

NOTES ON RECENT DECISIONS

CONSTITUTIONAL LAW—

Decisions on constitutional law questions promulgated the first three months augur well for the future of constitutionalism in this country. The Supreme Court, true to its mission, acted as a faithful guardian of the Constitution. Not even the President of the Philippines, concededly acting from the best of motives, could get away with a latitudinarian construction of his own powers under the fundamental law. The following decisions, *Lacson v. Roque*,¹ *Rodriguez and Tañada v. Gella*,² and *Philippine Movie Pictures Workers' Association v. Premiere Productions*³ and the resolution in *Montano v. Ocampo*⁴ on an application for bail, deserve more than a passing mention.⁵

¹ 49 O. G. 93. See discussion of this decision in 2 TAÑADA AND FERNANDO, CONSTITUTION OF THE PHILIPPINES, 4th ed., pp. 990-998.

² 49 O. G. 465. See discussion in 2 TAÑADA AND FERNANDO, *ibid.*, pp. 928-952.

³ G. R. L-5621, prom. March 25, 1953.

⁴ G. R. L-6352, prom. Jan. 29, 1953.

⁵ These other cases may be mentioned: (1) *People v. Acierro*, G. R. L-2708, prom. Jan. 30, 1953, where the Supreme Court held that an accused may be barred from raising the question of double jeopardy based on a previous trial by a court martial where in such proceeding he successfully resisted the jurisdiction of the military tribunal on the ground that a civil court had competence to decide the matter; (2) *Quimsuan v. Republic*, G. R. L-4693, prom. Feb. 16, 1953, where the Supreme Court followed the doctrine in *Serra v. Republic*, G. R. L-4223, prom. May 12, 1952, to the effect that the child of a Filipino mother born out of wedlock with an alien need not apply for Philippine citizenship as he is a Filipino from birth; (3) *Siock Boon v. Republic*, G. R. L-4688, prom. Feb. 16, 1953, where the Supreme Court held that an applicant who replied that by the principles underlying the Constitution he understood that "The Philippine Government is run under three departments: executive, legislative, and the judiciary," possesses the qualification that the petitioner be able to specify the basic principles underlying the Constitution and likewise that a Philippine dialect, here *tausug* which is the Moro dialect in the province of Sulu, spoken by a substantial portion of its population, can be considered a principal language; (4) *Tan Chong Yao v. Republic*, G. R. L-5074, prom. March 3, 1953, where the failure to file an income tax return not shown to be intentional was not considered as showing that petitioner did not conduct himself in a proper and irreproachable manner, where it was likewise held that in the absence of any evidence to the contrary it will be assumed that "a little ability" to speak and write Spanish is sufficient for purposes of naturalization; and where the fact that an applicant who arrived here in 1913, never went back to his native country, China, all his minor children of school age studying in public schools and the University of Santo Tomas, Tagalog being the medium of expression in his own house, was adjudged by the Supreme Court as refuting the contention that he had not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos; (5) *Lim v. Republic*, G. R. L-4588, prom. Jan. 28, 1953, where it was held that an applicant, an unmarried student in Preparatory Medicine, employed in the father's business firm with a salary of ₱80.00 a month plus free board and lodging, satisfies the requirement of lucrative trade or lawful occupation; (6) *Du v. Republic*, G. R. L-3683, prom. Jan. 28, 1953, where the reason for the requirement that the applicant must have enrolled his minor children of school

I. SEPARATION OF POWERS: LAW AS LIMITATION ON PRESIDENTIAL AUTHORITY

In *Lacson v. Roque*⁶ and *Rodriguez and Tañada v. Gella*,⁷ the authority of the President to act was challenged and in both cases successfully.

In the former, the President admittedly in pursuance of "the present policy of the administration" suspended petitioner Mayor Lacson of the City of Manila, against whom was pending in the Court of First Instance a criminal case for libel. Parenthetically, it may be noted that the accusation for libel arose from a radio broadcast in which Mayor Lacson, true to form, characterized in language less than moderate a decision of Judge Montesa of the Manila Court of First Instance. The epithets "incompetent" and "ignoramus" were not conspicuous by their absence. What was originally an action for prohibition brought against the Executive Secretary, who was entrusted with the functions of enforcing the order of suspension, became an action for *quo warranto*, as Vice Mayor Gatmaitan took over and performed the duties of the office.

In *Rodriguez and Tañada v. Gella*,⁸ likewise an action for prohibition, the respondent officials were sought to be restrained from releasing and expending public funds which the President appropriated in two executive orders presumably under powers conferred on him by the Emergency Powers Act, C. A. No. 671.

It is obvious then that the main issue in both cases dealt with the authority of the President, in the former to suspend an elective city mayor, in the latter, to appropriate public funds presumably in pursuance of a congressional grant of emergency powers. In both cases the applicable constitutional provisions supply the test of the limits of presidential authority. With reference to the presidential power over local governments, the Constitution expressly provides:

"The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."⁹

age in any of the public schools or private schools recognized by the Government where Philippine history, government, and civics are taught, namely that such studies are likely to promote their loyalty to the country, was reiterated; (7) *Dy v. Republic*, G. R. L-5098, prom. March 10, 1953, where the Supreme Court held that the applicant who has reached the fourth year high school in the La Union Academy has not established his completion of secondary education and was not exempt from filing a declaration of intention even if he were born in the Philippines; and (8) *Chan Kim Lian v. Republic*, G. R. L-4551, prom. Jan. 30, 1953, where the absence of the applicant from Oriental Misamis during the entire period of the Japanese occupation, due to his having gone to Cotabato for business purposes resulting in his being caught there by the Japanese invasion and his having served as a guerrilla there, was held as not causing the loss of his residence in Oriental Misamis.

⁶ See note 1.

⁷ See note 2.

⁸ See note 2.

⁹ Art. VII, Sec. 10 (1), Constitution of the Philippines.

On the question on when the President may exercise delegated authority to cope with an emergency, the Constitution is likewise explicit:

"In times of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy."¹⁰

By a vote of 6 to 4 in the *Lacson* case and 10 to 0¹¹ in the *Rodriguez and Tañada* case, the Supreme Court annulled the actuations of the Executive. There was a conflict between what the President decreed and what the Constitution ordains. In a government of laws and not of men, the outcome was not difficult to predict. Nonetheless, the Supreme Court deserves more than its share of full credit. In less than a month, it had occasion to inform the President that he was wrong not once but twice.

A. *Lacson v. Roque*

The absence of authority of the President to suspend the Mayor of Manila could have been predicated in the *Lacson* case on the ground that as the Constitution contemplates that over local governments the President at the most exercises *general supervision* and only as may be provided by law as distinguished from *control* over all departments, bureaus, and offices, suspension, and much more so removal, was not embraced within *general supervision*. Such a conclusion would have been in accordance with the express language of the Constitution. For if under *control* the President may suspend as well as remove and under *general supervision*, the President may suspend as well as remove, the distinction vanishes. Such a conclusion moreover would have the merit of effectively interposing an obstacle to the temptation which may prove highly irresistible in an election year for the President to use local government officials to increase the chances of his party at the polls.

While the justices composing the majority did not choose to base their decision on this ground, Justice Tuason, who wrote the main opinion demonstrated nonetheless that they were mindful of the distinction.

"The contention that the President has inherent power to remove or suspend municipal officers is without doubt not well taken. Removal and suspension of public officers are always controlled by the particular law applicable and its proper construction subject to constitutional limitations. (2 McQuillen's Municipal Corporations [Revised], section 574.) So it has been declared that the governor of a state, (who is to the state what the President is to the Republic of the Philippines), can only remove where the power is expressly given or arises by necessary implication under the Constitution or statutes. * * *

¹⁰ Art. VI, Sec. 26, Constitution of the Philippines.

¹¹ Justice Montemayor, however, dissented from the majority on the question of the continuing effectivity of C. A. No. 671, although he admitted that the orders were illegal.

"There is neither statutory nor constitutional provision granting the President sweeping authority to remove municipal officials. By article VII, section 10, paragraph (1) of the Constitution the President 'shall * * * exercise general supervision over all local governments,' but supervision does not contemplate control. (*People v. Brophy*, 120 P., 2nd, 946; 49 Cal. App., 2nd., 15)"¹²

Chief Justice Paras in his concurring opinion admitted that the power of the President over all local governments is limited to general supervision as may be provided by law. This did not prevent him from concluding though that the constitutional provision conferring such general supervision as may be provided by law implies "that said supervision will include any power vested in the President by law."¹³ The better view would seem to be that what the Constitution stresses is not the vesting of authority over local governments in the President by law but that rather his authority cannot exceed *general supervision*. A statute vesting such power in the President which can properly be characterized as *control* would be objectionable even if there is a grant presumably by law because it amounts to more than *general supervision*.

Justice Padilla in another concurring opinion found no occasion to refer to the distinction between the control that the President possesses over all departments, bureaus, and offices and the general supervision that under the Constitution is the extent of his authority over local governments. He came out with a suggestion though, well worth further consideration.

"* * * That power to remove must, of course, be lodged somewhere in the framework of the Government. It could be in a competent court if the mayor should be found guilty of a crime or misdemeanor for which the penalty provided and imposed upon him be temporary or perpetual disqualification or suspension from holding public office. * * *"¹⁴

The vesting of the power to remove in the judiciary may prove to be the satisfactory answer both on constitutional and practical grounds to the problems of dealing with objectionable local officers.

The approach predicated absence of authority of the President to suspend the elective mayor of Manila on the distinction between control and general supervision not commending itself to the majority of the Court, how did it arrive at the conclusion that the President was without such an authority? From a survey of the Charter of Manila, R. A. No. 409, it clearly appears that there is no power to suspend. Again the search for authority to justify presidential action could have ended there and the suspension stigmatized as illegal.

As a clear indication of its determination to be fair to the Executive, the Court went farther and by virtue of the principle that the power to remove includes the power to suspend, sought to determine whether the President could remove the elective mayor of Manila.

¹² 49 O. G. 93, at page 98.

¹³ 49 O. G. 93, at page 107.

¹⁴ 49 O. G. 93, at page 109.

All that the Charter yields on this point is the highly unsatisfactory phrase "He shall hold office for four years, unless sooner removed."¹⁵ Considering that the City Mayor is an elective official, such a legal provision could have been disregarded as devoid of any meaning, failing as it does to express a legislative intent as to who can remove and for what causes the mayor may be removed. Such a provision had significance when the mayor was appointive, in which case, the power to remove was in the Executive, the cause being left to his pleasure. This ground for decision, plausible as it undoubtedly is, the majority did not find attractive.¹⁶

Instead, the Justices of the Supreme Court, both the majority and the dissenting, construed the City Charter with the other provisions of the Revised Administrative Code. For Justice Tuason and Justice Feria, the President can remove the Mayor of the City of Manila but only on the ground of disloyalty in accordance with the provision of the Revised Administrative Code conferring on the President power to remove any person from any position of trust or authority under the Government of the Philippines for disloyalty to the Republic. This legal provision comes from a section of the Revised Administrative Code which explicitly provides that the power therein conferred on the President are in addition to his general supervisory authority. When under the Constitution his power is limited to general supervision, doubt may validly be entertained as to the above provision being a source of presidential powers over local governments.

Three other Justices, Chief Justice Paras, Justice Padilla, and Justice Jugo, who joined in the decision to the effect that the suspension of Mayor Lacson was illegal, are of the opinion that the ground for removal of provincial officials which included dishonesty, oppression, or misconduct in office, could be the basis of the power of the President to remove. Why Chief Justice Paras reached that conclusion is explained by him thus:

"It is hard and illogical to believe that, while there are express legal provisions for the suspension and removal of provincial governors and municipal mayors, it could have been intended that the mayor of Manila should enjoy an over-all immunity or sacrosanct position, considering that a provincial governor or municipal mayor may fairly be considered in parity with the city mayor insofar as they are all executive heads of political subdivisions. Counsel for petitioner calls attention to the fact that the peculiarly elevated standard of the City of Manila and its populace might have prompted the lawmakers to exempt the city mayor from removal or suspension. Much can be said about the desirability of making the executive head of Manila as strong and independent as possible, but

¹⁵ Charter of the City of Manila, Sec. 9.

¹⁶ Thus, under the former Charter of Manila, Chapter 60 of the Revised Administrative Code of 1917, where the Mayor was appointive, there was the express provision that he was to be "appointed by the Governor-General (later by the President) with the consent of the Senate" and was to "hold office for three years unless sooner removed." Evidently, in framing the Charter of the City of Manila the legislative draftsmen did not take into consideration that the post of Mayor is not elective.

there should not be any doubt that awareness of the existence of some sort of disciplinary measures has a neutralizing and deterring influence against any tendency towards official misfeasance, excesses or omission." ¹⁷

Justice Padilla entertains a similar view as he does not believe that "the City Mayor of Manila should be placed over and above the elective provincial governors in rank and importance; and for that reason the causes for removal of elective provincial governors may as well be applied to the City Mayor of Manila." ¹⁸

The majority could conclude that the suspension was illegal then on the ground that even if such a power to remove exists and the power to suspend can be implied from the power to remove, an accusation for libel does not fall within the offenses of disloyalty, dishonesty, oppression or misconduct in office.

Moreover, as Justice Tuason pointed out in the main opinion:

"We believe also that in the field of procedure no less than in that of substantive law the suspension under review is fatally defective. No administrative charges have been preferred against the petitioner and none seem to be contemplated. The sole grounds for the suspension, as recited in the President's order, are 'the pendency of criminal case No. 20707 for libel,' and 'the present policy of the administration, requiring the suspension of any elective official who is being charged before the courts of any offense involving moral turpitude.'

"It seems self-evident that if, as must be conceded, temporary suspension is allowed merely so as to prevent the accused from hampering the normal course of the investigation with his influence and authority over possible witnesses, the rule presupposes the existence of administrative charges and investigation being conducted or to be conducted. We are certain that no authority or good reason can be found in support of a

¹⁷ 49 O. G. 93, at page 106.

¹⁸ 49 O. G. 93, at pages 109-110. Cf. This slip dig at petitioner's well known temperament coupled with the admission of its insufficiency as a legal cause for suspension:

"Much as it is wished and desired to see and have a mayor as becoming an officer of such high rank possessed of composure in his behavior, prudence in his acts and self-restraint in his utterances, yet I cannot bring myself to believe that a libel allegedly committed by him which is unrelated to the performance of the duties of his office would warrant his suspension from office. It is unnecessary to pass judgment on whether he may be removed after conviction. His utterances may be biting, cutting, sharp, caustic and sarcastic; and, granting for the sake of argument, that the utterance upon which the information for libel is grounded be contemptuous—a point I do not pass upon pending determination and judgment on the merits of the case for libel filed against the petitioner in the Court of First Instance of Manila—still I do not believe that the alleged libelous utterance which gave rise to the filing of the information, unrelated to the performance of his duties as mayor, would be sufficient cause for his suspension from office. The offended party must resort to court for redress of his grievance and to have it right the wrong. And if it be contemptuous the court against which it was committed has ample power to make him answer for his misdeed."

proposition that the Chief Executive can suspend an officer facing criminal charges for the sole purpose of aiding the court in the administration of justice. Independent of the other branches of the Government, the courts can well take care of their own administration of the law. And administrative policy or practice not predicated on constitutional or statutory authority can have no binding force and effect in matters not purely political or governmental. Where individual rights, honor and reputation are in jeopardy, it is only law or the Constitution which can give legality to executive actions. It has been shown that nothing in the Constitution, law or decisions warrants the petitioner's suspension." ¹⁹

The four dissenting Justices are of the opinion that the President may remove the elective mayor of the City of Manila for disloyalty, dishonesty, oppression and misconduct in office. As explained by Justice Bautista Angelo:

"* * * The majority opinion holds that such a behavior should be characterized as one entirely divorced from the official position of petitioner and should be appreciated merely in the light of a personal actuation which has no bearing on his office. I cannot subscribe to this view. The circumstances under which the petitioner made the utterances imputed to him as libelous point to a different conclusion. It should be borne in mind that those utterances were made on the occasion of a radio broadcast exclusively held to give petitioner an opportunity to express his view on public questions in his capacity as Mayor of the City of Manila. It was a broadcast given by him not as Lacson, the individual, but as Lacson the Mayor. The public listened to him not because he was Arsenio Lacson but because he was the Mayor of the City. Such is the general impression when the broadcast was made, and that is the reason why the broadcast was made right in the City Hall in order to give to the whole show a color of official authority. And in that broadcast he made the following utterances: 'I have nothing but contempt for certain courts of justice. I tell you one thing (answering an interrogator), if I have the power to fire Judge Montesa (the trial judge) I will fire him for being incompetent, for being an ignorant * * * an *ignoramus*.' The majority believes that such a behavior does not constitute a misconduct in office, but the Chief Executive holds a different opinion. On matters which involve differences of opinion between this court and the Chief Executive, a becoming regard for a co-equal power demands that the opinion of the latter should be respected in the absence of abuse of discretion." ²⁰

Whatever may be said about the precise grounds on which the decision was reached, it does not seem open to doubt that both the majority and minority justices unite in the view that presidential authority is limited by the Constitution and the applicable statutes. It is cause for gratification further that in the recent case of *Lacson v. Roque*, the Supreme Court was not as generous in its appraisal of the Presidential authority under this provision of the Constitution as it was in the two earlier cases of *Planas v. Gil* ²¹ and *Villena v. Secre-*

¹⁹ 49 O. G. 93, at page 103.

²⁰ 49 O. G. 93, at pages 116-117.

²¹ *Planas v. Gil*, 67 Phil. 62.

*tary of Interior.*²² If the Supreme Court limited itself to the approval of the exercise of the presidential authority at issue in each of the above cases, in the former that of investigating an elective councilor of the City of Manila, and in the latter that of suspending a municipal mayor, it would not have been so bad. What was objectionable was that in both cases it relied on the broadest possible construction of presidential power.

There is no questioning the fact either that this decision of the Supreme Court is auspicious for the cause of constitutionalism in the Philippines, indicative as it is of the determined stand by the Supreme Court to call a halt on the exercise of any dubious authority by the President. If there were any doubts, the second Emergency Powers Act case, *Rodríguez and Tañada v. Gella*,²³ should remove them.

B. *Rodríguez and Tañada v. Gella*

That there would be no toleration of unwarranted pretension to executive authority was made clear anew by the Supreme Court, this time in an even more decisive manner in the case of *Rodríguez and Tañada v. Gella*.²⁴ By a unanimous vote, ten justices participating, the Supreme Court annulled two executive orders of President Quirino purportedly issued on the authority of the grant of emergency powers to him under Commonwealth Act No. 671.

Reference to the first Emergency Powers Act cases may explain why unanimity was so easily achieved. In 1949, on August 26 to be exact, the Supreme Court, in *Araneta v. Dinglasan* and companion cases,²⁵ annulled one executive order on rentals promulgated by the late President Roxas, one on export controls by President Quirino, and another two executive orders appropriating funds to defray expenses in connection with the holding of the national elections as well as for the operation of the government, all issued under C. A. No. 671. Insofar as the orders on rental and export controls are concerned the opinion of the Supreme Court as to their nullity was unanimously arrived at. It was not so, however, with reference to the two executive orders appropriating funds, the voting being 6 to 2.

Of the six justices who denied validity of such executive orders, five based their opinion on the ground that C. A. No. 671 had already lapsed. One of them, Justice Montemayor, supplied the necessary vote for a majority and agreed with his five other colleagues that the orders would not stand the test of legality. Nonetheless, he differed with them in their view that C. A. No. 671 had ceased to be operative. He based his opinion on the nullity of the order on the ground that there had been a tacit and implied withdrawal of so much of C. A. No. 671 as granted the power to appropriate, Congress having shown its readiness and ability to legislate on such matters ever since liberation.

²² *Villena v. Secretary of Interior*, 67 Phil. 451.

²³ See note 2.

²⁴ See note 2.

²⁵ 45 O. G. 4411.

The absence of a decisive vote on the continuing effectivity of C. A. No. 671 was by the President deemed sufficient to issue two executive orders in 1953, concededly from the best of motives, appropriating public funds for essential and urgent public works and for relief in provinces and cities that suffered from typhoons, floods, and other calamities. He must have likewise been emboldened so to act because of the presidential veto of H. B. No. 727 which was enacted purposely to repeal all Emergency Powers Acts.

The Supreme Court viewed the matter differently. Not that this was to be wondered at. After all there was that decision in the first Emergency Powers Act cases expressly holding that the appropriation of public funds made by the President was without legal authority.²⁶

The opinion by Chief Justice Paras appropriately opens with a reminder that the Supreme Court "had already passed upon the status of Commonwealth Act No. 671, approved on December 16, 1941, * * *." After mentioning the sad and dismal fate that befell the executive orders in the first Emergency Powers Act cases, the Chief Justice continued:

"More or less the same considerations that influenced our pronouncements of August 26, 1949 are and should be controlling in the case now before us, wherein the petitioners seek to invalidate Executive Orders Nos. 545 and 546 issued on November 10, 1952, the first appropriating the sum of ₱37,850,500 for urgent and essential public works, and the second setting aside the sum of ₱11,367,600 for relief in the provinces and cities visited by typhoons, floods, droughts, earthquakes, volcanic action and other calamities."²⁷

Nor could the veto of the President of H. B. No. 727, expressly withdrawing from him authority to promulgate rules and regulations in times of national emergency, help his position any. As correctly pointed out by the Chief Justice:

"Although House Bill No. 727, had been vetoed by the President and did not thereby become a regular statute, it may at least be considered as a concurrent resolution of the Congress formally declaring the termination of the emergency powers. To contend that the Bill needed presidential acquiescence to produce effect, would lead to the anomalous, if not absurd, situation that, 'while Congress might delegate its powers by a simple majority, it might not be able to recall them except by two-third vote. In other words, it would be easier for Congress to delegate its powers than to take them back. This is not right and is not, and ought not to be the law.'²⁸

²⁶ The writer of this note as *amicus curiae* had occasion to state in the course of the oral argument that it is a cardinal doctrine in a government of laws and not of men that the valid and definitive pronouncements of the highest tribunal are binding on all private citizens and officials alike, from the highest to the lowest, not excepting the President.

²⁷ 49 O. G. 465, at page 466.

²⁸ 49 O. G. 465, at page 467.

To fortify the above position, mention was made by the Chief Justice of the fact that C. A. No. 671 could be likened to an ordinary contract of agency "whereby the consent of the agent is necessary only in the sense that he cannot be compelled to accept the trust, in the same way that the principal cannot be forced to keep the relation in eternity or at the will of the agent. Neither can it be suggested that the agency created under the Act is coupled with interest."²⁹

As in the first Emergency Powers Act main opinion by Justice Tuason, the Chief Justice in this case sought confirmation for the view that the National Assembly never intended the grant of authority to the President under C. A. No. 671 to continue after liberation. Reliance was placed on a statement by President Quezon that the period contemplated "such factual war as that then raging."

The Supreme Court likewise found highly unconvincing the argument that the Philippines is still technically at war with Japan pending the ratification of the peace treaty. To show its lack of persuasive character reiteration was made of the point that C. A. No. 671 referred to a factual war. Moreover, from the express language of the Act, the war contemplated was that between the United States and Japan, the Philippines being only involved because it was then under American sovereignty. The Chief Justice referred in the third place to the fact that the United States had signed the peace treaty with Japan and the Philippines meanwhile has become an independent country.

The opinion of the Chief Justice concluded with this note of tribute to the basic principle underlying our structure of government, namely, the principle of separation of powers. To quote from the Chief Justice:

"Shelter may not be sought in the proposition that the President should be allowed to exercise emergency powers for the sake of speed and expediency in the interest and for the welfare of the people, because we have the Constitution, designed to establish a government under a regime of justice, liberty, and democracy. In line with such primordial objective, our Government is democratic in form and based on the system of separation of powers. Unless and until changed or amended, we shall have to abide by the letter and spirit of the Constitution and be prepared to accept the consequences resulting from or inherent in disagreements between, inaction or even refusal of the legislative and executive departments. Much as it is imperative in some cases to have prompt official action, deadlocks in and slowness of democratic processes must be preferred to concentration of powers in any one man or group of men for obvious reasons. The framers of the Constitution, however, had the vision of and were careful in allowing delegation of legislative powers to the President for a limited period 'in times of war or other national emergency.' They had thus entrusted to the good judgment of the Congress the duty of coping with any national emergency by a more efficient procedure; but it alone must decide because emergency in itself cannot and should not

²⁹ 49 O. G. 465, at page 468.

create power. In our democracy the hope and survival of the nation lie in the wisdom and unselfish patriotism of all officials and in their faithful adherence to the Constitution." ³⁰

Two of the justices who dissented in the first Emergency Powers Act cases as to the validity of appropriation made by the President of public funds under C. A. No. 671, Justice Padilla and Justice Reyes, wrote concurring opinions. The more elaborate opinion of Justice Padilla was concurred in by three justices including Justice Reyes. Its logic is unanswerable.

It proceeds on the assumption that for C. A. No. 671 to be valid, the delegation of authority to the President could not have been for an indefinite period, there being a requirement in the Constitution that such delegation of authority must be for a limited period. As tersely put by him:

"* * * A law which delegates such powers to the President for an indefinite period would be unconstitutional because it is against the express provision of the Constitution. It would be an abdication of legislative powers. * * *"³¹

The argument that as the delegation of authority to the President was to be made by means of a law which requires his concurrence so should its withdrawal, termination, or revocation, was neatly and curtly disposed of by Justice Padilla with the observation that to require his consent for the revocation to be valid and effective might make such Emergency Powers Act violate the very provision of the Constitution "which requires and ordains that such delegation be for a limited period of time only, and because the refusal to concur in by a President bent on or inclined to continue exercising legislative powers delegated to him would result in a delegation of legislative powers, at least during his incumbency, or tenure of office, regardless of whether the reason or reasons for the grant of the authority to exercise such legislative powers have ceased to exist."³²

The other contention of counsel for the President that his veto should make ineffective the withdrawal of such power from him met the same fate in these well-chosen words:

"* * * The Congress could not have meant or intended to subordinate its opinion or judgment that the war had ended and that the national emergency had ceased to exist to that of the President, the legislative and not the executive being the department of the Government exclusively clothed or vested with the authority and power to make such a declaration. In passing the bill the Congress committed a mistake in the matter of form but not of substance because the latter is there in the explanatory note of the bill passed by both houses, to wit: 'that war had long ended,' that 'the need for the grant of such unusual powers to the President has disappeared,' and that for that reason it repealed all the Emergency Powers

³⁰ 49 O. G. 465, at pages 470-471.

³¹ 49 O. G. 465, at page 472.

³² 49 O. G. 465, at page 473.

Acts. After the Congress had made that declaration the President could no longer exercise the legislative powers delegated to him. It was a complete and absolute revocation of the delegation of such powers. His veto of the bill could not and did not have the effect of reviving or continuing the delegation of legislative powers which had been revoked by the Congress, the only constitutional body empowered and authorized to make the revocation."³³

Justice Montemayor, while concurring with the nullity of the order, could not bring himself to agree with his colleagues on C. A. No. 671 having lost its force and effectivity. That was the same position he took in the first Emergency Powers Act cases.³⁴

C. Effect of the Steel Seizure Case on Lacson v. Roque and Rodriguez and Tañada v. Gella

During the oral argument in both *Lacson v. Roque and Rodriguez and Tañada v. Gella* cases, the Justices evinced considerable interest in the Steel Seizure Case,³⁵ recently decided, annulling on the ground of lack of constitutional and statutory authority the executive order of President Truman, who took possession of and operated most of the steel mills in that country to avert a strike that might jeopardize the American war effort in Korea.

It may not be too farfetched to assert that the lack of a sympathy with which the American Supreme Court met argument of counsel for the government concerning the broad presidential powers under the Constitution was not without influence in the decision arrived at in both cases.

Opinions in the Steel Seizure case yield the conclusion that for the present at least, the American Supreme Court does not look on the provision vesting executive power on the President as source of authority.

Thus, Justice Black in the main opinion categorically declared that "it is clear that if the President had authority to issue the order he did, it must be found in some provisions of the Constitution."³⁶ The contention advanced that such presidential power "should be implied from the aggregate of his powers under the Constitution" failed to elicit a favorable response from Justice Black.

For Justice Frankfurter, there was no question either that the corresponding clause in the American Constitution could hardly be looked upon as granting the necessary authority to President Truman to issue the questioned executive order.

Justice Douglas was more explicit: "Article 2 which vests the 'executive power' in the President defines that power with particularity."³⁷

³³ 49 O. G. 465, at pages 473-474.

³⁴ 49 O. G. 465, at pages 476-489.

³⁵ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579.

³⁶ 343 U. S. 579, at page 587.

³⁷ 343 U. S. 579, at page 632.

Justice Jackson was in agreement with Justice Black:

"The Solicitor General seeks the power of seizure in three clauses of the Executive Article, the first reading, 'The executive Power shall be vested in a President of the United States of America.' Lest I be thought to exaggerate, I quote the interpretation which his brief puts upon it: 'In our view, this clause constitutes a grant of all the executive powers of which the Government is capable.' If that be true, it is difficult to see why the forefathers bothered to add several specific items, including some trifling ones."³⁸

Moreover, the doctrine announced in the Steel Seizure case that the presidential duty to take care that the laws be faithfully executed requires an appropriate congressional act and does not justify executive action based solely on his policy, must have likewise recommended itself to the Supreme Court of the Philippines. As Justice Black stated in that case, the seizure order cannot be sustained under such constitutional provision. Its very language "refutes the idea that he is to be a law-maker." On this point, Justice Black likewise stated:

"The Founders of this Nation entrusted the law-making power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand."³⁹

Justice Frankfurter concurring, entertained no doubt either as to the scope and meaning of the presidential duty to take care that the laws are faithfully executed.

"Apart from his vast share of responsibility for the conduct of our foreign relations, the embracing function of the President is that he shall take Care that the Laws be faithfully executed * * * Art. 2, p. 3. The nature of that authority has for me been comprehensibly indicated by Mr. Justice Holmes. 'The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power.' *Myers v. United States*, 272 U. S. 52, 177. The powers of the President are not as particularized as those of Congress. But unenumerated powers do not mean undefined powers. The separation of powers built into our Constitution gives essential content to undefined provisions in the frame of our government."⁴⁰

Justice Douglas, likewise concurring, was equally emphatic: " * * the power to execute the laws starts and ends with the laws Congress has enacted."⁴¹

³⁸ 343 U. S. 579, at pages 640-641.

³⁹ 343 U. S. 579, at page 589.

⁴⁰ 343 U. S. 579, at page 610.

⁴¹ 343 U. S. 579, at page 633.

II. CONSTITUTIONAL RIGHTS

A. *Montano v. Ocampo*

Of the various constitutional rights of an accused person, not the least important is the right to bail. In the minute resolution of *Montano v. Ocampo*,⁴² the Supreme Court showed how much it values that prerogative of an accused. The unanimity of the justices, coupled with the speed with which they promulgated the resolution, elicited and earned, as was natural, public approval. This display of judicial energy, ability and independence was all the more remarkable considering the admittedly strong pressure exerted by the Executive branch to keep the petitioner behind bars.

Why the Supreme Court as a matter of law should grant bail is not difficult to understand. Here in this case, the preliminary investigation against the accused was made by the respondent judge at the unholy hour of midnight, a few hours after the complaint was filed, with contingents of the armed forces standing near the residence of the petitioner, a member of the Philippine Senate, to pounce upon him the moment the warrant of arrest was issued.

When the protracted hearing for bail was held, the case against the petitioner was sought to be made out by alleged confederates in the raid on a Cavite town and other witnesses of far from unblemished character. Petitioner, on the other hand, to show his innocence, relied on the testimony of individuals known for their probity and integrity, including no less than the Mayor of the City of Manila and other professionals who were at odds politically with the petitioner. Nonetheless, the respondent judge, in a labored opinion, chose to believe the witnesses for the prosecution.

Not so the Supreme Court. As the resolution pointed out:

"Brushing aside the charge that the preliminary investigation of this case by the aforesaid Judge was railroaded, the same having been conducted at midnight, a few hours after the complaint was filed, we are of the opinion that, upon the evidence adduced in the application for bail in the lower court, as such evidence is recited lengthily in the present petition and the answer thereto, and extensively analyzed and discussed in the oral argument, there is not such clear showing of guilt as would preclude all reasonable probability of any other conclusion."

Then came a short dissertation on the right to bail, starting with this doctrine:

"Exclusion from bail in capital offenses being an exception to the otherwise absolute right guaranteed by the Constitution, the natural tendency of the courts has been toward a fair and liberal appreciation, rather than otherwise, of the evidence in the determination of the degree of proof and presumption of guilt necessary to warrant a deprivation of that right."

⁴² See note 4.

The above, coupled with this observation by the court:

"Besides, to deny bail it is not enough that the evidence of guilt is strong; it must also appear that in case of conviction the defendant's criminal liability would probably call for a capital punishment. No clear or conclusive showing before this Court has been made."

tend to confirm the view that even if the accused were indicted for a capital offense and evidence of guilt strong, the judicial discretion to grant bail still remains.

In addition, the liberality of the Supreme Court in this case has gone to such lengths that it seems that only where in case of conviction, a capital punishment is likely to be imposed, may the accused be denied the right to bail. This is to go farther than the language of the Constitution warrants. In support of such a liberal, not to say an extravagant, construction, may be mentioned the high regard that the Constitution pays to the liberty of an accused person who until convicted is entitled to a presumption of innocence.

The Supreme Court likewise announced this rule of construction:

"In the evaluation of the evidence the probability of flight is one other important factor to be taken into account. The sole purpose of confining accused in jail before conviction, it has been observed, is to assure his presence at the trial. In other words, if denial of bail is authorized in capital cases, it is only on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the jury. Hence the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of the probability of evasion of prosecution."

The petitioner's release was ordered here as according to the Supreme Court the possibility of escape, bearing in mind the petitioner's official and social standing as well as other personal circumstances, seemed "remote, if not nil."

B. Philippine Movie Pictures Workers' Association v. Premiere Productions, Inc.

The *Philippine Movie Pictures Workers' Association v. Premiere Productions, Inc.*⁴³ case reaffirms the right to a hearing which, as Justice Laurel pointed out in an earlier case, is one of the cardinal requirements in administrative proceedings of an administrative character.⁴⁴ In this petition for review of two orders of the Court of Industrial Relations, the issue raised by the petitioner labor union against the respondent firm is whether the aforesaid labor tribunal could authorize the lay-off of workers on the basis of the ocular inspection without receiving full evidence to determine the cause or motive of such lay-off. A petition was here filed by the respondent firm requesting the lay-off of some of its personnel on the alleged ground that it was incurring financial losses. Petitioner, however,

⁴³ See note 3.

⁴⁴ *Ang Tibay v. Court*, 69 Phil. 635.

contended that the claim of financial losses had no basis in fact, it being relied upon as mere subterfuge to camouflage an act of retaliation on the part of the respondent for a strike staged by the workers a few days before.

When the petition was set for hearing at the request of counsel for respondent, the presiding judge of the Court of Industrial Relations conducted an ocular inspection of the studios and premises of the respondent, in the course of which he questioned about fifteen laborers present in the place in the presence of counsel of both parties. The testimony of those interrogated were taken down and respective counsel were allowed to cross-examine them. It was on the strength of the finding made by him when he inspected the premises that the judge reached the conclusion that the petition for lay-off was justified because there was no more work for the laborers. This procedure was characterized by the petitioner as a denial of due process.

This view of the petitioner labor union was sustained by the Supreme Court thus:

"Considering the merits of the controversy before us, we are of the opinion that the required due process has not been followed. The court *a quo* merely acted on the strength of the ocular inspection it conducted in the premises of the respondent company. The petition for lay-off was predicated on the lack of work and of the further fact that the company was incurring financial losses. These allegations cannot be established by a mere inspection of the place of labor especially when such inspection was conducted at the request of the interested party. As counsel for petitioner says, such inspection could at best witness 'the superficial fact of cessation of work but it could not be determinative of the larger and more fundamental issue of lack of work due to lack of funds.' This fundamental issue cannot be determined without looking into the financial situation of the respondent company. In fact, this matter is now being looked into by the court *a quo* in connection with the fourteen demands of the labor union, but before finishing its inquiry it decided to grant the lay-off pending final determination of the main case. This action is in our opinion premature and has worked injustice to the laborers."

In the main opinion of Justice Bautista Angelo in this case there was a reaffirmation of the right to labor as a property right in these words:

"The right to labor is a constitutional as well as a statutory right. Every man has a natural right to the fruits of his own industry. A man who has been employed to undertake certain labor and has put into it his time and effort is entitled to be protected. The right of a person to his labor is deemed to be property within the meaning of constitutional guarantees. That is his means of livelihood. He cannot be deprived of his labor or work without due process of law."

III. CONCLUSION

It is too early to predict what the year has in store for constitutional law in the Philippines. As of the time of writing, however, all signs seem to be favorable. In all of the above cases discussed the supremacy of the Constitution has been vindicated in no uncertain terms by the Supreme Court. May the decisions in the succeeding months reflect the same fidelity to constitutional law mandates.

ENRIQUE M. FERNANDO *

CRIMINAL LAW AND PROCEDURE—

Nowhere in the various fields of law does individual liberty more frequently collide with the public force exerted in the interests of good order than in the criminal law. Stability, even fixity, of doctrinal structures is probably more in evidence here than in most other areas of the law. The Supreme Court has manifested no marked inclination to expand or restrict radically the established notions in this field. In the first quarter of 1953, the bulk of the decisions dealing with criminal law contained, in very large measure, but reiterations of the previously accepted. Only one, *People v. Bulalakao*,¹ seems to indicate a deviation from, in the sense of a relaxation of, prior standards. Three others, *People v. Mingoa*,² *People v. Acierto*,³ and *People v. Tidoy*,⁴ seem sufficiently significant to warrant more than cursory mention.

A. CRIMINAL LAW

1. *Ignorantia Facti and Aberratio Ictus*

In *People v. Bulalakao*, the accused Bulalakao was the leader of one of two warring Moro factions in Cotabato. He informed the Constabulary that a large group of "dissidents and bandits" were stealing palay and large cattle in his town. The Constabulary authorities apparently believed his report, and dispatched Lt. Cabelin, a co-accused, with a patrol of sixteen soldiers armed with rifles and a machinegun. The mission of the patrol, the court found, was to verify the reports of Bulalakao, to enforce the law, and "to disperse or annihilate or capture lawless elements." At about 4:00 o'clock next morning, upon arriving at the place referred to by Bulalakao, Lt. Cabelin deployed his men around a group of three houses, at a distance of 25 or 35 yards from the houses. Bulalakao had pointed to the houses as the hideouts of the "dissidents and bandits."

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¹ G. R. No. L-4911, prom. Feb. 10, 1953.

² G. R. No. L-5371, prom. March 26, 1953.

³ G. R. Nos. L-2708, 3355, 3356, 3357, 3358, 3359, 3360, prom. Jan. 30, 1953.

⁴ G. R. No. L-4714 and 4718, prom. Feb. 28, 1953.