the petition for naturalization filed by the other respondent Teodoro Lim pending in the Court of First Instance of Manila. The Supreme Court denied the petition, holding (1) that a civic organization or association representing a group of Filipino citizens does not constitute a juridical person or entity, and, since only natural or juridical persons may be parties, either in civil actions or special proceedings (Rule 73 sec. 2 in connection with Rule 3 sec. 1, Rules of Court), the petitioner-league cannot be a party in the said naturalization proceeding nor institute the present action of *mandamus* and (2) that, assuming that the petitioner is a natural or juridical person, no law grants the petitioner the right and the petitioner has no legal interest in opposing an application for naturalization,—the Solicitor General, personally or through his delegate, and the provincial fiscal being the only officers or persons authorized by law to appear on behalf of the government and oppose an application for naturalization or move for the cancellation of a naturalization certificate already issued (Com. Act No. 473 secs. 10 and 18).

In case of association of natural persons not legally organized as a juridical entity, each and every one of the members thereof must be made parties, and the only exceptions are, first, when the parties are so numerous that it is impractica-

ble to bring all of them in court, in which case one of more may be made parties if they represent sufficiently the interest of all (Rule 3 sec. 12), and, second, when two or more persons associated in any business transact such business under a common name, in which case they may be sued by such common name, whether it comprises the names of such persons or not (Rule 3 sec. 15).

The rule enunciated by the Supreme Court that the petitioner-league did not have legal interest to intervene and oppose applications for naturalization, is in consonance with the rule in other jurisdictions (Matter of McCarron, 29 NYS 582; Raymond v. Raymond, 37 SW 202; McCarron v. Cooper, 44 NYS 695; Pintsch Compressing Co. v. Bergin, 84 Fed. 140; Com. v. Paper, Brewster Pa. 263 cited in 2 C. J. 1125; Peterson v. State, 89 SW 81).—*Briefed by* BIENVENIDO A. TAN, JR.

PUBLIC SERVICE ACT.—Certificate of convenience and public necessity, Effect of transitional situation after war on policy on grant thereof.

Gregorio v. Public Service Commission, SC-G.R. No. L-550 *January 30, 1947*. This is a petition for a writ of certiorari to annul an order of the Public Service Commission denying an application to operate an ice plant. The Supreme Court denied the petition, holding that, in the absence of a clear showing that the same is arbitrary, unlawful, or outside the jurisdiction of the Commission to make (Com. Act No. 146, sec. 35 as amended), the court cannot interfere with the formula adopted by said Commission of granting certificates up to December 31, 1948 to applicants who had facilities for making ice and denying certificates to those who had not—the Commission having been dealing with a transitional situation and confronted with a complex problem of business, economy and statesmanship requiring the immediate production of essential services because of the severe scarcity of ice and the prevention of speculation in permanent certificates of convenience and public necessity.

In this case, the Supreme Court took occasion to affirm its previous rulings succinctly summarized: The Public Service Commission is the entity vested with the power to authorize the operation of public services and to issue certificates of public convenience therefor (Com. Act No. 146, sec. 15 as amended). In the exercise of this power, the Commission must be guided by public necessity and convenience as the primary consideration (Manila Electric Co. v. Pasay Transportation Co., 31 O. G. 2083; Manila Electric Co. v. Pasay Transportation Co., 36 O. G. 3250; Manila Electric Co. v. Parsons Hardware Co., 37 O. G. 1333). In the granting or refusal of a certificate of public convenience, all things considered, the question is what is best for the interest of the public (Carmelo & Oriol v. Monserrat, 55 Phil. 644). It follows that, when public convenience would not be saved, the issuance of a certificate is not in order. Since the granting of a certificate of public convenience presupposes that it is for the use and benefit of the travelling public, so where it appears that the route over

which the certificate is granted is nothing but a proposed road which has not been constructed, the certificate itself is null and void (A.L. Ammen Transportation Co. v. De Margallo, 54 Phil. 570).

In this decision, also, the Supreme Court drew a distinction between a petition for certiorari and a petition for review, which are the only remedies provided by law for the consideration by the Supreme Court of orders or decisions of the Public Service Commission (Com. Act No. 146 sec. 36 as amended; Manila Railroad Co. v. Ammen Transportation Co. Inc., 48 Phil. 266). The remedy by certiorari is available only in case the Commission has exceeded its jurisdiction or gravely abused its discretion. When no question of jurisdiction is involved but merely an error of law or fact, the appropriate remedy is review and not certiorari (Ishi v. Public Service Commission, 63 Phil. 428). — *Briefed* by TROADIO T. QUIAZON, Jr.

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Historic Continuity

"LEARNING, my learned brethren, is a very good thing. I should be the last to undervalue it, having done my share of quotation from the Year Books. But it is liable to lead us astray. The law, so far as it depends on learning is indeed, as it has been called, the government of the living by the dead. To a very considerable extent no doubt it is inevitable that the living should be so governed. The past gives us our vocabulary and fixes the limits of our imagination: we cannot get away from it. There is, too, a peculiar logical pleasure in making manifest the continuity between what we are doing and what has been done before. But the present has a right to govern itself so far as it can; and it ought always to be remembered that historic continuity with the past is not a duty, it is only a necessity." — Mr. JUSTICE HOLMES, *Collected Legal Papers.*

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