REVIEW:

Opinions of the Secretary of Justice

SERIES OF 1950

ADMINISTRATIVE LAW; CERTIFICATE OF AVAILABILITY OF FUNDS NOT REQUIRED IN BARTER CONTRACTS.[1]

The Bureau of Prisons entered into a barter contract with a certain company wherein it was agreed that the Bureau would deliver sawed lumber after the installation of a sawmill. Upon failure to deliver the lumber, the company filed with the General Auditing Office a money claim arising from an alleged breach of contract. The Auditor of the Bureau interposed as defense that the contract was void as a certificate of availability of funds was not procured. The question was also raised as to the legal effect of the contract granted it was valid.

Opinion: Section 607 provides:

"Section 607. Certificate showing appropriation to meet contract.—Except in the case of a contract for personal services or for supplies to be carried in stock, no contract involving an expenditure by the National Government of three thousand pesos or more shall be entered into or authorized until the Auditor General shall have certified to the officer entering into such obligation that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereto ***."

It is evident that the above-quoted provision is limited in application to contracts involving the expenditure of public funds. This is borne out by the purpose behind the requirement imposed by the above section—in order that the Auditor General may certify that public funds have been duly appropriated to meet the proposed contract and that such amount is available for expenditure on account thereof, (See Sec. 607, supra.) If a contract does not entail the expenditure of public funds, there certainly is no need for a certification that funds have been appropriated to meet the contract. A contract of barter, as is plainly the case with the one in question, is consequently not within the purview of said provision for no public funds will have to be expended thereunder. Such contract need not therefore be coursed thru the Office of the Auditor General to make it valid.

The contract, having been validly entered into, produced legal consequences to which the contracting parties became subject. The terms of the contract indubitably show that it is one of barter. "Barter is a contract by which each of the contracting parties obligates himself to give one thing in order to receive another." (Art. 1538, Civil Code.) It is a consensual contract and is perfected by the mere agreement of the parties as to the things to be exchanged. (Tolentino, Vol. 11, Civil Code, p. 909, citing 10 Manresa, 451.)

[1] In the case of Tan Tee vs. Wright (53 Phil. 172), the Supreme Court held that a certificate of availability of funds is required for the validity of a contract with the government. The case treated in this opinion, however, should be distinguished from the Tan Tee doctrine in the sense that in the former the contract is one of barter.

This being so, the contract under consideration was perfected the moment the Bureau of Prisons and the Philippine Operations Inc., agreed as to the things to be bartered.

However, said contract would be consummated only from the time the parties shall have mutually taken possession of the things exchanged. (Blagton vs. Vda. de Oller, 62 Phil. 933.) Under the contract in question, the delivery by the Bureau of Prisons of the first batch of timber was conditioned upon the installation of the sawmill. Failure to install it in good running condition would be fatal to the consummation of the contract, and the obligation of the other party to comply with its part of the contract would not arise. Moreover, the rule that the vendor is bound to deliver and warrant the thing which is the subject of the sale (Art. 1461, Civil Code) is also applicable to the contract of barter, for, under Article 1641 of the same code, barter is governed by the provisions relating to purchase and sale as to all matters not especially provided for. In a case where, in the execution of a contract of purchase and sale of goods, the purchaser gives his consent on the assertion of the vendor that the goods are on the way, this assertion is an essential element of the contract, the non-fulfillment of which deprives the vendor of his right of action to demand of the vendee the payment of the price of the sale. (Soler vs. Chesley, 43 Phil. 529.) Likewise, in the contract of barter between the Bureau of Prisons and the Company, the stipulation that the sawmill will be installed first is an essential element of the contract, the non-fulfillment of which deprives the party on whom such obligation is incumbent of the right to demand delivery of the lumber in exchange for his goods.

OPINION NO. 1

MUNICIPAL CORPORATIONS; CITY COUNCIL CANNOT CREATE CITY DEPARTMENT OR VEST APPOINTMENT ON PRESIDENT WITHOUT LAW.

The city council of Dumaguete passed an ordinance creating a Health and Welfare Department and vested the appointment of the head in the President of the Philippines. The validity of such ordinance is in question.

Opinion:

The city council exceeded its powers in creating the Department of Health and Welfare. While it is true that section 19 of Republic Act No. 327 (charter of Dumaguete City) recognizes the possibility of the creation of other city departments aside from those mentioned in section 17 thereof, (finance, law, police, fire departments) the said provision does not authorize the city council to effect the creation of city departments. The city departments being created specifically by law, it is quite obvious that the creation of new ones or the abolition of those previously created may only be accomplished by congressional action. This is so because the creation of an additional city department results in no less than an amendment of the city charter. To recognize, therefore, the validity of Ordinance No. 2 of the city council would be to give rise to the absurd legal conclusion that a city council may amend a law enacted by Congress.

The same considerations apply with respect to transferring the power of appointment of the city health officer from the proper Department Head to the President of the Philippines. The city charter not having vested the power to appoint the city health officer in the President of the Philippines, and the said official not being a "city" officer within the purview of the second paragraph of

section 19 of the city charter, he should therefore be appointed by the proper Department Head. (Ops., Sec. of Jus., dated December 27, 1940 and July 8, 1947.) That a city ordinance may not vest the power to appoint in the President is also deduced from the provision of section 10 (3), Article VII of the Constitution, which provides that the appointment of inferior officers may *by law* be vested by *Congress* in the President alone, in the courts, or in the heads of departments.

OPINION No. 2
Series 1950

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POLITICAL LAW—POSTAL CANCELLER BEARING EMBLEM OF SECTARIAN ORGANIZATION VIOLATIVE OF CONSTITUTION.

The Knights of Columbus, a fraternal and benevolent society of Roman Catholic men ( ) requested the use by the Post Office of a postal canceller bearing its emblem and a slogan announcing its national convention. The question raised is whether such use violates the constitutional prohibition against the use of public money or property for the benefit or support of any sect or church.

Besides its fraternal and benevolent character, a careful examination of the charter of the organization reveals that among the various aims and purposes for which it was organized is the promotion of religious work and the protection of Catholic interests. Thus, Section 1 (d) of its charter provides that said organization was constituted and established for the purpose, among other, "of promoting and conducting educational, charitable, *religious*, social welfare, war relief and welfare and public relief work." Then, too, Section 101 thereof limits membership therein only to Roman Catholics by providing that "*Practical Roman Catholics* only shall be eligible to and entitled to continue membership in the Order."

On the basis of its membership requirement and religious objectives, the Knights of Columbus, although it cannot be denominated a sect, church, denomination or system of religion, is nonetheless a sectarian organization. Webster ascribes to the term "sectarian", the following connotation: "bigotedly attached to the tenets and interests of a sect or denomination." Words and Phrases describes this term as referring to the activities of the followers of one faith in relation to those of another. (Vol. 38, p. 445). Ballentine Law Dictionary defines "sectarian" as pertaining to some one of the various sects or a body of persons professing the same faith. Furthermore, it has been held that a sectarian organization is "one whose purpose as expressed in its charter, and whose acts, done pursuant to powers conferred, are promotive of tenets or interests of a particular sect or denomination." (Gerhardt vs. Heid, 267 NW 127).

Since the Knights of Columbus is a sectarian organization, the use of such slogan canceller to postmark outgoing mails for the purpose of announcing its first national convention would be in contravention of the constitutional provision under consideration.

The request of said organization for the use of the mails as above contemplated would, if granted, redound to its direct benefit. The grant of such privilege would certainly give it much publicity from which it will derive considerable profit. The benefit resulting therefrom would not merely be incidental, because a benefit to be considered really incidental, must not result from an act, plan, design or purpose calculated to produce it. It is obvious that the principal aim and purpose

requesting the use of mail facilities for the particular purpose is not the increased revenue collections that would inure to the Government from the sale of stamps to be postmarked by such cancellers but the resulting propaganda and advertisement of the organization. The benefit is, therefore, deliberately intended to accrue to this organization which, under the circumstances, would be enjoying the singular privilege of advertising its national convention at the expense of the public through its postal facilities. The fact that all expenses incident to the manufacture of cancellers, and the purchase of stamp pads, ink, rubber daters, etc., are to be borne by the organization would not take such use of the mail from the pale of the constitutional prohibition, for the reason that the whole process, from the stamping to the actual delivery of the mail matter would necessarily involve the application and use of the postal facilities by a sectarian organization falls plainly within the express terms of the constitutional prohibition.

In the case of Aglipay vs. Ruiz, 64 Phil. 201, the situation, however, is different. Although the court held therein that the constitutional prohibition in question is not infringed when the benefit accruing to the sectarian institution through the use of public funds is merely incidental, this ruling may not be relied upon in support of the privilege herein requested. In said case, the use of public funds for the purchase of plates and for the printing of postage stamps containing a map of the Philippines, showing Manila as the "Seat of the XXXIII International Eucharistic Congress", was not intended for the benefit of the Roman Catholic Church. The issuance of the stamps was authorized by a law which vested in the Director of Posts discretion to determine when it would be advantageous to issue the same, and the holding of the International Eucharistic Congress was simply chosen as the occasion for the issue thereof. The inscription on the stamp was adopted for the purpose of advertising not the Roman Catholic Church under whose auspices the congress was held, but the Philippines as the place of the religious confab in order to attract more tourists to this country. While the issuance was inseparably linked with an event of religious character, yet, it was purely a voluntary action on the part of the Government for its benefit and not for that of any religion. Consequently, there was no use or application of public property in violation of the Constitution.

OPINION No. 3
Series 1950

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ADMINISTRATIVE LAW—RIGHT OF ALIENS TO PRACTICE MEDICINE IN THE PHILIPPINES.

Is an American physician who was born in a state which does not permit Filipino physicians from practicing there but who has resided in a state granting reciprocity to Filipinos entitled to practice here?

Opinion:

Before a foreign physician may be admitted to the practice of medicine in the Philippines it must be shown that the "country of which he is a subject or citizen permits Filipino physicians to practice within its territorial limits. (Sec. 772 Revised Administrative Code). In the United States the practice of the professions is governed by laws peculiar to each State. Consequently, the law on the practice of medicine in the State of which the physician applying for permission to practice said profession in the Philippines is a citizen is the determining factor. If the State of which he is a citizen allows Filipino

physicians to practice within its territorial bounds, he may be allowed to practice in the Philippines.

By the provision of the fourteenth Amendment of the Constitution of the United States, all persons born or naturalized in the United States are citizens of the United States and of the State wherein they reside. (14 C.J.S. 1131). In other words, in the United States there is a double or dual citizenship, that is citizenship in the nation, considered as a whole, and citizenship in the State in which the individual resides. (Scott vs. Sandford, 15 L. Ed. 691). Thus, the American physician applying for admission to practice medicine in the Philippines is, at one and the same time, a citizen of the United States and of the State in which he was a resident before he came to this country. The place of his birth is immaterial in the determination of his State citizenship.

A citizen of the United States may be issued a license to practice medicine in the Philippines if the State in which he was a resident before he came to the Philippines allows Filipino physicians to practice therein regardless of the fact that Filipino physicians are not permitted to practice in the State where he was born.

OPINION No. 5
Series 1950

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ADMINISTRATIVE LAW — ALLOWANCE ALLOWED ONLY IN INJURY INCURRED IN PERFORMANCE OF DUTY.

A warehouseman of the government while riding home in a government truck after office hours was injured in a collision. He claims the payment of his salary in full while under confinement.

Opinion:

Section 699 of the Revised administrative Code speaks of injury "*in the performance of duty*". This expression should be read in the light of the legislative intent as ascertained from the whole provision. A perusal of the rest of the provision discloses that the payment of like benefits is also provided when an employee is killed or dies of "injuries received or sickness contracted *in the line of duty*" or becomes ill as a "*direct* and *immediate* consequence of the *performance of some act in the line of duty.*" The legislature evidently used the phrase "in the performance of duty" in its ordinary sense, as synonymous with the words "in line of duty". (See Hutchens vs. Govert et al. 78 N.E. 1061, 1062; Rhodes vs. U.S. 79 F. 740; Allen vs. Burlington C.R. & N.R., Co., 11 N.E. 614, 616; Mesker vs. Bishop, 103 N.E. 492, 496).

In construing similar statutes, it has been held that the phrase "shall die as a result of an injury received during the performance of duty" means that there must have been a casual relation, mediate or immediate, between the duty performed by the deceased and the injury which resulted in his death. (Lawrence vs. City of Los Angeles, 127 P. [2d] 931; Cordell vs. City of Los Angeles 154 P. [2d] 31; Platt vs. City of Los Angeles, 165 P. [2d] 714; Dillard vs. City of Los Angeles 118 P. [2d] 345.) The rule has been correctly stated as requiring, in order to claim benefits under such statutes that the deceased shall have died as a direct result of some injury received, or sickness or illness contracted, in the performance, or attempted performance, of actual duty. (See Maitland vs. Board of Police Com'rs., 107 A. 411.) The words "in line of duty" have been given the same connotation. (See Rhodes vs. U.S. *supra*, citing 7 Op. Attys-Gen. 149, 161, 17 Op. Attys-Gen. 172.)

Likewise, the provision under consideration should be construed as providing for the payment of disability allowances only when the claimant is injured while actually discharging his duty and it requires a cause connection between the performance of his duty and the injury. This is the patent and natural meaning of the statute. It does not go to the extent of providing for the payment of benefits merely because a person dies or suffers injury while in the Government service, for the reason that statutes of this nature do not, as a rule, create a system of insurance. (See Dillard vs. City of Los Angeles, *supra*, citing Renz vs. Nibbing, 743 N.W. 713; State vs. Board of Trustees, 174 N.W. 465; State ex rel Moore vs. Glassco et al., 149 S.W. [2d] 848.)

In the case under consideration, the claimant was injured admittedly on his way home after the termination of the day's work. He was, at the time of the injury, not in the performance of any duty enjoined upon him by reason of his employment. The injury he received had no relation whatsoever to his duties as a Warehouseman. It was merely the result of an accident arising out of a common risk to which the rising public in general is exposed. Moreover, in using a conveyance furnished by the Surplus Property Commission he was exposed to no greater hazard.

It is earnestly insisted that the injury should be considered as one received "in the course of the employment." Compensation cases, such as those cited by the claimant, are not of such help because they were decided under a different statute which allows compensation for injuries received under different circumstances, i.e., from any accident "arising out of and in the course of the employment."

OPINION No. 10
Series 1950

INTERNATIONAL LAW—FOREIGN EMBASSIES CANNOT USE OWN SOLDIERS AS GUARDS WITHOUT CONSENT OF PHILIPPINES.

The question presented is the right of the American Embassy to have a detail of twenty-two members of the United States Marine Corps or guards in the Embassy premises.

Opinion:

There is no law or treaty which recognizes the right of a foreign government to employ its troops as guards for the offices and residence of its duly accredited diplomatic representatives in this country. Neither does it appear that such right is generally recognized in accordance with the usages and customs of international law. On the contrary, the following citation is found in Moore's International Law Digest, Volume IV, pp. 625-626:

> "I do not find in any of the treaties with China provision authorizing the protection of the legation by foreign troops. You state in your dispatch that 'The question of the right of the legations to have escorts here (Peking) is abstract and independent of the probability of its exercise'. If this Government has the right, independently of treaty, to keep its own troops at Peking for the service of the legation, then it necessarily is the judge as the character and strength or number of the guard. But, as a recognized principle of international intercourse, no government would, if it could prevent it, permit the introduction into its territory of such a foreign military force. China, like any other government, is bound to afford adequate protection to our legation. On the occasion of Mr. Burlingame's visit to Peking in 1862 a Chinese escort was furnished him." (Letter of Sec. of State to Minister to China, Feb. 28, 1895.)

During the Boxer uprising in China, however, the United States Minister to China was authorized by the Chinese government to employ fifty (50) United States marines as legation guards in view of the disorders then prevailing. The employment of foreign troops in this case was justified on the ground that the Chinese government could not suppress the disorders (Moore, Ibid., Vol. V, p. 478).

Legally speaking, the guarding of the American embassy premises by members of the United States marine Corps may therefore, be authorized only if the Philippine Government will consent to the same. The granting of the permission requested is not recommended in view of its unsavory reflection upon the integrity of the Philippine Republic as a sovereign nation and its ability to maintain peace and order within its territory.

OPINION No. 14
Series 1950

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PUBLIC CORPORATIONS—PUBLIC CORPORATIONS EXEMPTED FROM TAXATION.

Are the properties of the National Airports Corporation subject to payment of taxes?

The National Airports Corporation is a "public corporation" created "to serve as an agency of the Republic of the Philippines for the development, administration, operation and management of government-owned landing fields in the Philippines." (Section 1, Republic Act No. 224.) Its objects are: "(a) to take over the use, management, control, regulation and policing of Nichols Field as a public airport for national and international traffic, and of all government airfields * * *; (b) To plan, design, equip, expand, improve, repair, alter, or construct these airports or any navigation facilities appurtenant thereto with a view of providing the public with and efficient and modern air transportation service; and (c) To assist in the development and utilization of the air potential in the Philippines, and in the encouragement and promotion of civil aeronautics." (Section 2).

It is evident that the National Airports Corporation is not a corporation organized for profit but an agency of the government created for governmental purposes above-quoted. The view that Republic Act No. 104, which requires government owned or controlled corporations to pay taxes, etc., applies only to government owned or controlled corporations, instrumentalities and agencies engaged in business or industry for profit in competition with private enterprises. (Op. of Sec. of Jus., Nos. 67 and 153, s. 1948.) Conformably thereto, the National Airports Corporation does not fall within the scope of said Act. Hence, it is exempt from the payment of taxes. A *fortiori* the Municipality of Parañaque cannot assess real estate taxes on Nichols Field, which, under the law, is a public airport (section 2[a], *supra*.)

OPINION No. 16
Series 1950

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CIVIL LAW—INTERNATIONAL LAW; TRANSFER OF DEPOSITS BY ORDER OF JAPANESE MILITARY ADMINISTRATION VALID.

What is the validity of the transfer of deposits with alien banks to the Bank of Taiwan in compliance with the order of the Japanese administration in the Philippines.

Opinion: *

The transfer of the deposit with the Philippine Trust Company to the

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* On matter of bank deposits as affected by war see Hilado v. De la Costa, G. R. No. L-150, April 30, 1949; Philippine Trust Co. vs. Luis Ma. Aranets, G. R. No. L-273.

Bank of Taiwan during the Japanese occupation was presumably in compliance with an order of the then Japanese Military Administration in the Philippines dated October 4, 1943 requiring the local banks to transfer to the Bank of Taiwan Ltd., as the depositary of the Bureau of Enemy Property Custody "all deposit accounts of hostile people (including those of corporations)". The legal effect of such transfer was decided by the Philippine Supreme Court in the case of Haw Pia vs. China Banking Corporation, G. R. No. L-554, April 9, 1948, wherein deposits was not a confiscation by a mere sequestration of enemy private personal property. In the subsequent case of Everett Steamship Corporation vs. Bank of the Philippine Islands, G. R. No. L-1729, promulgated on July 23, 1949, which involves substantially the same issues as those in the Haw Pia case, it was ruled by the Supreme Court that the transfer or payment by the defendant bank to the Bank of Taiwan of plaintiff's deposit by order of the Japanese Military Administration was valid and released the defendant's obligation to the plaintiff. Applying the above doctrine to the bank deposit with the Philippine Trust Company in question it would result that the said bank is no longer under any obligation to the depositor for the reimbursement of his bank balance transferred to the bank of Taiwan.

There is no law or policy under which the Philippine Government has undertaken to reimburse deposits transferred to the Bank of Taiwan pursuant to the order of the Japanese Military Administration. The Philippine Government is under no moral nor legal obligation to assume such liability. The depositor may, however, avail himself of the remedy suggested by the Philippine Supreme Court in the case of Haw Pia, supra, as follows:

"Now that the outcome of the war has turned against Japan, the enemy banks have the right to demand from Japan through their states or Government, payments or compensation in Philippine peso or U.S. dollars as the case may be, for the loss or damage inflicted on the property by the emergency war measure taken by the enemy * * * And if they cannot get any or sufficient compensation either from the enemy or from their States, because of their insolvency or impossibility to pay, they have naturally to suffer, as every body else, the losses incident to all wars."

OPINION No. 17
Series 1950

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ADMINISTRATIVE LAW—AUDITOR GENERAL CANNOT WITHHOLD UNLIQUIDATED DEBT.

Is an army officer facing the court-martial for violation of provisions of the Article of War on enbezzlement and absence without leave entitled to his salary prior to his suspension? If he is entitled can the Auditor General withhold his salary on the ground that such officer is indebted to the government?

Section 17 of Republic Act No. 138 provides:

"An officer awaiting trial by court martial or the final result thereof is entitled to receive full pay and allowances for the period during which his case is pending, unless he is suspended from office by the President: Provided, That an officer suspended by the President shall continue to receive pay and allowances if the President shall so direct in the order of suspension."

Under the foregoing provision, it will be noted that unless an officer facing court-martial charges is suspended from office by the President, he is entitled to receive pay and

allowances for the period during which his case is pending. As it appears the officer was not suspended immediately upon the filling of the case against him, it follows that he is entitled to the payment of his salary and allowances corresponding to the period prior to his suspension.

It is contended, however, that as the officer was administratively determined to be pecuniarily liable to the Government for the amount which the court-martial had found him guilty of having embezzled, any salary due him prior to his suspension may be withheld under the following provision of Section 624 of the Revised Administrative Code.

> "When any person is indebted to the Government of the Philippines, the Auditor General may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness."

The Provision just quoted is applicable only to cases where a person having a valid money claim against the Government has a settled or liquidated debt thereto (Op. Sec. of Jus., No. 287, s. 1948). While the Government may set off a liquidated debt in its favor against an amount due from it, the Auditor General is without authority to adjudicate conclusively unliquidated or contested claims against a creditor of the Government, as such a course of action would, in effect, amount to arrogation of judicial functions (Compania General de Tabacos vs. French & Unson, 39 Phil. 34, 46.)

In the case under consideration, the withholding the salary and allowance prior to the suspension is, in the final analysis predicated on his conviction for embezzlement. It should be noted however, that the sentence against him is not yet final and conclusive, the same being still subject to confirmation by the President pursuant to Article of War 47. Until the sentence is finally confirmed, the liability to the Government remains contentious and does not assume the character of a settled or liquidated debt as contemplated by Sec. 624 of the Revised Administrative Code.

OPINION No. 18
Series 1950

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GREGORIO PERFECTO, APPELLEE, vs. BIBIANO L. MEER, COLLECTOR OF INTERNAL REVENUE, APPELLANT G. R. No. L-2348, 2/27/50.

This is an action to recover income tax assessed on the salary of the plaintiff, a member of the Supreme Court, which tax plaintiff paid under protest. The contention of the plaintiff is that his salary is not subject to the payment of any tax, because the imposition of income tax on that salary amounts to a diminution thereof, in contravention of Article VIII, Sec. 9 of the Constitution.

QUESTION: Does imposition of income tax on members of the judiciary amount to a diminution of their salary?

OPINION: The U. S. Constitution also forbids the diminution of the compensation of the members of the judiciary, and the Federal Government has an income tax law. Does this law embrace the salaries of federal judges? In answering this question, we should consider four periods:

First Period. There was no attempt at taxation up to 1862.

Second Period. From 1862 to 1918. In July 1862, a statute was passed subjecting the salaries of "civil officers of the United States" to an income tax of 3%. Revenue officers construed it as including the compensation of all judges, but Chief

Justice Taney, speaking for the judiciary, wrote to the Secretary of the Treasury a letter of protest asserting that the salaries of judges are not subject to tax. The protest was unheeded, but in 1869, Attorney-General Hoar, upon request of the Secretary of the Treasury, rendered an opinion agreeing with Chief Justice Taney. For one-half century thereafter, these salaries were not taxed as income.

Third Period. The Federal Income Tax Act of February 24, 1919 expressly provided that taxable income shall include "the compensation of the judges of the Supreme Court and inferior courts of the United States." In Evans vs. Gore (253 U.S. 245; 64 L. ed. 887), the United States Supreme Court upheld the contention of Judge Evans, in seeking to recover the amount he had paid as income tax, that the tax reduced his compensation. Subsequently, in Miles vs. Graham, the decision in Evans vs. Gore was amplified to include not only the judges who, like Evans, assumed office before the enactment of the statute, but also those judges who assume office after the enactment of the statute. (The law had made no distinction as to judges appointed before or after its passage).

Fourth Period. In the United States Revenue Act of June, 1932, the modified proviso that "gross income" on which taxes were payable included compensation of "judges of courts of the United States taking office after June 6, 1932." Joseph Woodrough qualified as United States circuit judge on May 1, 1933. His salary as judge was taxed, and the issue of decrease of remuneration again came up before the United States Supreme Court. The Court held that the tax was not a diminution of the salary, and said: "To suggest that it makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government, is to trivialize the great historic experience on which the framers based the safeguards of Art. VII, Sec. 1." (59 S. Ct. 838).

The defendant's case is based mainly on the decision in the O'Malley vs. Woodrough case.

Carefully analyzing the 3 cases (Evans, Miles and O'Malley) and piecing them together, the logical conclusion may be reached that although Congress may validly declare by law that salaries of judges appointed thereafter shall be taxed as income (O'Malley), it may not tax the salaries of those judges already in office at the time of such declaration because such taxation would diminish their salaries (Evans, Miles).

Anyhow, the O'Malley case declares no more than that Congress *may validly enact a law* taxing the salaries of judges appointed after its passage. Here in the Philippines no such law has been approved.

Besides, it is markworthy that, as Judge Woodrough had qualified after the express legislative declaration taxing salaries, he could not very well complain. The Court probably had in mind that the tax levied on the salary in effect decreased the emoluments of the office and therefore the judge qualified with such reduced emoluments.

The O'Malley ruling does not cover the situation in which judges already in office are made to pay tax by executive interpretation, without express legislative declaration. That the state of affairs is controlled by the administrative and judicial standards herein-before described in the "second period" of the Federal Government, i.e., when the Income Tax Law merely taxes income in general, it does not include salaries of judges protected from diminution.

Two paramount circumstances may additionally be indicated, to wit:

1. When the Income Tax Law was first applied to the Philippines in 1913, the taxable "income" did not include salaries of judicial officers when these are protected from diminution. That was the prevailing belief in the United States, which must be deemed to have been transplanted here; and

2. When the Philippine Constitutional Convention approved (in 1935) the prohibition against the diminution of the judges' compensation, Evans vs. Gore and Miles vs. Graham were then outstanding doctrines, and the inference is not illogical that in restraining the impairment of judicial compensation the Fathers of the Constitution intended to preclude taxation of the same.

Therefore, when the tax is charged directly on their salary, and only then, and the effect of the tax is to diminish their official stipend, the taxation must be resisted as an infringement of the fundamental charter.

DISSENTING: The salaries provided in the Constitution for the Chief Justice and the Associate Justices were the same salaries which they were receiving at the time the Constitution was framed and adopted and on which they were paying income tax under the existing income tax law * * * To receive the same salaries, subject to the same tax, after the adoption of the Constitution as before, does not involve any diminution at all. When the framers of the Constitution fixed those salaries, they must have taken into consideration that the recipients were paying income tax thereon. There was no necessity to provide expressly that the said salaries shall be subject to income tax because they knew that the existing law already so provided. On the other hand, if exemption from any tax on said salaries had been intended, it would have been necessary specifically to so provide, instead of merely saying that the compensation as fixed "shall not be diminished during their continuance in office."

To make all citizens share the burden of taxation equitably, the Constitution expressly provides that "the rule of taxation shall be uniform." How could the rule of income taxation be uniform if it should not be applied to a group of citizens in the same situation as other income earners.

Moreover, the Constitution itself specifies what properties are exempt from taxes (sec. 22 [3], Art. VI). The omission of the salaries in question from this enumeration is in itself an eloquent manifestation of the intention to continue the imposition of income taxes thereon as provided in the existing law.

● **Briefed by**
CAMILO QUIASON

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Letter From Martin Domke

January 12, 1950

Dear Professor Fernando:

I read your very interesting article on Eugen Ehrlich in the February issue of the Philippine Law Journal. From the early days of my "legal life" in 1911, I have always been a great admirer of Ehrlich. I consider his "Sociology of Law" the outstanding work of the legal literature of this century. Again and again I tried in many countries to stimulate the further study of Ehrlich's writings.

It is for that personal reason I would like to get in contact with you and to have a reprint of your article. I will be glad to reimburse you for the expenses.

Enclosed you will find copy of a recent publication of mine in which you might be interested.

Very sincerely yours,
MARTIN DOMKE