ONE YEAR OF CONSTITUTIONAL LAW: 1951

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In 1951, the Philippines pressed with more vigor and determination the continuing and relentless struggle against the Huks and the Communists. Its ultimate victory could not be in doubt. The menace was not however entirely removed. So the Executive Department must have believed. The suspension of the privilege of the writ of habeas corpus decreed in late 1950 was not lifted—except as to some provinces. Voices, some of them from powerful political leaders, to restore the privilege of the writ went unheeded. Not even the holding of a national election called for a relaxation of the dominance of the armed forces.[1] As in times of stress, the military was on the ascendant. It is not surprising then that the atmosphere was tense. Doubts and misgivings made their presence felt. What there was of hope, and there should have been more considering the hold that democracy has on the vast majority of the Filipinos, could not prevail against the counsel of timidity and fear.

The justices of the Supreme Court could not and did not remain unaffected. So the decisions on some constitutional law questions would seem to indicate. Not that they could all be explained on this ground alone. Other forces were at work also. This is not to say that there was a radical departure from settled constitutional concepts. Fidelity to many venerable doctrines, there was. In the sphere of civil rights though, what was once taken for granted is now in doubt. Unfortunately too, there was manifest a tendency to accord less than supremacy to what should legally be considered so, the Constitution.

Before discussing that phase, it is appropriate to indicate that decisions on constitutional law rendered the past year will be discussed under the following topics: separation of powers, political rights, civil rights, and social and economic rights.

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[1] It is to be admitted though that intervention of the Army while objectionable on principle materially contributed to the holding of relatively clean and honest elections. It is to be hoped that future elections could be held freely and honestly with the Army being relegated to the sidelines.

I. SUPREMACY OF THE CONSTITUTION

The threat to national safety resulting from the Communist-inspired Huk uprising has led three members of the Court in *Nava v. Gatmaitan* [2] and *Hernandez v. Montesa* [3] to doubt the applicability of certain constitutional provisions during times of emergency. This attitude is at war with the principle of the supremacy of the Constitution. What is more disheartening is that in a decision promulgated early last year, *Cabauatan v. Uy Hoo*,[4] the Supreme Court held that the Constitution was not in force and effect, even in so far as Filipino and alien residents were concerned, during the period of the Japanese occupation.

In the language of the *Milligan* [5] case, the constitution is a law for rulers and for people in war and in peace and covers with the shield of its protection all classes of men, at all times and under all circumstances.

It is to be regretted then that in the above case of *Cabauatan v. Uy Hoo*,[6] the Supreme Court decided that the constitutional provision prohibiting alienation of private agricultural land to aliens was held inoperative during the period of the Japanese occupation. According to the Court:

> "It appears that the two parcels of residential land in question were sold by the plaintiffs to the defendants on March 18, 1943, for the sum of ₱18,000 in Japanese war notes. The sale therefore took place during the Japanese occupation. At that time the Constitution of the Philippines was not in force, it being political in nature. On this point this Court said, 'No objection can be set up to the legality of its provisions in the light of the precepts of our Commonwealth Constitution, because the latter was not in force during the period of the Japanese military occupation, as we have already stated. Nor may said Constitution be applied upon the revival at the time of re-occupation of the Philippines by virtue of the principle of post liminium, because 'a constitution should operate prospectively only unless the words employed show a clear intention that it should have a retrospective effect * * *' (Peralta v. Director of Prisons (1945) 42 O. G. p. 198, 208)."

It is to be admitted that as decided in the *Peralta* [7] case relied upon, the Constitution does not bind the belligerent occupant; but it is submitted, however, that the Supreme Court committed an error

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[2] G. R. No. L-4855, Resolution prom. Oct. 11, 1951.
[3] G. R. No. L-4964, Resolution prom. Oct. 11, 1951.
[4] G. R. No. L-2207, prom. Jan. 23, 1951.
[5] 4 Wall. 2.
[6] See note 4, *supra*.
[7] *Peralta v. Director of Prisons*, 42 O. G. 198.

in holding that the Constitution was likewise suspended as to the inhabitants of the Philippines. As a matter of fact, the holding of the Supreme Court in *Laurel v. Misa* [8] rejecting the theory of suspended sovereignty or suspended allegiance during the period of enemy occupation is based on the assumption that such belligerent occupation being temporary in character, the de jure sovereign retained the right to the allegiance of the inhabitants. Sovereignty not having been suspended, neither was its will as embodied in the Constitution.

Three justices in the recent cases of *Nava v. Gatmaitan* [9] and *Hernandez v. Montesa* [10] are of the opinion that the constitutional right to bail of persons accused except when the indictment is for a capital offense and the evidence of guilt is strong may not be invoked when there is a suspension of the privilege of the writ of habeas corpus. They hold the view that such constitutional provision is applicable only in normal times. This is to be deplored. It is contrary to the principle of the constitution as the supreme law, for rulers and for people, in war and in peace. All persons are within the scope of its protection, at all times and under all circumstances. True, the Constitution itself provides that under certain conditions the privilege of the writ of habeas corpus may be suspended, the other rights though remain unimpaired. For to quote anew from the *Milligan* [11] case: "* * * they limited the suspension to one great right, and left the rest to remain forever inviolable."

II. SEPARATION OF POWERS

Basic to the doctrine of separation of powers is the lack of jurisdiction of the judicial tribunals over political questions. This aspect of the doctrine finds affirmation in the case of *Cabili v. Francisco.*[12] In this petition for mandamus, eight senators composing the so-called Little Senate, the petitioners, sought to annul the resolution whereby the Senate of the Philippines reorganized its representation in the Commission on Appointments and to secure the reinstatement of Senator Enrique T. Magalona in that Commission.

From January 1950 to January 1951, the Senate representation in the Commission on Appointments consisted of seven Senators of the Liberal Party, two of the Avelino Liberal Party and two of the

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[8] 44 O. G. 1176.
[9] See note 2, *supra.*
[10] See note 3, *supra.*
[11] See note 5, *supra.*
[12] G. R. No. L-4638, prom. May 8, 1951.

Nacionalista Party. As a result of the new alignment which resulted in the Senate being divided into two factions, the Little Senate and the Democratic Group, the latter commanding a majority, the twelve positions occupied by the senators in the Commission on Appointments were declared vacant; seven senators of the Democratic Group were appointed to the Commission and the Little Senate was given the right to propose the remaining five; and upon refusal of the latter to do so, the membership in the Commission was completed with the appointment of five senators of the Little Senate on the initiative of the Democratic Group. The Senate representation as finally determined consisted of seven senators of the Liberal Party, three of the Avelino Liberal Party and two of the Nacionalista Party. The original ratio of 8-2-2 was turned into 7-3-2.

The petitioners contested the right of the Senate to reorganize the Commission on Appointments at that particular time on the ground that the members of the Commission should under the Constitution hold their positions until such time as the Senate should reorganize itself on the election of new members of that body. They therefore brought this mandamus proceedings.

The Supreme Court refused to take jurisdiction, on the authority of *Alejandrino v. Quezon*,[13] and *Vera v. Avelino*.[14] It stated:

> "After careful deliberation, a majority of six justices regretfully but necessarily reached the conclusion that the matter is beyond the Court's jurisdiction, it being no different in principle from the situation in Alejandrino v. Quezon and Vera v. Avelino et al., wherein we declined to entertain petitions to require the Senate to restore to certain suspended senators the exercise of their senatorial prerogatives. Here the petition attempts to force upon the Senate the reinstatement of Senator Magalona in the Commission on Appointments, and involves a lesser deprivation of legislative privileges. Needless to state, the conditions which impelled this court to assume jurisdiction in Avelino v. Cuenco, G. R. No. L-2821 do not necessarily obtain."

Adherence to the well-settled principle in the Philippines that political questions are beyond the jurisdiction of the judiciary is thus apparent from the above resolution. The express mention made of the leading cases of *Alejandrino v. Quezon* [15] and *Vera v. Avelino* [16] erases all doubt of their continuing force and validity. It is regrettable though that the Supreme Court did not in express terms

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[13] 46 Phil. 83.
[14] 43 O. G. 3597.
[15] See note 13, *supra*.
[16] See note 14, *supra*.

disavow its action in the case of *Avelino v. Cuenco* [17] when ruling on a motion for reconsideration on the part of the petitioner Avelino, it held that special circumstances compelled it to assume jurisdiction over the essentially political question of who is the duly-elected Presiding Officer of the Senate.

This policy of judicial non-intervention in political contests is supported by cogent considerations. Deviation therefrom is inimical to the best interest of the political agencies, of the Supreme Court itself and of the people.

It is inimical to the best interests of the political agencies in the Government for it tends to stifle their initiative or in the alternative weaken their sense of responsibility. To them the country looks for action. The judiciary has the relatively unspectacular role of deciding cases. Yet even in matters coming within their jurisdiction, these political agencies may move at a snail's pace every time a tiny doubt as to legality creeps in. Or at the other extreme, even if they do decide to act, they may fail to give enough thought to the matter, reassured as they are that there is always the judiciary to set everything right. Either attitude is not conducive to political maturity. Either attitude is not in accordance with the best interests of a democracy.

Judicial intervention likewise is hostile to the best interest of the Supreme Court. For it to enter the political thicket might result in its losing its way and groping in the dark. It would not matter so much if what is right is also what is expedient. But times there may be, when they clash. It may have to compromise between what is right and what is expedient. The minority may be right in a political contest but expediency may require that the majority be given its way. If it decides in accordance with what is right, it runs the risk of the majority disregarding and setting at naught its decision. If it decides in accordance with the majority, its decision may be followed but may be lacking in persuasiveness and conviction. Worse still it may lay itself open to the charge that it is but a tool of the majority group. On the other hand for it to stay aloof in accordance with the soundest judicial traditions would not be a renunciation of a duty the Constitution imposes upon it but merely a reaffirmance of its role of neutrality in partisan contests, which are better resolved in the chambers of whatever branch of Congress may be involved and ultimately through the force of public opinion or in the polls.

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[17] G. R. No. L-2821, prom. March 4 & 14, 1949.

This brings us to the question of the effect of judicial intervention in essentially political contests on the inherent right of the people to decide such questions themselves. It is a truism that in a democracy all government authority emanates from the people. So the Constitution says, prefaced with the declaration that sovereignty resides in them. The power of final decision is therefore theirs. Even the judiciary acts only as an instrumentality of the people in carrying out their wishes. Only under the system of a constitutional democracy, a constitution has been provided for as the test of legality of all governmental action and also until amended as a brake on the power of the majority to disregard minority groups. The principle is well settled then that with respect to such essentially political contests, appeal lies from the recalcitrance of or the abuse by the people's representatives in Congress directly to the people themselves. This appeal can be resolved periodically through elections and in between elections through the force of public opinion as rightly gauged and measured by the political agencies, who are ordinarily more responsive to the force of public opinion. It is the strength and at the same time the weakness of judicial agencies that they are not responsive but rather resistant to popular clamor. Their life-long tenure, their aloofness from traditional political controversies, their disdain of purely partisan considerations, give them that independence to withstand, as they ought to, popular pressure. Precisely though, these very same qualities make them poor arbiters in party and factional controversies.

A. DISQUALIFICATION OF MEMBERS OF CONGRESS FROM APPEARING AS COUNSEL FOR THE ACCUSED IN CERTAIN CASES.

Under the Constitution, no Senator or member of the House of Representatives may appear as counsel "wherein an officer or employee of the government is accused of an offense committed in relation to his office * * *." This constitutional provision was passed upon by the Supreme Court in the cases of *Marcos v. Chief of Staff*,[18] *Maronilla-Seva v. Andrada*,[19] and *Montilla v. Hilario and Crisologo*.[20]

In *Marcos v. Chief of Staff*, a petition for mandamus to compel respondent military tribunals to allow petitioners, members of Congress, to appear as counsel for the accused in a pending case, the question was whether the prohibition in the above section 17 applied.

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[18] G. R. No. L-4663, prom. May 30, 1951.
[19] G. R. No. L-4670, prom. May 30, 1951.
[20] G. R. No. L-4922, prom. Sept. 24, 1951.

The Supreme Court held:

"We are of the opinion and therefore hold that it is applicable, because the words "any court" includes the General Court-Martial, and a court-martial case is a criminal case within the meaning of the above-quoted provisions of our Constitution.

It is obvious that the words "any court," used in prohibiting members of Congress to appear as counsel "in any criminal case in which an officer or employee of the Government is accused of an offense committed in relation to his office," refers not only to a civil, but also a military court or court-martial. Because, in construing a Constitution, "it must be taken as established that where words are used which have both a restricted and general meaning, the general must prevail over the restricted unless the nature of the subject matter of the context clearly indicates that the limited sense is intended." (11 American Jurisprudence, pp. 680-682).

In the case of Ramon Ruffy v. Chief of Staff of the Philippine Army et al., G. R. No. L-533, August 20, 1946, we did not hold that the word "court" in general used in our Constitution does not include a Court Martial; what we held is that the words "inferior courts" used in connection with the appellate jurisdiction of the Supreme Court "to review on appeal, certiorari or writ of error, as the law or rules of court may provide, final judgments of inferior courts in all criminal cases in which the penalty imposed is death or life imprisonment," as provided for in section 2, Article III, of the Constitution, do not refer to Courts-Martial or Military Courts.

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That court martial cases are criminal cases within the meaning of section 17, Article VI, of the Constitution is also evident, because the crimes and misdemeanors forbidden or punished by the Articles of War are offenses against the Republic of the Philippines. According to section 1, Rule 106, of the Rules of Court, a criminal action or case is one which involves a wrong or injury done to the Republic, for the punishment of which the offender is prosecuted in the name of the People of the Philippines; and pursuant to Article of War 17, "the trial judge advocate of a general or special court-martial shall prosecute (the accused) in the name of the People of the Philippines."

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Furthermore, taking into consideration the apparent intention or purpose of the framers of our Constitution in enacting Section 17, Article VI of the Philippine Constitution, it is obvious that there exists the same if not more reason for prohibiting the appearance of members of the Senate and of the House of Representatives as counsel for the accused in courts-martial, as for inhibiting them to appear as such in civil courts, because the independence of civil courts' judges is guaranteed by our Constitution. *Ubi eadem ratio ibi eadem lex.*"

The ruling in the case of *Marcos v. Chief of Staff* [21] was followed in the case of *Maronilla-Seva v. Andrada.*[22] This was a peti-

[21] See note 18, *supra.*

[22] See note 19, *supra.*

tion for certiorari filed by the petitioner as trial judge advocate against the respondents on the ground that the respondent Major Andrada, as member of the general courts-martial which is trying three army lieutenants for offenses committed in relation to their office, acted in excess of his jurisdiction in allowing the other respondents to appear as counsel for the accused, over the objection of the petitioner based on the disqualification provided for in Section 17, Article VI of the Constitution. The Court deciding the case on its merits held:

> "In the cases of Ferdinand Marcos and Manuel Concordia v. Chief of Staff and General Courts-Martial Armed Forces of the Philippines, G. R. No. L-4663, 3671, we have already held that the petitioners in said cases, Congressman Ferdinand Marcos and Manuel Concordia, were disqualified or prohibited from acting as counsel for the accused before a court-martial, which is a tribunal or court, of crimes committed by them in relation to their office, and therefore they cannot appear as counsel for the accused in said cases. Applying said ruling to the present case, it follows that the respondent court-martial acted in excess of its jurisdiction or without any authority in allowing them to appear as counsel for the accused in the present case."

In the case of *Montilla v. Hilario and Crisologo*,[23] the Supreme Court laid down the scope of the constitutional disqualification imposed upon Senators and members of the House of Representatives prohibiting them from appearing as counsel before any court "in any criminal case wherein an officer or employee of the government is accused of an offense committed in relation to his office." Petitioners brought this case on a writ of certiorari before the Supreme Court to set aside an order of the respondent Judge Hilario overruling their objection to Congressman Crisologo's intervention as defense counsel in Criminal Case No. 129 "for murder with (and) frustrated murder" against the municipal mayor and three members of the police force of Santa Catalina, Ilocos Sur.

The Court speaking through Justice Tuason held:

> "Judged by the context of section 17 of Article VI, supra, and the proceedings of the Constitutional Convention, the relation between the crime and the office, contemplated by the Constitution is, in our opinion, direct and not accidental. To fall into the intent of the Constitution, the relation has to be such that, in the legal sense, the offense cannot exist without the office. In other words, the office must be a constituent element of the crime as defined in the statue, such as for instance, the crimes defined and punished in Chapters Two to Six, Title Seven, of the Revised Penal Code.

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[23] See note 20, *supra*.

> Public office is not of the essence of murder. The taking of human life is either murder or homicide whether done by a private citizen or public servant, and the penalty is the same except when the perpetrator, being a public functionary, took advantage of his office, as alleged in this case, in which event the penalty is increased.
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> But the use or abuse of office does not adhere to the crime as an element; and even as an aggravating circumstance, its materiality arises, not from allegations but on the proof, not from the fact that the criminals are public officials but from the manner of the commission of the crime."

The Supreme Court rightfully emphasized the fact that the above constitutional provision is not intended to prevent a member of Congress from entering an appearance as an attorney for the defense. It could not have been the intention, according to the Supreme Court, of the Constitutional Convention to predicate disability of members of Congress on the mere allegation that the weapons used were such as the public officials in question were authorized to carry or possess by reason of their positions.

Is the above restrictive interpretation in conformity with the object of the provision? If it be assumed that the disqualification of Congressmen is not intended to curtail unnecessarily the rights of an accused person to the most adequate legal defense he feels he can have, then no objection can be made to the propriety of the ruling in the Montilla case.

Under this assumption though it is not easy to explain why in the Marcos and Maronilla-Seva cases the provision was made applicable to court-martial proceedings. It would not have been at all difficult for the Supreme Court to hold otherwise considering the fact that in the case of *Ruffy v. Chief of Staff*,[24] it considered a court-martial as not one of those courts inferior to the Supreme Court in whom judicial power is likewise vested.

There is this other consideration. The constitutional provision is likewise intended to emphasize the fiduciary position of members of Congress. The interest of the State no less than the rights of the accused are deserving of consideration. There is something contrary to the fitness of things for a member of Congress who is entrusted with the law-making responsibility appearing in defense of an accused who is on trial for an offense committed in relation to his office. He is of course entitled to a presumption of innocence. As in the case of any other accused his guilt must be shown beyond reasonable doubt. In his case, however, considering the charge that

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[24] G. R. No. L-533, prom. August 20, 1946.

there was an abuse of his office it does seem preferable that he meets such a charge through a counsel not a member of Congress. For then the suspicion cannot be justly entertained that his acquittal, if acquitted he may be, is not due to the influence of counsel. Even if attempted, it is likely that the courts will be immune to it. Nonetheless, it is not easy to disabuse the popular mind about its existence. A provision of this character then protects the judge no less than the member of Congress. In that sense, it further strengthens the principle of separation of powers.

III. POLITICAL RIGHTS: CITIZENSHIP AND SUFFRAGE

On the vital constitutional right of citizenship, several decisions were rendered the past year. The cases dealing with suffrage hardly deserve notice. In one of them, *Tabando v. Court of Appeals*,[25] the Supreme Court decided that the judiciary has the power in election contests to determine which of the parties should pay the costs or to divide the costs between them, as may be equitable. Another case, *Teves v. Commission on Elections*,[26] held that in the absence of an express legislative command, the voters of a chartered city, which is a political entity separate from and independent of a province do not participate in the election of provincial officials.

The Supreme Court in declining to review on certiorari upon petition of the losing party before the Commission on Elections and likewise declining mandamus upon petition of the winning party when the President of the Philippines failed to order the new registration of voters as ordered by the Commission on Elections after annulling a previous registration, in effect upheld the power of the Commission on Elections to cancel a registration accomplished through fraud, violence, duress and wholesale irregularities.[27]

The importance of affirming the power of the Commission on Elections in such a case to assure a clean and honest election cannot be overestimated.

A. CITIZENSHIP CASES: CITIZENS BY ELECTION.

As yet no definite holding by the Supreme Court exist as to who are included in that class of persons who upon reaching the age of majority may elect Philippine citizenship, as children of mothers

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[25] G. R. No. L-2695, prom. May 28, 1951.

[26] G. R. No. L-5150, prom. Nov. 8, 1951.

[27] *Prudente v. Genuino et al.*, G. R. No. L-5222, Resolution prom. Nov. 6, 1951; *Genuino v. Commission on Elections*, G. R. No. L-5223, Resolution prom. Nov. 7, 1951.

who are citizens of the Philippines. Must the mother be a Filipino at the time of birth or is it sufficient that she is one upon his reaching the age of majority when he could elect Philippine citizenship? Or is the constitutional provision likewise applicable to those whose mothers before acquiring the nationalities of their respective spouses were Filipinos? That the last question is to be answered in the affirmative is the impression yielded by the case of *Torres v. Tan Chim.*[28] There is a similar opinion of the Secretary of Justice to that effect.

Thereafter, however, in the case of *Villahermosa v. Commissioner of Immigration,*[29] there is an obiter to the effect that the decisive period is the time of election. In the recent case of *Cu v. Republic,*[30] there is reversion to the opinion announced in the Tan Chim case.

In this Cu decision, the applicant for naturalization declared at the hearing of his petition that he was born in Angat, Bulacan in 1913 of a Filipino mother and a Chinese father whom he believed were legally married and that he considered himself to be a Filipino citizen. On the basis of this testimony, the trial court denied the application for naturalization and found the applicant "to be a Filipino citizen; both by right of birth and by right of selection." On appeal, the Supreme Court reversed the finding of the trial court that Robert Cu was a Filipino citizen. It added the following:

> "The statements (of the petitioner) make plain that he was at best uncertain that his parents were unmarried to each other, and are utterly inadequate to serve as basis for declaring the petitioner a Philippine citizen. The strong legal presumption that the applicant was born in wedlock—that his parents were lawful husband and wife—cannot be destroyed by evidence so slim. If the applicant's parents were legally married, which is to be presumed, then he was born a Chinese citizen and continued to be so, unless upon reaching the age of majority, he elected Philippine citizenship (Article IV, sec. 1, par. 4, Philippine Constitution), which he confessedly did not."

B. CITIZENSHIP CASES: CITIZENS BY NATURALIZATION.

Considering the privileges and the right of a social and economic character which the Constitution withholds from aliens and considering the fact that citizenship is not only a political right but likewise the basis of the political right of suffrage, there can be no dissent from the view that the Naturalization Law should be so con-

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[28] 40 O. G., 6th Sup. 215.
[29] G. R. No. L-1663, prom. March 31, 1948.
[30] G. R. No. L-3018, prom. July 18, 1951.

strued as to admit to Philippine citizenship only those aliens who are shown to have complied strictly with its provisions. The decisions rendered in 1951 on the whole reflect this point of view.

1. *Qualifications*.

As to the first two qualifications, age, not less than twenty-one and residence for a continued period of not less than ten years, no decisions construing them were handed down.

The third qualification is that the petitioner must be "of good moral character and believes in the principles underlying the Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living."

The requirement that the applicant "must be of good moral character" yields no hard and fast rule as to when it is met. Each case must be decided in the light of the circumstances which surround it. That seems to be the conclusion flowing from the decision in *Uy Chiong v. Republic*.[31]

Petitioner in that case was born of Chinese parents in China in 1905. In 1914, he came to the Philippines and continuously resided here except for visits to China on three occasions, first, in 1922 when he stayed there for three years in order to study and the last two times, in 1928 for short vacations to visit his mother. In his application, the petitioner declared that he married a Filipina, Josefa Dy, born of Filipino parents, the wedding having been performed in Iloilo. It was proved that the petitioner had property well over ₱100,000; that he speaks and writes English and the Visayan dialect and understands a little Spanish; that he was an active member of the YMCA, International and Chinese Chambers of Commerce and formerly belonged to the Iloilo Rotary Club and that he contributed generously to charity, particularly to the Red Cross and the Boys Town of Iloilo.

From the decision of the trial court granting the petition for naturalization, the Solicitor General appealed on the ground that the applicant did not possess good moral character. He alleged that the applicant committed deliberate falsehood in that in his application the applicant misrepresented two Chinese boys as his own children born of his marriage with Josefa Dy, when as a matter of fact, and as testified to by himself during the hearing of his application, said

[31] G. R. No. L-3233, prom. July 23, 1951.

two children were born in China of unknown parents and were bought by his mother and were later sent to him here in the Philippines. It was further alleged that in the applicant's affidavit, he stated that the two children were the sons of one, Lim Ping Ty, a Chinese woman, when in fact, the parents of the two children were unknown.

Explaining the discrepancy between his application and affidavit on hand and his testimony of the other, the petitioner stated that the two boys in question had been adopted by him according to Chinese custom, that both were educated and supported by him and since childhood had lived with him and his wife, that both he and his wife had always considered them as their own children and that was the main reason why he had stated in his application that the two boys were his own and listed them with the eight children he had by Josefa Dy. Petitioner likewise declared that although he gave in his affidavit the name Lim Ping Ty as the Chinese mother of the two boys in question, he did not regard that as important and that the name was given merely to complete the answers to the questions.

The Supreme Court affirmed the decision of the trial court and overruled the contention of the Solicitor General, stating:

> "Ordinarily, a deliberate falsehood committed by anyone, when made with ulterior motives, should be regarded as serious. In the present case, however, we are inclined to believe that the discrepancy or the falsehood appearing in his application and affidavit is not as serious as it may appear. The petitioner may have acted under the belief that the two boys in question were in legal contemplation his own children and so stated this fact in his application. And as to his affidavit, it is possible that he may not have attached much importance to the parentage of the two boys and that he may have supplied the name of the supposed mother only to complete his answer.
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> "When the qualification of an applicant for naturalization are doubtful, a discrepancy and departure from the truth as that found in the present case may incline the courts to deny the application. But considering the unusually favorable qualifications of the present petitioner, we believe that the discrepancy and irregularity found in his affidavit and application should not be allowed to stand in the way of his being admitted to Philippine citizenship."

The fourth qualification is intended to prevent a prospective citizen from being a burden on the state. He is required to have real estate in the Philippines worth not less than ₱5,000 or must have some lucrative trade, profession or lawful occupation. Under

the doctrine announced in the case of *King v. Republic*,[32] the applicant need not be the registered owner, it is enough that he owns the real estate worth not less than ₱5,000.

In the King case, the Solicitor General opposed the petition for naturalization on the ground that the applicant was not the owner of real estate at the time of the filing of the petition. Reliance was placed by the Solicitor General upon the fact that the transfer certificate of title over the land was issued to the applicant only on June 30, 1947 which was about three months after the filing of the petition. The Supreme Court rejected the contention of the Solicitor General and ruled as follows:

> "The fact that the certificate of title of the property was issued only on June 18, 1947 does not necessarily mean that the applicant was not the owner thereof on March 15, 1947, the date of the filing of the petition. The date of the issuance of the certificate of title by the Registrar of Deeds is always subsequent to the date of the acquisition of the property and is not sufficient to overcome the applicant's testimony that at the time of the filing of his petition, he was the owner of the real property mentioned therein."

In the event that the applicant does not own real estate in the Philippines worth not less than ₱5,000 at the time of the filing of his petition, he must have some known "lucrative trade, lucrative profession or lucrative lawful occupation." The adjective "lucrative" modifies 'trade,' 'professsion' and 'occupation.' Lucrative office implies salary or monetary compensation or pay. Hence, 'lucrative occupation' should carry identical connotation of gainful employment or tangible receipts." As a necessary consequence, even supposing that to be a student is to engage in a lawful occupation, such occupation, however, is not lucrative and does not satisfy the requirement of section 2, par. 4 of C. A. 473.[33]

The alternative requirement that the applicant must have some known lucrative trade, profession or lawful occupation is satisfied by the petitioner who receives a regular salary of ₱250 a month.[34]

No decision was rendered concerning that the applicant must be able to read and write English or Spanish and anyone of the principal Philippine languages. There is the further qualification that the applicant must have enrolled his minor children of school age in any of the public or private schools recognized by the Office of

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[32] G. R. No. L-2687, prom. May 23, 1951.
[33] *Lim v. Republic*, G. R. No. L-3920, prom. Nov. 20, 1951.
[34] *Republic v. Lim*, G. R. No. L-3030, prom. Jan. 31, 1951.

Private Education where Philippine history, government and civics are taught or prescribed as part of the school curriculum.

It is further provided that minor children of school age of the applicant must have been enrolled in the prescribed schools "during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization."

The Supreme Court repeatedly emphasized the importance of section 2, paragraph 6 as a qualification of an applicant for naturalization.[35] In the *Koe Sengkee* [36] case, the Supreme Court said:

> "The requirement that all the minor children of school age of the applicant must have been enrolled in any public or private school recognized by the government where Philippine history, government and civics are taught, is important for the reason that upon the naturalization of the father, the children ipso facto acquire the privilege of citizenship. It is the policy of the Philippine government to have prospective citizens learn and imbibe the customs, traditions and ideals of the Filipinos as well as their democratic form of government."

The Supreme Court has held this requirement to be mandatory. Thus, the fact that the applicant's children, when they left the Philippines for China in 1937 were not yet of school age and that they could not be brought back to the Philippines when they were already of school age in 1951 due to the civil war in China or the fact that the applicant cannot finance the return of his minor children to the Philippines in addition to the strictness of Philippine immigration authorities is no valid excuse for non-compliance with this requirement. To hold that the last World War could dispense with compliance with the requirement of the Naturalization Law, would be according to the Supreme Court to establish a dangerous precedent.[37]

In the case of *Tan Hi*,[38] it was not conclusively proved that the applicant's minor children in China were legitimate. In fact, the testimony tended more to establish that said children were illegitimate. Yet, the Supreme Court denied the application for naturalization.

In the case of *Chan Su Hok v. Republic*,[39] the Supreme Court declared that the applicant must "affirmatively show" that he has

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[35] *Lian Chua v. Republic*, G. R. No. L-3265, prom. Nov. 29, 1950; *Lian Hong v. Republic*, G. R. No. L-3575; *Tan Hi v. Republic*, G. R. No. L-3551, prom. Jan 25, 1951; *Chan Su Hok v. Republic*, G. R. No. L-3470, prom. Nov. 27, 1951; *Koe Sengkee v. Republic*, G. R. No. L-3863, prom. Dec. 27, 1951.

[36] See note 35, *supra*.

[37] *Uy Boco v. Republic*, G. R. No. L-2247, prom. Jan. 23, 1950.

[38] See note 35, *supra*.

[39] See note 35, *supra*.

enrolled all his minor children of school age in one of the prescribed schools.

2. *Disqualifications.*

Among those not eligible for Philippine citizenship are "citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof." In *Kookooritchkin v. Solicitor General*[40] decided in 1947, the Supreme Court upheld the right of a stateless person to be naturalized. The doctrine was followed in the case of *Bermont v. Republic.*[41]

In that case it was proved that the petitioner was born in Siberia in 1912 of parents who were both White Russians; that all of them, during the Russian revolution, fled to and settled in Japan for ten years; that in 1930, they moved to Shanghai and the petitioner came to the Philippines in January 1935 where he had since then resided continuously. It was also shown that the petitioner never took oath of allegiance to the Soviet Government and considered himself stateless; that he married a Filipino and had a child by her and that he took active part in the guerrilla movement for which he was awarded two medals of honor. The Supreme Court found the petitioner to be a stateless person and granted his petition notwithstanding the fact that he did not prove that the Soviet Government grants Filipinos the right to become naturalized subjects thereof.

In the cases of *Republic v. Lim,*[42] *Lim So v. Republic*[43] and *Uy Chiong v. Republic,*[44] the Supreme Court refused to read the provisions of the Chinese Law of Nationality into our Naturalization Law following the doctrine of *Parado v. Republic,*[45] and *Chausintek v. Republic.*[46] Said the Supreme Court in *Republic v. Lim*:

> "The determination of whether such renunciation (by a Chinese citizen of his nationality) is valid or fully complies with the provisions of our Naturalization Law lies within the province and is an exclusive prerogative of our courts. The latter should apply the law duly enacted by the legislative department of the Republic. No foreign law may or should interfere with its operation or application. If the requirement of the Chinese Law of Nationality were to be read into our Naturalization Law,

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[40] 46 O. G., Sup. No. 1, 217.
[41] G. R. No. L-3323, prom. July 18, 1951.
[42] G. R. No. L-3030, prom. Jan. 31, 1951.
[43] G. R. No. L-2645, prom. May 28, 1951.
[44] See note 31, *supra.*
[45] G. R. No. L-2628, prom. May 6, 1950.
[46] G. R. No. L-2755, prom. May 18, 1951.

> we would be applying not what our legislative department has deemed wise to require but what a foreign government has thought or intended to exact."

3. *Persons not required to make declarations of intentions.*

Subject to other requirements an applicant born in the Philippines or an applicant who has resided continuously in the Philippines for a period of thirty years or more before the filing of his application need not file a declaration of intention. In both cases it is required that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the government and not limited to any race or nationality. Where the applicant himself was born in the Philippines it must be shown likewise that he has received his primary and secondary education in public schools or those recognized by the government and not limited to any race or nationality.

With respect to the educational requirement as to the applicant who was born in the Philippines, the Supreme Court held, in the cases of *Uy Boco v. Republic* [47] and *Son v. Republic* [48] that "the applicant must have *completed* his primary and secondary education in public schools or those recognized by the government." In these two cases, the applications for naturalization of the applicants who had completed no more than the second year of high school were denied. In the recent case of *King v. Republic,*[49] the Supreme Court seemed to have modified the doctrine enunciated in the cases of Uy Boco and Jose Son.

The facts of that case are as follows: Cipriano King was born in the Philippines of Chinese parents. He finished his elementary education in Victoria Elementary School in Tarlac and was a senior high school student at the Gregg Business Institute (recognized by the government) at the time of the hearing of the petition. The Solicitor General opposed the application on the ground that the applicant had not received his secondary education. In overruling the objection of the Solicitor General, the Supreme Court said:

> "We have held that the requirement of enrollment in public schools or those recognized by the government of the children of a petitioner for naturalization could not be exacted from one whose children are not of school age. The same reason may be applied to the applicant who was a senior high school student at the Gregg Business Institute. He could

[47] See note 37, *supra.*
[48] G. R. No. L-3264, prom. Nov. 29, 1950.
[49] See note 32, *supra.*

> not be required to allege and prove that he had received his senior education in that Institute when he was only a senior student at the time of the filing and hearing of his application. We are of the opinion that there is a substantial compliance with the education requirement of section 6 of C. A. 473."

There is a dissenting opinion by Justices Pablo and Montemayor, who stood by the Uy Boco doctrine and maintained that the difference between the petitioner in the Uy Boco case and the petitioner in the King case is just a matter of degree.

The King case seemed to have departed from the literal construction of the law and has introduced the rule that an alien born in the Philippines need not have completed his primary and secondary education in public schools or those recognized by the government in order to be exempted from the requirement of making a declaration of intention. It is sufficient, and there is substantial compliance with the law, if the petitioner has completed his primary education and the first three years of high school in the prescribed schools and is in the process of completing his senior year at the time of the hearing of his petition.

In the subsequent case of *Tan v. Republic*,[50] the Supreme Court held that a petitioner for naturalization who has completed only the sixth grade in an Anglo-Chinese school is not exempt from making a declaration of intention, there being no substantial compliance with the education requirement.

With respect to the second class of persons exempted from making a declaration of intention, a petitioner, in order to fall within the class, must have resided continuously in the Philippines for at least thirty years prior to the filing of his petition. Thus, in the same case of *Tan v. Republic*, the petitioner who was born in the Philippines on September 28, 1917 and who filed his petition for naturalization on July 2, 1947 was declared not to be exempt from the requirement of filing a declaration of intention.

4. *Witnesses.*

It is required by the Naturalization Law, that the petition for naturalization "must be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable and that said petitioner has in their opinion all the qualifications necessary to become a citizen

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[50] G. R. No. L-2611, prom. July 31, 1951.

of the Philippines and is not in any way disqualified under the provision of this Act."

In the aforecited case of *Cu v. Republic*,[51] it was shown that the first witness admitted that his father was a Chinese citizen and his mother was a Filipina and that he never elected Philippine citizenship. He testified, however, that he was a member of the reserve force of the Philippine Army, a former R. O. T. C. trainee and was called to service during the war; that he voted in one of the post-liberation elections and that, at the time of the hearing of the petition, he was a member of the faculty of the U. P. and a resident physician in the Philippine General Hospital. The second witness stated that he had not known the petitioner for the required period of five years. The Supreme Court denied the petition for naturalization because the circumstances stated by the first witness did not make him a Philippine citizen and that stated by the second witness disqualified him from being a witness.

In thus holding, the court relied on the *Martorana*[52] case which speaks to the following effect:

> "In naturalization petitions, the courts are peculiarly at the mercy of the witnesses offered by the candidate. Such candidate takes care to see that only those who are friendly to him are offered as witnesses. The courts cannot be expected to possess acquaintance with the candidates presenting themselves for naturalization—in fact, no duty rests upon them in this particular; so that witnesses appearing before them are in a way *insurers of the character of the candidate* concerned, and on their testimony, the courts are of necessity compelled to rely."

5. *Court to hear petition.*

The Court of First Instance of the province in which the petitioner has resided at least one year immediately preceding the filing of the petition shall have exclusive original jurisdiction to hear the petition.

"The residence required in section 8 need not be actual, physical or material. It would be unreasonable to require an applicant for citizenship to be physically present or actually residing in the province one year immediately before he filed his petition. That requirement means the legal residence (animus manendi) from which he could or might depart or be absent temporarily for a certain purpose and to which he always intended to return. Animus revertendi, which is the criterion for determining one's domicile in a coun-

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[51] See note 30, *supra*.

[52] *U. S. v. Martorana*, 171 Fed. Rep. 397.

try other than that of his actual residence, may be taken into account in the determination of his domestic residence." [53]

Once a domicile is established, the same continues and before a resident may acquire a new residence, he must abandon his established residence and reside in a new one with the intention of residing therein permanently and without any intention of returning to his old residence.[54]

"The residence required in section 8 of the Revised Naturalization Law must be counted from the date of the filing of the petition and not from the date of the hearing of the petition." [55]

IV. CIVIL RIGHTS

Civil rights may be summed up in the term liberty. They mark out an area of freedom ordinarily free from governmental invasion or intrusion. This broad guaranty of liberty is implemented by specific pledges and immunities which may be classified under freedom of belief, of expression and of association and personal freedom including the constitutional rights of the accused.

It is in this field that the Supreme Court during the past year did seem to have retreated from positions that look so well-entrenched not so long ago. On freedom of expression, *Espuelas v. People of the Philippines* [56] represents a distinct loss for the cause of civil liberties. In so far as the constitutional rights of an accused are concerned, the resolution of the Supreme Court dismissing *Nava v. Gatmaitan* [57] and *Hernandez v. Montesa* [58] for lack of the necessary six votes to entertain the petition shows how precarious is the constitutional right to bail, notwithstanding its wording in terms almost absolute, when the privilege of the writ of habeas corpus is suspended.

The most plausible explanation for this playing down by the Supreme Court of its all important role as guardian of civil liberties would be the prevailing climate of opinion last year. With the drive against dissidents in full force but with danger from them not yet totally removed the claims on behalf of freedom were not given the sympathetic consideration they should otherwise deserve.

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[53] *King v. Republic, supra,* note 42.

[54] *Zuellig v. Republic,* 46 O. G. Sup. to No. 11, 220, cited with approval in *Republic v. Lim, supra,* note 42.

[55] *Squillantini v. Republic,* G. R. No. L-2785, prom. Jan. 31, 1951.

[56] G. R. No. L-2990, prom. Dec. 17, 1951.

[57] See note 2, *supra.*

[58] See note 3, *supra.*

Not that the picture last year in the field of civil rights was entirely dark. The *Mejoff*,[59] *Borovsky*,[60] *Chirskoff*[61] and *Andreu*[62] decisions redressed the balance considerably.

A. FREEDOM OF EXPRESSION: ESPUELAS V. PEOPLE OF THE PHILIPPINES.

The case of *Espuelas v. People of the Philippines*[63] is a prosecution under article 142 of the Revised Penal Code punishing those who write, publish or circulate scurrilous libels against the government or any of the duly-constituted authorities, or which suggests or incites rebellious conspiracies or riots or which tend to stir up the people against the lawful authorities or to disturb the peace of the community. Appellant Espuelas was convicted by the trial court of the above offense the conviction being sustained by the Court of Appeals, from which the case was elevated to the Supreme Court on appeal by certiorari.

The evidence disclosed that Espuelas had his picture taken, making it appear as if he were hanging at the end of a piece of rope suspended from a branch of a tree, when as a matter of fact he was merely standing on a barrel. Thereafter he had copies of said photographs sent to several newspapers and weeklies of general circulation, not only in Bohol but also throughout the Philippines and even abroad. With the copies of the above photographs was a note or letter wherein he made to appear that it was written by a person who committed suicide by name of Alberto Reveniera.

The letter addressed to the supposed wife of the latter purported to explain why he committed suicide. The reason he gave was that he "was not pleased with the administration of Roxas," and he would have his alleged wife tell "the whole world about this." Then the alleged suicide note continues:

> "And if they ask why I did not like the administration of Roxas, point out to them the situation in Central Luzon, the Hukbalahaps. Tell them about Julio Guillen and the banditry of Leyte.
>
> Dear wife, write to President Truman and Churchill. Tell them that here in the Philippines our government is infested with many Hitlers and Mussolinis.

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[59] *Mejoff v. Director of Prisons*, G. R. No. L-4254, prom. Sept. 26, 1951.

[60] *Borovsky v. Commissioner of Immigration*, G. R. No. L-4352, prom. Sept. 25, 1951.

[61] *Chirskoff v. Commissioner of Immigration*, G. R. No. L-3802, prom. Oct. 26, 1951.

[62] *Andreu v. Commissioner of Immigration*, G. R. No. L-4253, prom. 21, 1951.

[63] See note 56, *supra*.

> Teach our children to burn pictures of Roxas if and when they come across one.
>
> I committed suicide because I am ashamed of our government under Roxas. I can not hold high my brows to the world with this dirty government.
>
> I committed suicide because I have no power to put under *Juez de Cuchillo* all the Roxas people now in power. So, I sacrificed my own self."

In sustaining the conviction by a vote of six to three, the majority opinion of Justice Bengzon characterized the letter and its effects thus:

> "The letter is a scurrilous libel against the Government. It calls our government one of crooks and dishonest persons (dirty) infested with Nazis and Fascists i.e. dictators.
>
> And the communication reveals a tendency to produce dissatisfaction or a feeling incompatible with the disposition to remain loyal to the government.
>
> Writings which tend to overthrow or undermine the security of the government or to weaken the confidence of the people in the government are against the public peace, and are criminal not only because they tend to incite to a breach of the peace but because they are conducive to the destruction of the government itself (See 19 Am. Law Rep. 1511). Regarded as seditious libels they were the subject of criminal proceedings since early times in England."

There is a recognition in the majority opinion that article 142 of the Revised Penal Code lends itself to becoming "a weapon of intolerance constraining the expression of opinion or mere agitation for reform." The opinion likewise admits that in disposing of said appeal, "careful thought had to be given to the fundamental right of freedom of speech." While statutes against sedition then, as the majority opinion points out, "have always been considered not violative of such fundamental guarantee," care is to be taken that "they should not be interpreted so as to unnecessarily curtail the citizen's freedom of expression to agitate for institutional changes."

Notwithstanding such an attitude which on its face seems to frown upon an unwarranted curtailment of the right of expression, the conviction was upheld as "there is sufficient safeguard by requiring intent on the part of the defendant to produce illegal action." For the majority the particular article in question which was "aimed at anarchy and radicalism presents largely a *question of policy.*" The Legislature having spoken in article 142 "the law must be applied."

The majority opinion goes on to state:

"Analysed for meaning and weighed in its consequences the article cannot fail to impress thinking persons that *it seeks to sow the seeds of sedition and strike*. The infuriating language is not a sincere effort to persuade, what with the writer's simulated suicide and false claim to martyrdom and what with its failure to particularize. When the use of irritating language centers not on persuading the readers but on creating disturbance, the rationale of free speech can not apply and the speaker or writer is removed from the protection of the constitutional guaranty."

The majority could even invoke an authority in support of their harsh view.

"In 1922 Isaac Perez of Sorsogon while discussing political matters with several persons in a public place uttered these words: 'Filipinos must use bolos for cutting off Wood's head'—referring to the then Governor-General, Leonard Wood. Perez was found guilty of inciting to sedition in a judgment of this court published in the Philippine Reports. That precedent is undeniably opposite. Note that the opinion was penned by Mr. Justice Malcolm probably the member who has been most outspoken on freedom of speech. Adopting his own words we could say, 'Here the person maligned by the accused is the Chief Executive of the Philippine Islands. His official position, like the Presidency of the United States and other high offices, under a democratic form of government, instead of affording immunity from promiscuous comment, seems rather to invite abusive attacks. But in this instance, the attack on the President passes the furthest bound of free speech and common decency. More than a figure of speech was intended. There is a seditious tendency in the words used, which could easily produce disaffection among the people and a state of feeling incompatible with a disposition to remain loyal to the government and obedient to the law.'"

Even if the majority opinion be viewed with the utmost sympathy, its rationale is far from persuasive. It appears as if the majority in their repugnance for the foolish and intemperate letter of the accused and perhaps in their desire to caution similarly-minded critics of the administration to use less "infuriating" language dignified a matter, that should have occasioned either derisive laughter or at the most a minor irritation into a seditious libel. The dissenting opinion by Justice Tuason, concurred in by Chief Justice Paras and Justice Feria expresses a better understanding of the command of the Constitution that "no law is to be passed abridging the freedom of speech and of the press."

A pertinent excerpt follows:

"There is no inciting to sedition unless, according to Justice Holmes' theory expressed in connection with a similar topic, 'the words used are used in such circumstances and are of such a nature as to create clear and present danger that they will bring about the substantive evils that

> Congress has a right to prevent.' In the very law punishing inciting to sedition there is the requirement that the words alleged to be seditious or libelous *lead* or *tend* to the consummation of the evils sought to be prevented. Even in the ordinary offenses of threat and defamation, words are not taken at face value, but their import or gravity is gauged by the circumstances surrounding each particular case.
>
> The terms 'lead' and 'tend' are used in Article 142 of the Revised Penal Code in their ordinary signification. Thus understood, lead as a verb means 'to draw or direct by influence' or 'to prevail on,' and tend means 'to conduce to an end.' (Webster's International Dictionary).
>
> Judged by these tests, and granting for the present purposes that the defendant did intend to incite others to sedition, the article was harmless as far as the safety of the Government and its officers was concerned, and should have been ignored, as many others more serious than this one have been. The message, like an evil imagining from which no harm proceeds except to the individual himself, was not conducive to the attainment of the prisoner's aims. If words are 'the keys of persuasion' and 'the triggers of action,' the article under consideration was far from possessing either of these qualities, taking into consideration the personality of the man who wrote it and what he 'did.' The reaction of the readers could not have been other than the whole thing was comical if it were not 'tragic.' The general reaction it is fairly safe to say, was one of regret for a man of eccentric and unbalanced mind or ridicule and curiosity for a grotesque stunt. The witnesses for the Government themselves, some of whom were constabulary officers stationed at Tagbilaran, stated that upon reading the article and seeing the author's picture they just laughed it off, 'thinking that this fellow must be crazy,' That was akin to our own reaction, and there is little or no doubt that it exemplified the general effect upon the minds of other readers of the article. It is certain that none would commit a rash act upon a vague suggestion of a man who hanged himself and whom they had never heard of before, while those who had known him, like the constabulary officers above mentioned, were aware that the picture was a fake and thought the subject was a crank.
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> Attacks more serious, virulent and inflammatory than the one at bar, by persons well known in politics and public life and having influence and large following, have frequently appeared in the press or been launched on the platforms. What the defendant did or said was very tame and mild by comparison. Nevertheless, those critics have not been brought to court; and it is to the everlasting credit of the administration and, in the long run, for the good of the Government, that the parties reviled and the prosecutors have adopted a tolerant attitude."

The forceful dissenting opinion quotes the highly eloquent language of Justice Holmes dissenting in the Abrams case, which expresses the philosophy behind freedom of expression and the justification of the clear and present danger doctrine as a limitation thereon.

Here in the Philippines with the case of *Primicias v. Fugoso,*[64] the Supreme Court has tacitly adopted the clear and present danger rule.

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[64] 45 O. G. 3280.

Tested by that doctrine the conviction here should not have been sustained. There is no question about the right of the government to punish seditions and incitement to sedition. There should be no question either about the futility of any such letter and the alleged suicide to lead people to take up arms. The Filipino masses cannot be deluded that easily. Those who may have read the letter and may have believed it could have sympathized with the bereaved family. It would be sympathy coupled with condemnation for so foolish an act. Where then is the danger? As noted by Boudin "the meaning of the rule is clear: the danger involved must be both clear and present. It is also clear that the rule is all pervasive—'it applies to every case.' " [65]

It must be admitted though that with reference to seditious speeches and publications, the Supreme Court in the *Evangelista*,[66] *Feleo*,[67] and *Nabong* [68] cases did express its preference for the dangerous tendency doctrine. Under this view the danger need not be clear and present. It is sufficient that it could be envisioned, even if its occurrence is remote. The very statement of the doctrine makes clear how lacking it is in its protection for the constitutional guarrantee of freedom of expression.

A word about the *Perez* [69] decision. It is true that the majority states that it was penned by Justice Malcolm, "probably the member who has been most outspoken on freedom of speech." Precisely this decision does not do him justice. The principle announced in this case is at war with his often eloquently expressed views on the importance of freedom of expression. It could be explained on the ground that the accused Perez in this case threatened to cut off the head of the old American Governor-General. Justice Malcolm must have been aware that humane and considerate as was the policy of the Americans in the Philippines, there was no time when the feeling for Philippine independence was not strongly felt by the overwhelming majority of the Filipinos. Considering the fact then that Governor General Wood incurred the ire of many leading political leaders because of his strong opposition to the early grant of Philippine independence, it was not too far-fetched to believe that irresponsible statements of the sort made by Perez might be acted on by some zealous and misguided patriots. Such a thought must have

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[65] Boudin, "Seditious Doctrines" and the "Clear and Present Danger Rule," 38 *Virginia Law Review*, 143, 155.

[66] *People v. Evangelista*, 57 Phil. 254.

[67] *People v. Feleo*, 58 Phil. 573.

[68] *People v. Nabong*, 57 Phil. 455.

[69] *People v. Perez*, 45 Phil. 599.

occurred to Justice Malcolm in sustaining the conviction. So he stated: "the courts should be the first to stamp out the embers of insurrection. The fugitive flame of disloyalty, lighted by an irresponsible individual, must be dealt with firmly before it endangers the general public peace." Is that the situation now?

B. EFFECT ON THE CONSTITUTIONAL RIGHT TO BAIL OF THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS: THE NAVA AND HERNANDEZ CASES.

For lack of one vital vote, to make a majority of six as required by the Judiciary Act, the Supreme Court in *Nava v. Gatmaitan* [70] and *Hernandez v. Montesa*,[71] missed an opportunity to speak in the unmistakable language that constitutional rights mean what they say and that the Constitution is supreme, emergency to the contrary notwithstanding. Respondent judges in the above two petitions ruled that the petitioners were included among those coming within the terms of the suspension of the privilege of the writ of habeas corpus and were for that reason not entitled to their constitutional right to bail. Upon the matter being taken before the Supreme Court five of the nine justices who voted on the question were of the opinion that petitioners under the constitution has the right to bail unless it could be shown that evidence of guilt for the capital offense of which they were charged were strong. In thus arriving at that conclusion, the above five justices merely applied literally the terms of the controlling constitutional provision.

As Chief Justice Paras expresses it:

> ". . . The privilege of the writ of habeas corpus and the right to bail guaranteed under the Bill of Rights are separate and co-equal. If the intention of the framers of the Constitution was that the suspension of the privilege of the writ of habeas corpus carries or implies the suspension of the right to bail, they would have very easily provided that all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong and except when the privilege of the writ of habeas corpus is suspended. As stated in the case of Ex Parte Milligan, 4 Wall. 2, 18 L. ed. 297, the Constitution limited the suspension to only one great right, leaving the rest to remain forever inviolable."

Justice Tuason has no doubts on the matter either:

> "To the plea that the security of the State would be jeopardized by the release of the defendants on bail, the answer is that the existence of danger is never a justification for courts to tamper with the funda-

[70] See note 2, *supra*.
[71] See note 3, *supra*.

mental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency of the so-called 'judicial statesmanship.' The Legislature itself cannot infringe them, and no court conscious of its responsibilities and limitations would do so. If the Bill of Rights are incompatible with stable government and a menace to the Nation, let the Constitution be amended, or abolished. It is trite to say that, while the Constitution stands, the courts of justice as the repository of civil liberty are bound to protect and maintain undiluted individual rights."

From Justice Bengzon who penned the questionable opinion in the Espuelas case, there is a cogent and forceful presentation of the argument that respect for constitutional rights would aid in the fight against Communism in the Philippines.

"And in my opinion, one of the surest means to ease the uprising is a sincere demonstration of this Government's adherence to the principles of the Constitution together with an impartial application thereof to all citizens, whether dissidents or not. Let the rebels have no reason to apprehend that their comrades now under custody are being railroaded into Muntinglupa, without benefit of those fundamental privileges which the experience of the ages has deemed essential for the protection of all persons accused of crime before the tribunal of justice. Give them the assurance that the judiciary, ever mindful of its sacred mission will not, thru faulty or misplaced devotion, uphold any doubtful claims of Governmental power in diminution of individual rights, but will always cling to the principles uttered long ago by Chief Justice Marshall that when in doubt as to the construction of the Constitution, 'the Courts will favor personal liberty.' (ex Parte Burford 3 Cranch, & U. S., Law Ed. Book 2 at p. 495)."

Three of the four dissenting justices however, Padilla, Bautista Angelo and Pablo, premised their inability to accord to petitioners Nava and Hernandez their constitutional right to bail on the ground that the emergency existing suspended such right as to them, their detention having been begun by virtue of the proclamation suspending the privilege of the writ of habeas corpus.

As Justice Padilla puts it:

"I am of the opinion that paragraph 14, section 1, Article III, of the Constitution, which prohibits the suspension of the privilege of the writ of *habeas corpus*, and paragraph 16 of the same section and article, which grants to all persons before conviction the right to be released on bail by sufficient sureties, except to those charged with capital offenses when the evidence of guilt is strong, and enjoins that excessive bail be not required, may be invoked and applied in normal times for such is the import of paragraph 14 if the exception is to be taken into account. The exception has reference to the suspension of the privilege during such period as the necessity for it shall exist, which may be decreed by the President in cases of invasion, insurrection or rebellion, or imminent

> danger thereof, when public safety requires it. (Article VII, section 10, paragraph 2, of the Constitution). It envisages and is intended to confront an abnormal situation pregnant with perils and dangers to the existence of the State. The exception in paragraph 16, unlike the one in paragraph 14, refers to the denial of bail during a period of normalcy."

Justice Bautista Angelo was more emphatic in his views that individual rights must give way to the demands of the State.

> "The cases before us involve a fundamental issue which vitally concerns the security of the State and the welfare of our people. They involve a conflict between the State and the individual. When the right of the individual conflicts with the security of the State, the latter should be held paramount. This is a self-evident shibboleth. The State is the political body that stands for society and for the people to secure which individual rights must give way and yield. For as Justice Holmes well said, 'when it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment.' (Moyer v. Peabody, 55 L. ed. 410). Only having in mind this fundamental point of view can we determine in its true light the important case before us which has no precedent in the annals of our jurisprudence."

As above-mentioned, no binding decision was rendered as the Judiciary Act requires the concurrence of six votes before the Supreme Court could decide a case or a petition. Thus, for the lack of the necessary majority, many of the lower court judges were confirmed in their belief that it is part of the judicial power they wield to refuse to apply constitutional provisions safe-guarding individual rights at the mere invocation of the opposing party that emergency warrants such suspension. Unless the Supreme Court speaks, and speaks plainly and unequivocally, the fear may be legitimately entertained that other constitutional rights may under one pretext or another be accorded less weight than is justly due them. The regime of constitutionalism for which this country stands, and which distinguishes it from totalitarian governments, would be the first victim of such an approach to constitutional questions. The failure then of the Supreme Court in 1951 to sustain in a decisive and unqualified manner the supremacy of the Constitution is a matter that may have serious repercussions.[72]

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[72]On this point see *Philippine Law Journal*, Vol. XXVII, No. 1: Fernando and Quisumbing-Fernando, "The Role of the Supreme Court as Protector of Civil Liberties in Times of Emergency"; Pineda and Espiritu, "The Suspension of the Privilege of the Writ of Habeas Corpus: Its Justification and Duration"; Ponce Enrile, "The Effect of the Suspension of Habeas Corpus on the Right to Bail in Cases of Rebellion, Insurrection and Sedition"; Laurel, "An Inquiry into the Effects of the Suspension of the Privilege of the Writ of Habeas Corpus upon the Constitutional Rights of an Accused Person Except the Right to Bail."

C. PERSONAL FREEDOM: THE MEJOFF, BOROVSKY, CHIRSKOFF AND ANDREU DECISIONS.

The picture presented in civil rights cases is not as one might suspect from the actuations in the controversies previously discussed one of unrelieved gloom. There is a bright side to it. In the sphere of personal freedom, due process to the accused, non-imprisonment for debt, and protection from double jeopardy, the Supreme Court was true to its role of guardian of constitutional rights.

In the Mejoff,[73] Borovsky,[74] Chirskoff,[75] and Andreu [76] petitions for habeas corpus, the Supreme Court affirmed the principle that non-enemy aliens, even if a previous deportation order had been issued against them which could not have been executed however, provided no criminal charges had been filed against them and no judicial order issued, could not be kept under indefinite detention. Reliance was placed by the Supreme Court not only on the due process clause of the Constitution but likewise on the Universal Declaration of Human Rights.

In all the above proceedings, the habeas corpus petitions were presented for the second time. Their first petitions for habeas corpus were denied as pending arrangement for their deportation, it was held that the government had the right to hold undesirable aliens under confinement for a reasonable length of time. After the lapse of more than two years in each case, however, the second petitions for habeas corpus were granted.

In *Mejoff v. Director of Prisons*,[77] it was shown that Boris Mejoff, an alien of Russian descent, was brought to the Philippines as a secret operative of the Japanese forces during the Japanese Occupation. Upon liberation, deportation proceedings were started against him and he was ordered deported. Efforts were made to carry out the order, but he could not be deported as no Russian ship would take him aboard.

In the case of *Borovsky v. Commissioner of Immigration*,[78] it was shown that petitioner born in Shanghai of Russian parents, came and stayed in the Philippines under legal permit since 1936, and was ordered deported by the Deportation Board in 1946 as "an undesirable alien, a vagrant and habitual drunkard, engaging in es-

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[73] See note 59, *supra*.
[74] See note 60, *supra*.
[75] See note 61, *supra*.
[76] See note 62, *supra*.
[77] See note 59, *supra*.
[78] See note 60, *supra*.

pionage activities." All efforts to deport him likewise failed. He claimed to be a stateless alien which claim like Mejoff's was not disproved. As in the Mejoff case, the first application for writ of habeas corpus was denied. Like Mejoff, he had to be detained as the deportation order could not be carried out. Hence this second petition for habeas corpus.

Chirskoff entered the Philippines with a passport. Sometime later he obtained employment in Florida Blanca. While there, he was arrested by order of the Commissioner of Immigration on March 16, 1948, charged "with aiding, helping and promoting the final objective of the Hukbalahaps to overthrow the Government." He was ordered deported, after the arrest on the ground that, he "violated conditions of the temporary stay given him by failing to depart from the Philippines upon its expiration, thus rendering him subject to deportation under section 37 (2), (7) of the Philippine Immigration Law of 1940, as amended." No formal charges for giving aid to Hukbalahaps had ever been filed. It is to be noted, therefore, that the deportation was not based on the charge in the order of his arrest. As in the two previous petitions, his detention was prolonged when the deportation order remained unexecuted. He alleged though that he "could easily have departed from the Philippines without any excuse on the part of the Government when, upon express authority of the respondent Commissioner of Immigration, he secured employment in the Swedish S. S. Axel Salem which was to sail from the Philippines in 1948, but the respondent Commissioner of Immigration for no valid and practical reason withdrew the said authority."

Andreu was another stateless alien, born in Latvia, who was ordered deported by the President on the basis of the recommendation of the Deportation Board that he was "an undesirable alien whose conduct and mode of life render his presence in the Philippines inimical and dangerous to public interest." He was ordered temporarily detained pending deportation. The second application was granted, the Court through Justice Padilla stating that it was bound by the rule laid down in the preceding Mejoff, Borovsky and Chirskoff cases.

The basis for the above decisions was more explicitly set forth by Justice Tuason referring to the *Mejoff* and *Borovsky* petitions in the *Chirskoff* [79] case thus:

> "In the last mentioned cases we held that foreign nationals, not enemy, against whom no criminal charges have been formally made or

[79] See note 61, *supra*.

> judicial order issued, may not indefinitely be kept in detention; that in the 'Universal Declaration of Human Rights' approved by the General Assembly of the United Nations of which the Philippines is a member, the right to life and liberty and all other fundamental rights as applied to human beings were proclaimed; that the theory on which the court is given power to act is that the warrant of deportation, not having been able to be executed, is *functus officio* and the alien is being held without any authority of the law (U. S. v. Nichols, 47 Fed. Supp. 201); that the possibility that the petitioners might join or aid disloyal elements if turned out at large does not justify prolonged detention, the remedy in that case being to impose conditions in the order of release and exact bail in reasonable amount with sufficient sureties."

It is to be noted likewise that limits were imposed on the freedom granted. To quote from the *Chirskoff* [80] case again:

> "Following our decisions in Borovsky v. Commissioner of Immigration, supra, and Mejoff v. Director of Prisons, supra, it is ordered that the writ issue commanding the respondents to release the petitioner from custody upon these terms: The petitioner shall be placed under the surveillance of the immigration authorities or their agents in such form and manner as may be deemed adequate to insure that he keep peace and be available when the Government is ready to deport him. The surveillance shall be reasonable and the question of reasonableness shall be submitted to this Court or Court of First Instance of Manila for decision in case of abuse. He shall also put up a bond for the above purpose in the amount of ₱5,000.00 with sufficient surety or sureties, which bond the Commissioner of Immigration is authorized to exact by section 40 of Commonwealth Act No. 613."

D. DUE PROCESS IN CRIMINAL PROCEEDINGS: MONTILLA V. ARELLANO.

Montilla v. Arellano [81] reiterated the right of the accused to prepare for trial as part of his constitutional right to due process.

Petitioner Montilla was prosecuted for homicide. On the day of the trial, the provincial fiscal appeared but not the accused nor any attorney on his behalf. Respondent Judge Arellano, upon motion of the prosecution, ordered the defendant arrested and his bond confiscated. Immediately after that order was dictated, the accused appeared with his counsel, who explained their being late because he and his client had come from another town in Isabela and the road was muddy. Counsel having moved for the reconsideration of the order of arrest and confiscation of the bond, Judge Arellano set aside the order, and in its place fined the accused ₱5.00. The trial was continued. When asked by the Judge if counsel for the defense was ready for trial, the latter respectfully but persistently answered that he was not ready to go to trial on that day, that his

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[80] See note 61, *supra*.

[81] G. R. No. L-3757, prom. July 12, 1951.

services were sought by the accused just a few days previous, and that he had not gone over the record yet.

The judge denied counsel's request for an opportunity to prepare for trial. As a result, the present petition for certiorari with preliminary injunction was filed against him.

On the above facts, the court held that—

> "To say that the defendant's attorney did not ask for postponement is to indulge in a play of words. When counsel said that he was not ready to go to trial, his purpose could be no other than that he wanted the trial put off to another date. Under section 7, Rule 114 of the Rules of Court, the accused is entitled as of right at least two days to prepare for trial, and a denial of this right deprives him of a constitutional right to trial by due process."

E. NON-IMPRISONMENT FOR DEBT: PEOPLE V. MERILO.

In *People v. Merilo*,[82] the Supreme Court affirmed the decision rendered in the previous case of *People v. Vera Reyes*[83] that the constitutional prohibition against imprisonment for debt cannot be availed of by an employer who being able to pay refuses to do so without justification.

According to the facts of the case, defendant employed Francisco Amarrador as a photographer in his art studio at ₱8.00 per day payable daily. Instead of paying the agreed sum, the photographer was paid only ₱24.00 after working for one month and three days. The matter was brought by Amarrador to the attention of the Department of Labor. Defendant then executed a document in favor of Amarrador acknowledging a debt of ₱337.84 as wages for services rendered from October 29, 1947 to February 16, 1948, with a promise to pay the same little by little.

Defendant was prosecuted under Section 1 of Commonwealth Act No. 303 requiring every employer to pay the salaries and wages of his employees and laborers at least once very two weeks or one-half month unless it is impossible to do so due to force majeure or unless previously exempted by the Secretary of Labor. Section 4 provides that failure to pay as required in section 1 shall be considered prima facie fraud committed by employer by means of false pretenses similar to those mentioned in Article 315 (4) of the Revised Penal Code and will be punished in the same manner.

Defendant assailed the constitutionality of the provisions of Commonwealth Act No. 303 because they presume the guilt of the accused and they provide imprisonment for failure to pay a debt.

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[82] G. R. No. L-3489, prom. June 28, 1951.
[83] 67 Phil. 187.

In deciding this case the court quoted from the opinion in the case of *People v. Vera Reyes*: [84]

> ". . . The last part of section 1 considers as illegal the refusal of an employer to pay, when he can do so, the salaries of his employees or laborers on the fifteenth or last day of every month or on Saturday of every week, with only two days extension, and the non-payment of the salary within the periods specified is considered as a violation of the law. The same Act exempts from criminal responsibility the employer who, having failed to pay the salary, should prove satisfactorily that it was impossible to make such payment. The Court held that this provision was null because it violates the provision of section 12, Article III, of the Constitution, which provides that no person shall be imprisoned for debt. We do not believe that this constitutional provision has been correctly applied in this case. A close perusal of the last part of section 1 of Act No. 2549, as amended by section 1 of Act No. 3958, will show that its language refers only to the employer who, being able to make payment, shall abstain or refuse to do so, without justification and to the prejudice of the laborer or employee. An employer, so circumstanced, is not unlike a person who defrauds another, by refusing to pay his just debt. In both cases the deceit or fraud is the essential element constituting the offense. The first case is a violation of Act No. 3958, and the second is estafa provided by the Revised Penal Code. In either case the offender cannot certainly invoke the constitutional prohibition against imprisonment for debt. Police power is the power inherent in a government to enact laws, within the constitutional limits, to promote the order, safety, health, morals, and general welfare of society. (12 C. J., p. 904). In the exercise of this power the legislature has ample authority to approve the disputed portion of Act No. 3958 which punishes the employer, who being able to do so, refuses to pay the salaries of his employees and laborers within the specified period of time."

F. DOUBLE JEOPARDY.

The case of *Melo v. People* [85] has settled the doctrine on double jeopardy in the Philippines. Subsequent cases on double jeopardy have been in accord with the decision therein.

The protection of the constitutional prohibition is against a second jeopardy for the *same offense,* the only exception being as stated in the Constitution that if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the *same act.* A single act may amount to an offense against two statutes and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other. In *People v. Bacolod,* [86]

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[84] See note 83, *supra.*

[85] G. R. No. L-3580, prom. March 22, 1950.

[86] G. R. No. L-2578, prom. July 31, 1951.

the Supreme Court ruled that the lower court erred in granting a motion to quash a second complaint for public disturbance after the defendant pleaded guilty to a previous complaint for serious physical injuries thru reckless imprudence. While both informations were based on the same act of firing a submachine gun, the first offense charged was a crime against persons and the second, against public peace and order. The proof establishing the first would not establish the second, it being necessary to show besides the wilful discharge of firearm that there was a dance in the tennis court in connection with the town fiesta with the consequent disturbance to the people in attendance.

Not that the above rule is inflexible. Cases exist calling for the mitigation of its rigor. An example is afforded by *People v. del Carmen*.[87] In that case an information for malicious mischief in destroying and removing a "banguera" and "media agua" was dismissed by the lower court, after presentation of evidence for the prosecution, on motion of defendant counsel on the ground that the prosecution failed to prove its case. A subsequent information for coercion based on the same facts but alleging that the defendant prevented the house-owner from "leaving intact the 'banguera' and 'media agua' " was held to constitute double jeopardy. The Supreme Court explained its opinion thus:

> "While the rule against double jeopardy prohibits prosecution for the same offense, it seems elementary that an accused should be shielded against being prosecuted for several offenses made out from a single act. Otherwise, an unlawful act or omission may give rise to several prosecutions depending upon the ability of the prosecuting officer to imagine or concoct as many offenses as can be justified by said act or omission, by simply adding or subtracting essential elements. Under the theory of appellant, the crime of rape may be converted into a crime of coercion, by merely alleging that by force and intimidation the accused prevented the offended girl from remaining a virgin.
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> "The case at bar is an occasion for reminding prosecuting officers to be careful and comprehensive in criminal investigations with the view to determining definitely, before filing the necessary information, the offenses in fact and in law committed, in order to avoid situations smacking of persecutions."

The same tendency is reflected in *People v. Elkanish*.[88] Defendant in that case pleaded not guilty to an information of illegal possession of blasting caps. Then he was prosecuted for illegal importation of the same articles. He successfully moved to quash the second information for illegal importation on ground of double jeo-

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[87] G. R. No. L-3459, prom. Jan. 9, 1951.
[88] G. R. No. L-2666, prom. Sept. 26, 1951.

pardy, possession being inherent in importation. According to Justice Tuason:

> "In our case, there is no denying that importation and possession represent only one criminal intent, one volition; the design was to sell or dispose of the blasting caps for profit, the importation and possession being no more than means to accomplish that purpose, the media between the accused and the ultimate objective."

An interesting case on double jeopardy is *People v. Zapata and Bondoc* [89] where the Supreme Court held that as each sexual intercourse constitutes a crime of adultery, the plea of double jeopardy does not lie if offended husband chooses to prosecute erring spouse and paramour for every adulterous act thus committed, even if as in this case the wife had heretofore pleaded guilty to the first complaint and served her sentence.

Section 9 of Rule 113 of Rules of Court enumerates among the requisites for double jeopardy that the defendant shall have been convicted or acquitted or the case against him dismissed or otherwise terminated without the express consent of the defendant. In *People v. Romero,*[90] the lower court having granted the prosecution a last postponement, the prosecution at the day of the hearing did not have an important witness on hand and wanted the witness arrested, the trial to be suspended in the meanwhile. Defendant's counsel, inviting the court's attention to its order granting the last postponement, petitioned the court to dismiss the case. The petition was granted. The fiscal filed a motion for reconsideration which was denied. On appeal by the prosecution from the order of dismissal, the defendant's attorney filed with the Supreme Court a motion to dismiss the fiscal's appeal on the ground that the defendant having been already in jeopardy, would be placed in jeopardy by the appeal. To support this contention, defense counsel averred that the defendant did not himself personally move for the dismissal of the case. In disposing this contention, the Supreme Court ruled that the motion for dismissal by the defendant's counsel had the same effect as if the defendant himself had *personally* moved for such dismissal for the only case in which the defendant cannot be represented by his counsel is in pleading guilty under section 3 of Rule 114.

Where two informations for estafa referring to the same criminal act differ in (1) the defendants charged, (2) the offended parties named and (3) the description of the manner of the commis-

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[89] G. R. No. L-3047, prom. May 16, 1951.
[90] G. R. No. L-4517-4520, prom. July 31, 1951.

sion of the offense, filing of the second information after the dismissal of the first would not result in double jeopardy. Thus in the case of *People v. Balboa*,[91] the defendants named in the first information were Martinez and Balboa whereas in the second it is only Balboa; Nesbitt was the offended party in the first information and Martinez in the second; and the value of the ring or rings themselves should have been delivered to Mrs. Serrano or Nesbitt under the first information whereas in the second information, the delivery of the money or the rings should have been made to Martinez. Under the first complaint, the case against Balboa was provisionally dismissed on the ground that her co-accused, Martinez, had not yet been arrested and without him the charge could not be proved against Balboa. Subsequently, Martinez, on being arrested, moved for the definite dismissal of the case against him on the ground that he had satisfactorily explained the matter to the complainant Nesbitt. The motion was granted. On that same date the provisional dismissal against Balboa was also made definite on motion of her counsel. About a month and a half later, the second information with the aforementioned differences was filed against Balboa alone. The lower court entertained a motion to quash on ground of double jeopardy. The Supreme Court reversed the order of dismissal, reasoning that to commit estafa against Nesbitt is not the same as to commit estafa against Martinez.

The last World War has resulted in the destruction or loss of records of criminal cases pending consideration in 1941. In such a situation the remedy of the parties is a reconstitution in conformity with law. Under Republic Act No. 441 the period for each reconstitution was extended up to June 7, 1951. Should the defendant or counsel refuse to cooperate by not producing all pertinent papers in his possession bearing on the case, a new information for the same offense is proper. The Supreme Court in the case of *People v. Dagatan* [92] and relying on the decision in the case of *United States v. Laguna*,[93] said: Until the proceedings which, under the system which the law provides, constitutes his trial are terminated, the happening of an unforeseen event which renders the continuance of his trial for the time impossible as it cannot be used for his conviction cannot be urged for his absolution. As the burning of this courthouse with all the criminal records which it contains could not be used as basis for the affirmance of the conviction in this Court, so the same even could not be urged as a reason for the delivery of

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[91] G. R. No. L-3522, prom. Sept. 12, 1951.
[92] G. R. No. L-4396, prom. Oct. 30, 1951.
[93] 17 Phil. 532.

such persons from jail on the ground that a retrial would be a second jeopardy.

V. SOCIAL AND ECONOMIC RIGHTS

A. EQUAL PROTECTION: BENEFIT TO ALIENS.

Aliens in the Philippines are included within the term person in the first clause, first section of our Bill of Rights, which embodies the equal protection guarantee. The doctrine is equally well-settled that the equal protection clause yields to the more specific provisions which deny political and certain economic rights to aliens. The exclusion of aliens from the exercise of political rights, however, is not subject to challenge. Not so the denial to aliens of certain economic rights, probably because the right of a person to make a living is recognized even if he were in foreign territory.[94] Even before the Philippine Constitution went into effect, the Supreme Court had already upheld the validity of legislation, Act No. 2761, making a classification based on nationality, as not infringing the equal protection clause.[95]

The promulgation of the Constitution, with its nationalistic provisions limiting the disposition, exploitation, development, or utilization of natural resources, and the operation of public utilities to Filipino citizens or corporations or associations at least sixty per centum of the capital of which is owned by such citizens, has made it less difficult to sustain legislation relying on nationality as the basis for classification. The Supreme Court previously held in *Co Chiong v. Cuaderno*[96] decided on March 31, 1949, that the equal protection clause which is a general guaranty, has to give way to the specific nationalistic provisions of Article XIII of the Constitution.

The past year saw the Supreme Court reiterating the ruling laid down in *Co Chiong v. Cuaderno*.[97] In the case of *Tan Seng Hoo v. De la Fuente*,[98] no attack was made on the validity of Republic Act No. 37, giving citizens of the Philippines preference in the lease of public market stalls and empowering the Secretary of Finance to promulgate the necessary rules to carry out its purpose. The Co Chiong decision stood in the way. It was alleged though that said Act gives the alien the right to a market stall if there is no Filipino applicant.

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[94] See *Truax v. Raich*, 239 U. S. 33.
[95] *Smith Bell & Co. v. Natividad*, 40 Phil. 136.
[96] 46 O. G. 4833.
[97] See note 96, *supra*.
[98] G. R. No. L-3624, prom. Dec. 28, 1951.

The Court pointed out that if aliens are allowed to occupy stalls, such occupancy is not a matter of right, but a privilege which can be cancelled anytime by the city authorities. The privilege exists only in the absence of Filipino applicants in order not to lose rentals. The occupancy of a stall in the public market is reserved for nationals. It is a privilege given to Filipinos by the Constitution. It is not an inalienable right possessed by every human being, like the right to life, or the freedom of the mind.

Decisions of American courts sustaining the validity of state laws regulating or prohibiting the exercise of certain occupations by aliens as not violative of the 14th Amendment, and Philippine laws prohibiting the granting of contracts for public works to aliens and the exercise of the law profession by aliens in the Philippines were cited to show some measures of a nationalistic character sustained as valid.

In the other decisions rendered the past year, however, the benefits accruing to aliens under the equal protection clause was fully recognized.

Mention may be made of the already cited case of *Cabauatan v. Uy Hoo*.[99] By virtue of the holding that the Constitution was not in force during the Occupation, the ruling in the *Krivenko* [100] case that the prohibition against transfer of agricultural lands to aliens applied to residential, commercial, and industrial lots became meaningless for the many transactions that took place then. Considering the fact that aliens in the Philippines were more economically secure and that many loyal Filipinos in a losing battle for survival sold their houses and lots, the decision is to be regretted.

Escoto v. Arcilla [101] involved the issue as to whether an alien could under the Constitution repurchase lots which had been sold a retro prior to the Constitution. It appears that the sale was executed in May 1932 with right to repurchase by a Chinese vendor, Tancungco, the period to repurchase having been fixed at two years. This period lapsed without repurchase having been made nor was the title consolidated in the vendee. Instead Tancungco continued in the possession as lessee. By a subsequent agreement entered into in 1940, and renewed in 1941, Tancungco was given two years from date to exercise the right of repurchase at double the original consideration. It was further stipulated that the present defendant, as surviving spouse of the original vendee would seek appointment

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[99] See note 6, *supra*.
[100] *Krivenko v. Register of Deeds*, 44 O. G. 471.
[101] G. R. No. L-2819, prom. May 30, 1951.

as administrator of his wife's estate and thereafter get judicial authorization to sell the lands in question to the Chinese vendor, and that in the event that the court refused to authorize the sale for any reason whatsoever, Tancungco would deliver the lots to Arcilla on demand. The judge before whom the petition for approval of the sale was brought refused to sanction the sale because Tancungco is a Chinese.

Plaintiff herein, as administratrix of her husband Tancungco's estate, commenced this action to compel defendant to get from the court authority to sell the lands to Tancungco's heirs. The lower court dismissed the action, the chief ground for the dismissal being that Tangcungco is a Chinese citizen and therefore disqualified by the Constitution from acquiring real estate.

The Supreme Court, in reversing the judgment of the lower court, held that the subsequent agreement of the parties was in point of fact and in spirit an extension and continuation of the period of repurchase provided in the original contract, and thus does not infringe the Constitution; that "Tancungco was exercising a property right which antedated the Constitution and which the fundamental law expressly respects and ratifies. Tancungco was not an ordinary purchaser acquiring new property nor was Arcilla attempting to part with one in which his deceased wife's estate had absolute unfettered title in fee." The court also pointed out that the fact that Tancungco's widow, the present plaintiff, did recover her Philippine citizenship, and her surviving children are likewise Filipino citizens now following the reacquired nationality of their mother, has completely removed all objections to the conveyance on constitutional grounds. The principle respecting the right to repurchase by the alien makes further inroads on the Krivenko decision.

Director of Lands v. Gan Tan [102] raised the question of the right of a Chinese citizen, Gan Tan, to have certain transfer certificates of title which were lost during the war, reconstituted under Republic Act No. 26, considering the ruling in the *Krivenko* [103] case.

Petitioner-appellant Gan Tan is a Chinese citizen who bought the lots from Cebu Heights Co. on March 14, 1940 and obtained the corresponding certificates of title. This title was lost during the last war. He filed this petition for reconstitution under Republic Act No. 26. The Act provides that if the court, after hearing finds that the evidence presented is sufficient and proper to warrant the

[102] G. R. No. L-2664, prom. May 30, 1951.
[103] See note 100, *supra*.

reconstitution of the lost certificate of title and that the petitioner is the registered owner of the property, and said certificate was in force at the time it was lost, the court has the duty to issue the order of reconstitution.

The lower court denied the petition on the ground that the petitioner being an alien, is not qualified to acquire the land covered by said title. The Supreme Court reversed, holding that this was not the proper proceeding to attack petitioner's title, the present issue being limited to whether there is a title to be reconstituted.

Justice Pablo, dissenting, was of the opinion that the petition should be denied for the reason that the sale was executed in contravention of the Constitution and therefore there never existed a legal sale and Gan Tan did not obtain the land legally. Consequently the subsequent act of issuing the transfer certificate of title was null.

> "Opino que Gan Tan no tiene derecho a pedir a los Tribunales de Filipinas la reconstitución del certificado de transferencia de título que comprueba la obtención ilegal de un terreno por él. Si se le concede terrenos de acuerdo con la ley, entonces no se puede impedir en lo futuro la adquisición de bienes inmuebles por extranjeros mediante maquinaciones más o menos ingeniosas; ellos continuarían acaparando bienes inmuebles porque, despues de todo, obtienen protección de los tribunales."

The above case was relied upon in the case of *Chua Yu Sun v. De los Santos* [104] which involved similar facts. The petition was brought by a Chinese citizen for the reconstitution of destroyed certificates of title to lots bought before the war. It was granted in the light of the decision in *Director of Lands v. Gan Tan.*

There seems to be a drift away from the Krivenko doctrine. While not explicitly overruled, its force has been impaired.

Other cases relating to aliens which were decided in 1951 follow. In *Tolentino v. Board of Accountancy,*[105] the constitutionality of Commonwealth Act No. 3105, section 16-a, as amended, otherwise known as the Philippine Accountancy Law, in so far as it authorizes accountants to practice their profession under a trade name, was put at issue before the Supreme Court, the attack relying among others, on its being discriminatory for having been approved only to protect foreign accountants.

The Supreme Court, while holding that the plaintiff had no cause of action for declaratory relief, nevertheless pointed out that the

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[104] G. R. No. L-4374, prom. Nov. 23, 1951.
[105] G. R. No. L-3062, prom. Sept. 28, 1952.

claim had no basis in law and in fact for the Act applies to all accountants in general without distinction. It should be noted that Ferguson and Hausaman, a British and Swiss subject respectively, who had been both admitted to the practice of accountancy in the Philippines were named co-defendants with the Board in this action. The Supreme Court did not see how the Act discriminates in favor of the foreigners. Further reflection should have convinced it that such commercially valuable trade-names in the accounting field were built up by foreigners. Its benefits now accrue mostly to foreign accountants.

In *People v. de Guzman*,[106] the constitutionality of a municipal zoning ordinance is attacked as an invasion of property rights in that among others it denies equal protection of the laws and discriminates against Chinese. The ordinance questioned prescribes a minimum 100 meters distance between the motors used in lumber yards and the nearest house, prohibits the establishment of lumberyards without motor within certain specified zones. It also requires the securing of written permit from the Mayor for the operation of lumberyards. The Court, in sustaining the validity of the ordinance as a legitimate exercise of the police power by the municipal council, held further that the contention that there is discrimination in favor of Filipinos was not tenable because the prohibition in the ordinance applies to all lumber yards regardless of their owners.

B. WHEN EMINENT DOMAIN MAY BE EXERCISED.

The Constitution provides among the fundamental rights of the individual, the right not to have one's private property taken for public use without just compensation. The same document provides among the powers of the state, the power of Congress to authorize upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals, as an explicit affirmation of the inherent right of the state to exercise the power of eminent domain. Both provisions recognize the power of the government on the one hand and the right of the individual property-owner on the other. How far consistently with property rights in the name of due process may the government undertake the expropriation of private lands for the benefit of its tenants in the name of public interest?

The case of *Guido v. Rural Progress Administration* [107] decided on October 31, 1949, supplies the prevailing principle. That case involved an attempted condemnation of 22,655 square meters, part

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[106] G. R. No. L-2772-2775, prom. Sept. 29, 1951.
[107] 47 O. G. 1848.

commercial, and situated in Maypajo, Caloocan, Rizal. The Supreme Court denied respondent's right to expropriate the private property of the petitioner for the benefit of a few tenants because that falls short of the requirement of public use.

The Guido case was relied upon in a decision handed down in the case of *City of Manila v. Arellano Law College, Inc.*[108] The area involved was 7,270 square meters and the same case is weaker for the condemnor for the added reasons that the tenants in whose behalf the City of Manila instituted the condemnation proceeding were squatters and not *bona fide* tenants, and that the land sought to be expropriated was already ear-marked for a university site.

In 1951, two cases came up before the Court involving the same question:—*Urban Estates Inc. v. Montesa*[109] decided March 15, 1951, and *Republic of the Philippines v. Samia*[110] decided July 18, 1951.

The case of *Urban Estates v. Montesa*[111] dealt with the authority of the city of Manila to expropriate a tract of land situated within the city limits and having an area of 49,533.10 square meters, more or less. Justice Tuason, writing for a unanimous court, pointed out that there is less necessity for condemnation in this case than in either of the cases of *Guido v. Rural Progress Administration*,[112] *Commonwealth of the Philippines v. De Borja*,[113] and *City of Manila v. Arellano Colleges Inc.*,[114] from the standpoint of the persons intended to be favored, let alone the public. The land sought to be condemned here has actually been subdivided by its owners, who have spent considerable money for its improvements and in the laying out of streets, and is being offered for sale; some lots in fact have already been sold and paid in full or in part. Besides, the remaining lots, after eliminating the lots that have already been alienated, are said to be about one-half of the entire subdivision, or smaller than the land involved in the Guido case. The opinion stated that the city authorities have no power to bring down the price of lots for sale to the level the poor can afford, if the price is beyond the reach of some people who want to buy.

The facts of the *Republic v. Samia*[115] case are substantially as follows: On January 30, 1947, the Republic of the Philippines started

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[108] 47 O. G. 4197.
[109] G. R. No. L-3830, prom. March 15, 1951.
[110] G. R. No. L-3900, prom. July 18, 1951.
[111] See note 109, *supra*.
[112] See note 107, *supra*.
[113] G. R. No. L-1496, prom. Nov. 29, 1949.
[114] See note 108, *supra*.
[115] See note 110, *supra*.

in the Court of First Instance proceedings under Commonwealth Act No. 539 to expropriate the lands of Samia and Pineda in Manila —non-contiguous parcels of land with a total area of 5,593 square meters occupied by fifty-seven (57) tenants to whom the government intends to resell the realty, after subdividing it into small lots. The court fixed ₱6,769 as provisional values of the properties.

On the question as to whether the Guido case is applicable, and with regard to the allegation that the doctrine in the Guido case should be reconsidered because of the twentieth century movements all over the world to improve the lot of the common people and the enlightened trends of governmental policy of most civilized nations "redistributing the wealth of the nation to the unfortunate common people or 'have-nots,'" Justice Bengzon pointed out that the Guido ruling has been reaffirmed in two subsequent expropriation proceedings:

> "The Constitution did not intend to destroy private ownership nor redistribute the nation's wealth to the have-nots. On the contrary it recognizes and protects private ownership. Nevertheless, recognizing the evils of vast land-holdings and concentration of wealth it adopted certain remedial measures: (1) limitations upon the acquisition of public land (Art. XIII, sections 1 and 2); (2) authority of Congress to determine size of private agricultural lands which individuals may acquire (Art. XIII, sec 8); (3) Congressional power to authorize expropriation of landed estates to be subdivided and sold to individuals (Art. XIII, sec. 4); (4) Authority of Government to 'acquire utilities and other private enterprises to be operated' by it (Art. XIII, sec. 6).
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> "Except in the specific instances enumerated by the Constitution, no private individual may be deprived of his property, even by the Government; because fortunately we have not reached that stage where the individual is 'made for the state.'" [116]

It is argued that Commonwealth Act No. 539 "is for its object and purpose a political question of the Government, the necessity and expediency of which cannot be the subject of a judicial inquiry." The court held that the necessity or expediency of that law is not being questioned, the courts holding merely that it applies only to lands which under the Constitution, the Congress could expropriate.

> "Furthermore, a law that attempts to deprive a land-owner of his private property without his consent does not merely raise a political question beyond the jurisdiction of the courts. The individual has a right to seek the protection of the judiciary whenever his rights of ownership are invaded without constitutional authority, even when such invasion is committed by agents of the Government."

[116] This conclusion is of doubtful validity considering the general terms in the clause regulating eminent domain is worded. See Art. III, sec. 1, clause 2.

The foregoing cases show that whether the land to be expropriated involves 22,655 or 7,270 square meters, 49,533 or 5,593 square meters, whether the tenants sought to be benefited are a few squatters, 57 tenants or 60 families, the question in every case resolves itself into the issue as to whether the taking is one which survives the test of public use and public interest. In the words of Justice Tuason: "taking that inures to the welfare of the community at large" as distinguished from "taking that benefits a mere handful of people bereft of public character." There is no fixed criterion for expropriation that will not infringe the Constitution. The emphasis on social and economic rights in the modern welfare or service state does not deprive individual property-owners of protection by the courts in the enjoyment of his "property owned in reasonable quantities and used legitimately."

What rights do tenants have over land bought by the Rural Progress Administration for their benefit? This question arose in the case of *Deato v. Rural Progress Administration.*[117] In this case, about seven hundred tenants of the several parcels of land which were sold by "Tabacalera," Com. General de Filipinas, to the respondent Rural Progress Administration, an agency created by the President of the Philippines under authority granted by Commonwealth Act No. 378, "to promote small land owners and to improve the living condition and general welfare of the rural population" by negotiating for the acquisition of large estates or parts thereof with option to purchase, to be sublet to bonafide occupants, filed a petition for prohibition to restrain the respondent Administration from collecting 20% of their crop harvest for the agricultural year 1948-1949. Petitioners were legitimate occupant farmers of the parcels of land and had been paying rents or *canon* for the lots they cultivated and occupied before the purchase. After the sale in November 1947, the Administration collected and the petitioners voluntarily delivered 30% of the crop harvest for 1947-1948 as *canon* or rent. For the crop year 1948-1949, the Administration tried to collect not 30% but 20% as its share as landlord. Petitioners refused to give even this 20%. This petition was filed after the Board of Directors of the Rural Progress Administration by resolution rejected a petition of the same petitioners here to the effect that the respondent refrain from making the 20% collection and that the said petitioners were willing to give said 20% as part payment for their landholdings, preferably in cash.

The theory of the petitioners is that having signed no contract of tenancy with the respondent, they may not be considered as te-

[117] G. R. No. L-3624, prom. April 13, 1951.

nants and consequently are under no obligation to pay rent, and that they (petitioners) are really the owners of the land because the said land was purchased by the Government for them, and that the Administration is a mere trustee, they being the *cestui que trust*.

The Supreme Court affirmed the judgment appealed from and held that the petitioners are tenants of the Administration by implied contract of tenancy under the Rice Share Tenancy Act No. 4054 as amended. The Court also observed that if the Rural Progress Administration is a mere trustee, the *cestui que trust* can be no more than the Government and not the petitioners because the petitioners are clearly not the owners, or even applicants-purchasers of the land. The contention that there is no tenancy relation because of the absence of a contract was dismissed as leading to absurd results: "since they are not owners, neither are they lessees nor tenants (according to them) then they are mere squatters or intruders in the property." The court pointed out that even if the parcels involved will eventually be sold by the Government to the *bonafide* occupants thereof, the acquisition of the land by the Administration did not mean a sale of the same to the occupants because the Rural Progress Administration must first determine who the real *bonafide* tenants are, the extent of their holdings, the subdivision of the entire property into small lots, the price of each landholding, and the conditions of the sale before a sale could be made to the petitioners.

VI. CONSTITUTIONAL LAW AFTER ONE YEAR

How did the Supreme Court fare? Has it been true to its role of protecting constitutional rights? The answers may be found in the brief and inconclusive survey here attempted of the decisions rendered the past year. The record speaks for itself. The verdict, on the whole, should be of work adequately done. Objection is made against its holding that the Constitution was inapplicable during the period of the Japanese Occupation. The impression exists that the economic rights of aliens did receive too sympathetic a consideration.

Nor is this all. In the sphere of civil rights, it did not have an untarnished record. It seems that its sense of humor was blunted by the adverse and critical reaction to various moves of the administration. A letter that few would take seriously attained the dignity of seditious libel. It did not, as was expected of it, use its prestige and its authority to call a halt to the excessive claims to power of zealous prosecutors, whose judgments invariably seemed to echo the thinking of army authorities.

This is not to minimize the threat to state existence posed by the armed Huks and their Communist leaders. This is merely to emphasize that democracy can be defended democratically, that not its least attractive quality in the battle for men's minds and hearts is its devotion to freedom. It could even be that the conviction that no other way of life is deserving of the utmost loyalty and allegiance would have been immeasurably strengthened by the Supreme Court being firm, immovable, unwavering in its adherence to constitutional commands and prohibitions.