NOTES ON RECENT DECISIONS

CONSTITUTIONAL LAW—

The Supreme Court, the second quarter of this year, had another opportunity to enrich constitutional law. It made good use of it, except perhaps in one instance.[1] In another case,[2] there was regrettably shown lack of alertness in condemning a move that could have no other objective but that of thwarting one of the nationalistic provisions of the Constitution. In this brief note, the cases decided will be discussed under the heading of constitutional rights and separation of powers.

I. CONSTITUTIONAL RIGHTS

In two important decisions, *Rutter v. Esteban*[3] and *People v. de la Cruz*,[4] the claims to property and to liberty were given a respectful hearing, and as to property an emphatic affirmation. In a third, *People v. Quasha*,[5] the conclusion arrived at while favorable to the accused may have unfortunate repercussions on the nationalistic policy embodied in the Constitution.

A. *Rutter v. Esteban*

In *Rutter v. Esteban*,[6] the basic purpose for which the non-impairment clause of the Constitution was adopted, namely the immunity from legislative interference of contract rights, received judicial approval. There was a recognition though that under appropriate circumstances, the all-pervasive police power may carry the day as against the contention that the legislation challenged does impair the obligation of contracts. While not so articulated expressly, there is here a manifestation of the function of the judiciary in passing on the conflict between assertions of individual rights and the exercise of state power, namely that of reconciliation and adjustment.

As before noted in *Rutter v. Esteban*, it was the non-impairment clause that emerged victorious. As a result Republic Act No. 342, providing that all debts and other monetary obligations contracted before December 8, 1941 shall not be due and demandable for a period of eight years from and after the settlement of war claims of debtors by the United States-Philippines War Damage Commission, was in the language of the Court declared "unreasonable and oppressive, and should not be prolonged a minute longer. * * *" The Supreme Court in a unanimous opinion was thus led to declare it "null and void and without effect."

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[1] *Jose D. Villena v. Roque et al.*, G. R. No. L-6512, prom. June 19, 1953.
[2] *People v. Quasha*, G. R. No. L-6055, prom. June 12, 1953.
[3] G. R. No. L-5790, prom. April 17, 1953.
[4] G. R. No. L-5790, prom. April 17, 1953.
[5] See note 2.
[6] See note 3.

The question of the validity of R. A. No. 342, approved by Congress on July 26, 1948, was unavoidable as it was the basis for the lower court dismissing an action filed by the plaintiff Rutter to recover the balance of the purchase price of property sold by him to the defendant on August 20, 1941 and payable during the occupation period.[7]

R. A. No. 342 was a moratorium legislation. Previously, two executive orders by the then President Osmeña had been issued with the same end in view, to suspend the enforcement of payment of all debts and other monetary obligations payable within the Philippines, except those incurred after liberation pending action by the government.[8]

At the time of the issuance of the executive orders and presumably of the enactment of R. A. No. 342 there was a factual justification for the moratorium. The Philippines was confronted with an emergency of impressive magnitude at the time of her liberation from the Japanese military forces in 1945. Business was at a standstill. Her economy lay prostrate. Measures, radical measures, were then devised to tide her over until some semblance of normalcy could

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[7] The facts of the case according to Justice Bautista Angelo are:

"On August 20, 1941, Royal L. Rutter sold to Placido J. Esteban two parcels of land situated in the City of Manila for the sum of ₱9,600 of which ₱4,800 were paid outright, and the balance of ₱4,800 was made payable as follows: ₱2,400 on or before August 7, 1942, and ₱2,400 on or before August 27, 1943, with interest at the rate of 7% per annum.

"To secure the payment of said balance of ₱4,800, a first mortgage over the same parcels of land has been constituted in favor of the plaintiff. The deed of sale having been registered, a new title was issued in favor of Placido J. Esteban with the mortgage duly annotated on the back thereof.

"Placido J. Esteban failed to pay the two installments as agreed upon, as well as the interest that had accrued thereon, and so on August 2, 1949, Royal L. Rutter instituted this action in the Court of First Instance of Manila to recover the balance due, the interest due thereon, and the attorney's fees stipulated in the contract. The complaint also contains a prayer for the sale of the properties mortgaged in accordance with law.

"Placido J. Esteban admitted the averments of the complaint, but set up as a defense the moratorium clause embodied in Republic Act No. 342. He claims that this is a pre-war obligation contracted on August 20, 1941; that he is a war sufferer, having filed his claim with the Philippine War Damage Commission for the losses he had suffered as a consequence of the last war; and that under section 2 of said Republic Act No. 342, payment of his obligation cannot be enforced until after the lapse of eight years from the settlement of his claim by the Philippine War Damage Commission, and this period has not yet expired.

"After a motion of summary judgment has been presented by the defendant, and the requisite evidence submitted covering the relevant facts, the court rendered judgment dismissing the complaint holding that the obligation which plaintiff seeks to enforce is not yet demandable under the moratorium law. Plaintiff filed a motion for reconsideration wherein he raised for the first time the constitutionality of the Moratorium Law, but the motion was denied. Hence this appeal."

[8] See Executive Orders No. 25, dated November 18, 1944 and No. 32, dated March 10, 1945, issued by President Osmeña.

be restored and an improvement in her economy noted. No wonder then that the suspension of enforcement of payment of the obligations then existing was decreed first by executive order and then by legislation.

The Supreme Court was right therefore in rejecting the contention that of itself the Moratorium Law was unconstitutional, amounting as it did to the impairment of the obligation of contracts. As of that time the Supreme Court could correctly state that "it is however justified by a valid exercise of the State of its police power." That is another way of stating that considering the circumstances confronting the legitimate sovereign upon its return to the Philippines, some such remedial device was needed and badly so. An unyielding insistence then on the right to property on the part of the creditors was not likely to meet with judicial sympathy.[9]

The Supreme Court did not find necessary to discuss the validity of the moratorium legislation in this case as lawyer-like it could rely on an authoritative precedent. Reference is made to the leading American case of *Home Building & Loan Association v. Blaisdell.*[10] Here the Minnesota Mortgage Moratorium Law was sustained both by the Minnesota Supreme Court and the United States Supreme Court, as against the contention that there was an impairment of contract laws. As the then Chief Justice Hughes pointed out, this constitutional provision is "qualified by the measure of control which the State retains over remedial processes" and also by its possession of "authority to safeguard the vital interests of its people." He likewise called attention to the fact that not only are existing laws read into contracts in order to fix the obligations as between the parties, "but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order." Then came this timely reminder that the policy of protecting contracts against impairment "presupposes the maintenance of a government by virtue of which contractual relations are worth while—a government which retains adequate authority to secure the peace and good order of society." Further on in the opinion by the late Chief Justice Hughes in the *Blaisdell* case is a reiteration of the view

[9] Cf. "Statutes declaring a moratorium on the enforcement of monetary obligations are not of recent enactment. These moratorium laws are not new. 'For some 1,400 years western civilization has made use of extraordinary devices for saving the credit structure devices generally known as moratoria. The moratorium is a postponement of fulfilment of obligations decreed by the state through the medium of the courts or the legislature. Its essence is the application of the sovereign power.' (58 C.J.S. p. 1208, footnote 87). In the United States, many state legislatures have adopted moratorium laws 'during times of financial distress, especially when incident to, or caused by, a war' (41 C. J. p. 213). Thus, such laws 'were passed by many state legislatures at the time of the Civil War suspending the rights of creditors for a definite and reasonable time, * * * whether they suspend the right of action or make dilatory the remedy' (12 C. J. p. 1078). These laws were declared constitutional. * * *"

The opinion went on further to state that the true test of the constitutionality of moratorium statutes lies in the "determination of the period of suspension of the remedy." Such period must meet the test of being "definite and reasonable, otherwise it would be violative of the constitution."

[10] 290 U. S. 398 (1934).

that the economic interests of the State "may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts."

The Supreme Court, however, was not unmindful of the limitations implicit in the above doctrine of the *Blaisdell* case. To quote from the majority opinion penned by Justice Bautista Angelo:

> "It must be noted that the application of the reserved power of the State to protect the integrity of the government and the security of the people should be limited to its proper bounds and must be addressed to a legitimate purpose. If these bounds are transgressed, there is no room for the exercise of the power, for the constitutional inhibition against the impairment of contracts would assert itself. We can cite instances by which these bounds may be transgressed. One of them is that the impairment should only refer to the remedy and not to a substantive right. The State may postpone the enforcement of the obligation but cannot destroy it by making the remedy futile (*W. B. Worthen Co. v. Kavanaugh*, 79 L. ed. 1298, 1301-1303). Another limitation refers to the propriety of the remedy. The rule requires that the alteration or change that the new legislation desires to write into an existing contract must not be burdened with restrictions and conditions that would make the remedy hardly pursuing (*Bronson v. Kinzie*, 1 How. 311, 317; 46 Har. Law Review, p. 1070). In other words, the Blaisdell case postulates that the protective power of the State, the police power, may only be invoked and justified by an emergency, temporary in nature, and can only be exercised upon reasonable conditions in order that it may not infringe the constitutional provision against impairment of contracts (*First Trust Co. of Lincoln v. Smith*, 277 NW 762, 769).

While the above observation is correct insofar as the particular facts in question in the *Rutter* case are concerned, still exception may be taken to the implication that the protective power of the State could only be invoked and justified by an emergency, otherwise there is a violation of the impairment clause. The more accurate view seems to be that announced in *U.S. v. Gomez Jesus*,[11] that the constitutional prohibition against laws impairing the obligation of contracts does not have the effect of restricting the power of the State to protect the public health, public morals or public safety as the one or the other may be involved in the execution of such contracts.

As expressed in a treatise:

> "* * * In appropriate cases then the non-impairment clause cannot be invoked as against the right of the State to exercise its police power.
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> "Whenever appropriate community or state action is needed to safeguard the public welfare, the courts are called upon, as in other cases affecting the exercise of police power, to adjust and harmonize individual rights with communal interest. * * *"[12]

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[11] 31 Phil. 218 (1915).

[12] I TAÑADA & FERNANDO, CONSTITUTION OF THE PHILIPPINES, 4th ed., 444, 445.

As a matter of fact the opinion in the *Rutter* case does not view the matter differently for as it pointed out the question to be determined by virtue of the challenged legislation was "is the period of eight (8) years which Republic Act No. 342 grants to debtors of a monetary obligation contracted before the last global war and who is a war sufferer with a claim duly approved by the Philippine War Damage Commission reasonable under the present circumstances?"

Clearly, if it were unreasonable, then the individual right to non-impairment of contractual obligations must prevail over the assertion of community power to remedy an existing evil.

The Supreme Court was convinced about its unreasonableness. As stated in the opinion of Justice Bautista Angelo:

> "But we should not lose sight of the fact that these obligations had been pending since 1945 as a result of the issuance of Executive Orders Nos. 25 and 32 and at present their enforcement is still inhibited because of the enactment of Republic Act No. 342 and would continue to be unenforceable during the eight-year period granted to pre-war debtors to afford them an opportunity to rehabilitate themselves, which in plain language means that the creditors would have to observe a vigil of at least twelve (12) years before they could effect a liquidation of their investment dating as far back as 1941. This period seems to us unreasonable, if not oppressive. While the purpose of Congress is plausible, and should be commended, the relief accorded works injustice to creditors who are practically left at the mercy of the debtors. Their hope to effect collection becomes extremely remote, more so if the creditors are unsecured. And the injustice is more patent when, under the law, the debtor is not even required to pay interest during the operation of the relief, unlike similar statutes in the United States (*Home Building & Loan Association v. Blaisdell, supra*).

The conclusion then to which the foregoing considerations inevitably lead is that R. A. No. 342 as of the time of adjudication suffered from the vice of nullity as "the period granted to debtors as a relief was found unwarranted by the contemplated emergency."

Three American Supreme Court decisions [13] and six state cases [14] were invoked by the Court in support of the conclusion reached.

Then came a statement why the aforesaid cases apply with added force in the Philippines "considering the conditions prevailing in our country." Thus:

> "We do not need to go far to appreciate this situation. We can see it and feel it as we gaze around to observe the wave of reconstruction

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[13] *W. B. Worthen Co. v. Thomas*, 292 U. S. 426 (1934); *W. B. Worthen Co. v. Kavanaugh*, 295 U.S. 56 (1935); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935).

[14] *Pouquette v. O'Brien*, 100 Pac. 2nd., 979 (1940); *First Trust Joint Stock Land Bank of Chicago v. Adolph Arp et al.*, 283 N.W. 441 (1939); *First Trust Co. of Lincoln v. Smith et al.*, 277 N.W. 762 (1938); *Milkint v. McNeeley et al.*, 169 S.E. 790 (1933); *Haynes v. Treadway*, 65 Pac. 892 (1901); *Swinburne v. Mills*, 50 Pac. 489 (1897).

> and rehabilitation that has swept the country since liberation thanks to the aid of America and the innate progressive spirit of our people. This aid and this spirit have worked wonders in so short a time that it can now be safely stated that in the main the financial condition of our country and our people, individually and collectively, has practically returned to normal notwithstanding occasional reverses caused by local dissidence and the sporadic disturbance of peace and order in our midst. Business, industry and agriculture have picked up and developed at such stride that we can say that we are now well on the road to recovery and progress. This is so not only as far our observation and knowledge are capable to take note and comprehend but also because of the official pronouncements made by our Chief Executive in public addresses and in several messages he submitted to Congress on the general state of the nation. * * *"

It is not surprising then that the concluding portion of the opinion could be couched in a language of lofty moral tone:

> "In the face of the foregoing observations, and consistent with what we believe to be as the only course dictated by justice, fairness and righteousness, we feel that the only way open to us under the present circumstances is to declare that the continued operations and enforcement of Republic Act No. 342 at the present time is unreasonable and oppressive, and should not be prolonged a minute longer, and, therefore, the same should be declared null and void and without effect. And what we say here with respect to said Act also holds true as regards Executive Orders Nos. 25 and 32, perhaps with greater force and reason as to the latter, considering that said Orders contain no limitation whatsoever in point of time as regards the suspension of the enforcement and effectivity of monetary obligations. And there is need to make this pronouncement in view of the revival clause embodied in said Act if and when it is declared unconstitutional or invalid."

B. *People v. de la Cruz*

The question of what constitutes a cruel and unusual punishment was raised in *People v. de la Cruz*.[15] The Supreme Court, however, avoided passing squarely on the issue by exercising its discretion and lowering the penalty complained of. In the course of the opinion of Justice Bengzon, however, there is a valuable discussion of the meaning of the above constitutional provision.

Appellant de la Cruz was sentenced to pay a fine of P5,000 and to imprisonment for five years as well as barred from engaging in the wholesale and retail business for the same period of time, for having retailed a can of milk at ten centavos more than the selling price.

In his appeal before the Supreme Court, one of the alleged errors assigned was the violation of the constitutional guarantee against excessive fines and the infliction of cruel and unusual punishment.

As to fines, the statement by Cooley that the amount to be imposed is one addressed to the discretion of the court, is accepted. To be free from any constitutional objections, it should, of course,

[15] See note 4.

have reference not only to the act for which the accused was taken to court but also for his ability to pay.

As to the latter half of the prohibition there is the requirement that the punishment be both *cruel* and *unusual*.[16]

An earlier case referred to in the *de la Cruz* case, *U. S. v. Borromeo*,[17] notes the historical background of this constitutional guarantee:

> "The prohibition in the Philippine Bill against cruel and unusual punishments is an Anglo-Saxon safeguard against governmental oppression of the subject, which made its first appearance in the reign of William and Mary of England in 'An Act declaring the right and liberties of the subject, and settling the succession of the crown,' passed in the year 1689. It has been incorporated into the Constitution of the United States and into most of the constitutions of the various states in substantially the same language as that used in the original statute. The exact language of the Constitution of the United States is used in the Philippine Bill. It follows that punishments provided in legislation enacted by the former sovereign of these Islands must be considered according to the standard obtaining in the United States in order to determine whether they are cruel and unusual."

In the same *Borromeo* case, mention was likewise made of one test to be applied in determining whether the constitutional prohibition against cruel and unusual punishment is violated. The test is not the proportion between the offense and the punishment "but the character of the punishment and its mode of infliction." Another test followed by some authorities is the severe and disproportionate character of the punishment to the offense "as to shock public sentiment and violate the judgment of reasonable people."

Both tests are referred to in the opinion of Justice Bengzon in the *de la Cruz* case, followed by this observation:

> "Because it expressly enjoins the imposition of 'excessive fines' the Constitution might have contemplated the latter school of thought assessing punishments not only by their character but also by their duration or extent. And yet, having applied 'excessive' to fines, and 'cruel and unusual' to punishments did it not intend to distinguish 'excessive' from 'cruel' or 'unusual'? And then, it has been heretofore the practice that when a court finds the penalty to be 'clearly excessive' it enforces the law but makes a recommendation to the Chief Executive for clemency, (Art. 5 of the Revised Penal Code). Did the Constitutional Convention intend to stop that practice? Or is that article unconstitutional?"

Then came the assumption, for the purpose of this decision, "without actually holding, that too long a prison term might clash with the Philippine Constitution."

Not that the above assumption has settled the question. The Court, according to Justice Bengzon, is confronted again by two

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[16] *Legarda v. Valdez*, 1 Phil. 146 (1902).

[17] 23 Phil. 279 (1912).

opposing theories, one being that the prohibition applies to legislation only and not to judicial decisions imposing penalties within the limits of the statute, and the other being that the fundamental prohibition likewise restricts the judge's power and authority.

After which comes this explanatory portion of the opinion:

> "In other words, and referring to the penalty provided in Republic Act No. 509, under the first theory the section would violate the Constitution, if the penalty is excessive under any and all circumstances, the minimum being entirely out of proportion to the kind of offense prescribed. If it is not, the imposition by the judge of a stiff penalty—but within the limits of the section—will not be deemed unconstitutional. The second theory would contrast the penalty imposed by the court with the gravity of the particular crime or misdemeanor, and if notable disparity results, it would apply the constitutional brake, even if the statute would, under other circumstances, be not extreme or oppressive."

Justice Bengzon then goes on to state that under the first doctrine, the issue is whether the imprisonment for two months or a fine of two-thousand pesos, the minimum provided for by section 12 of Republic Act No. 509, is "too excessive for a merchant who sells goods at prices beyond the ceilings established in the Executive Order." For Justice Bengzon, a negative answer is called for

> "because in overstepping the price barriers he might deprive, in some instances, profits amounting to thousands of pesos. Therefore under that doctrine, the penalty imposed in this case would not be susceptible of valid attack, it being within the statutory limits."

Under the second theory, the inquiry, according to him, should be whether the penalty of five years and ₱5,000 is cruel and unusual for a violation that merely resulted in a ten-centavo profit to the accused. This is his answer:

> "Many of us do not regard such punishment unusual and cruel, remembering the national policy against profiteering in the matter of foodstuffs affecting the people's health, the need of stopping speculation in such essentials and of safeguarding public welfare in times of food scarcity or similar stress. In our opinion the damage caused to the State is not measured exclusively by the gains obtained by the accused, inasmuch as one violation would mean others, and the consequential breakdown of the beneficial system of price controls."

Instead of a definite ruling as to which of the two theories is applicable, the Supreme Court, "deeply moved by the plight of this modest store-owner with a family to support," reached an area of compromise which in its own words skirts the constitutional issue, yet executes substantial justice. This is how it did it:

> "* * * We may decrease the penalty, exercising that discretion vested in the courts by the same statutory enactment.
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> "Wherefore, reducing the imprisonment to six months and the fine

to two thousand pesos, we hereby affirm the appealed decision in all other respects."

As noted at the outset of this article, the claim of an accused to be exempt from cruel and unusual punishment was, to say the least, given careful consideration and partial vindication.

C. *People v. Quasha*

In a third case, *People v. Quasha*,[18] affecting constitutional rights, the Supreme Court seemed to have faltered and to lose its touch.

The question as to whether the formation of a corporation sixty per centum of the capital of which is owned by Filipinos is necessary prior to the grant of the franchise or whether such organization of a corporation for the purpose of operating public utilities regardless of who owned the capital would be enough to warrant the grant of a certificate of incorporation, was raised before the Supreme Court in a criminal proceeding for falsification against William Quasha.

Our Constitution is nationalistic in tendency and seeks to preserve our natural reserves for the prosperity of the nation and its people. Hence this limitation. The rights of the Filipinos are held paramount to those of foreign investors who, with the money and the know-how, may literally deprive us of our natural resources. The Constitution proceeds on the theory that this patrimony belongs to the Filipino people. In thus rationalizing the acquittal of the defendant, less than wholesome respect was accorded this constitutional intent.

In the *Quasha* case the defendant, an attorney, was charged with falsification of a public and commercial document in that he caused it to appear in the articles of incorporation that the required 60% of the capital stock was owned by a Filipino when in fact he was a mere dummy of the five Americans who were the real incorporators and owners.

It would seem to those uninitiated in the mysteries of the law that the defendant had only one purpose in mind in resorting to such scheme. His motive certainly could not be of the purest. And yet, by ruling that the prohibition in the Constitution refers to the operation of public utilities of corporations without the necessary amount of capital owned by Filipinos, and not the mere formation of private corporations intending to engage in lawful business, Quasha's motive became immaterial. Certainly here is a case where "the letter killeth but the spirit giveth life."

The Supreme Court rationalized that it was not illegal to establish the corporation under the Corporation Law even if it were proven that the Americans were in fact the owners of the corporation. It was duly organized with a lawful purpose. Only to carry out that purpose, the incorporators are furthermore required to establish citizenship of the owners of at least sixty per centum of the capital stock. The condition then imposed by the Constitution refers not

[18] G. R. No. L-6055, prom. June 12, 1953.

to the formation of corporations but to the actual engagement in the exploitation of natural resources or operations of public utilities.

II. SEPARATION OF POWERS: AUTHORITY OF THE PRESIDENT

Neither has the Supreme Court been spared this quarter from inquiring into the authority of the President to act. It had to do so not once but twice, in *Villena v. Roque*,[19] and in *University of Santo Tomas v. Board of Tax Appeals*.[20] The *Villena* decision comes as a surprise after *Lacson v. Roque*.[21]

A. *Villena v. Roque*

Petitioner, Mayor of Makati, Rizal, was charged and convicted of the crime of falsification of a public document. The provincial governor, pursuant to the Revised Administrative Code, suspended him and later had him reinstated. Pending investigation of administrative charges, the President, through Executive Secretary Roque, took the case away from the provincial board, "for the good of the public service," assumed the task of investigation, and ordered his immediate suspension. The issue raised before the Court was whether under the general powers of the President under the Administrative Code, he could suspend elective municipal officers in the light of the distinction in the Constitution between the power of control over all departments, bureaus, and offices and general supervision over local governments as may be provided by law.

As was to be expected, the President's act was challenged by the petitioner. What was unexpected after *Lacson v. Roque* was that he was sustained. As the majority rationalized:

> "* * * One of the points raised by the petitioner is that Sections 2188 and 2190 of the Revised Administrative Code vest the power to investigate a municipal official in the provincial board. This power is not exclusive.* * *"

The arguments advanced against the above view, by Justice Tuason who dissented, carry persuasion:

> "By all canons of statutory construction and, I might say with apology, common sense, the preceding section (section 2190 conferring power of investigation on provincial board) should control in the field of investigations of charges against, and suspension of, municipal officials. The minuteness and care, in three long paragraphs, with which the procedure in such investigations and suspensions is outlined, clearly manifests a purpose to exclude other modes of proceedings by other authorities under general statutes, and to make the operation of said provisions depend upon the mercy and sufferance of higher authorities. To contend that these by their broad and unspecified powers can also investigate such charges and order the temporary suspension of the erring officials indefinitely is to defy all concepts of the solemnity of legislative pronounce-

[19] G. R. No. L-6512 prom. June 19, 1953.
[20] G. R. No. L-5701, prom. June 23, 1953.
[21] 49 O. G. 93.

> ments and to set back the march of local self-government which it has been the constant policy of the legislative branch and of the Constitution to promote."

The majority noted that the President's power to suspend is concurrent with that of the provincial governor and therefore cannot preclude the President from exercising a similar power. As expressed by Justice Jugo:

> "The fact however that the power of suspension is expressly granted by section 2188 of the Administrative Code to the provincial governor, does not mean that the grant is necessarily exclusive and precludes the Secretary of Interior from exercising a similar power."

The contention is not formidable. Suffice it to state that where jurisdiction is concurrent, the first competent body to act must be allowed his say. In addition, Justice Tuason correctly observed:

> "Granting, but without conceding, that there is irreconcilable inconsistency between the powers of the provincial authorities and of the national authorities in the matter of investigations and suspensions of municipal officials, the universal rule, which admits of no exception, tells us that the latter being of general application must yield to the former which is special in character."

Nor is the ground of the majority that if the President had power to suspend provincial officials, he could suspend municipal officials any more convincing. Justice Tuason correctly asserted that the "conclusion does not so easily follow the premise." He continued:

> "The power to suspend provincial officers does not necessarily imply power to suspend municipal officers. In the first place, Section 2078 is found in the chapter of the Code which deals with provinces whereas Sections 2188-2190 fall under the chapter dedicated to municipalities. In the second place, both sets of provisions are clear and specific, each sufficient unto itself. In the third place, the power of suspension and removal is not acquired by inference, much less inference that would upset express statutory enactments."

The main objection to this decision is the seeming adherence to the discredited theory of broad presidential powers in the earlier *Villena* [22] and *Planas* [23] cases. There the Supreme Court by a liberal interpretation of the powers of the President based on the constitutional provision vesting all executive powers in him, practically ignored the limitation to general supervision as may be provided by law. *Lacson v. Roque* represented a retreat to the Constitution. It is to be deplored that the Supreme Court did not maintain that position.

Could that the majority have shown a clearer perception of the issue involved in the case. To an unscrupulous President these

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

[23] *Planas v. Gil*, 67 Phil. 62.

broad powers could be abused and used as an effective means of depriving municipal governments of the right to enjoy local autonomy. It is cause for gratification to see the Supreme Court being predisposed to restrain the power of the President when there is no clear warrant in the Constitution.

B. *University of Santo Tomas v. Board of Tax Appeals*

After the above *Villena* decision, *Santo Tomas v. Board of Tax Appeals* was particularly welcome. Here it was made clear the President must act within the scope of authority granted by Congress.

Petitioner, a private non-stock corporation organized for educational purposes, was assessed under the Income Tax Law. Petitioner paid under protest and thereafter sought reconsideration of the decision of the Secretary of Finance holding it liable. It was directed to file a petition for review with the Board of Tax Appeals, according to the rules promulgated by the Board pursuant to an Executive Order.[24] The question posed before the Supreme Court was whether such Executive Order was valid under a Republic Act[25] delegating special powers to the President.

This Act was passed by Congress for the purpose of giving the President authority "to reorganize within one year the different executive departments, bureaus, offices, agencies and other instrumentalities of the government including corporations owned or controlled by it * * * to promote simplicity, economy, and efficiency and to improve the service in the transaction of the public business."

Pursuant to this grant of power, the President issued an Executive Order[26] creating the Board of Tax Appeals as an instrumentality of the Department of Finance. This the President was empowered to do. This was in accord with the delegated power given by Congress. The President did not stop there, however. He gave the board exclusive jurisdiction to hear and decide cases on appeal from decisions of the Collector of Internal Revenue involving tax questions. This was objectionable. It was a clear trespass on legislative powers, a clear violation of express provisions of the Constitution. In matters of judicial jurisdiction, Congress alone has the power "to define, prescribe, and apportion the jurisdiction of the various courts." The Board in effect exercised judicial functions upon the grant of jurisdiction by the President.

The Internal Revenue Code expressly vests jurisdiction in actions for the recovery of taxes on the courts.[27] The Judiciary Act gives to Courts of First Instance original jurisdiction in all civil actions involving the legality of a tax.[28] With the creation of the Board of Tax Appeals the proper courts of justice were deprived of their rightful jurisdiction. A lawful power of courts of law was withdrawn and vested in an office of administrative creation.

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[24] Executive Order No. 401-A.
[25] Republic Act No. 422.
[26] See note 24.
[27] Sec. 306, National Internal Revenue Code.
[28] Sec. 44(b), Republic Act No. 296.

The law clearly outlined and defined the power of the President, limiting his authority to mere reorganization of the different executive departments, bureaus and instrumentalities. The Chief Executive far exceeded his limitations and when he did so he exercised that which was not within his lawful power to do.

Commenting on the exercise of delegated authority, Justice Bautista Angelo said:

> "The power conferred to make regulations for carrying a statute into effect must be exercised within the powers delegated, that is to say, must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted, and it can not be extended to amending or adding to the requirements of the statute itself; but it is presumed that the regulations adopted were to carry out only the provisions of the statute and not to embrace matters not covered or intended to be covered thereby. Rules that operate to subvert the statute may not be framed under a delegation of power to the President."

III. SEPARATION OF POWERS: RULE-MAKING POWER OF THE SUPREME COURT

Where substantive rights are concerned, the Supreme Court ruled in the case of *Primicias v. Ocampo*,[29] that it is not within its power to make rules covering them. Under the Constitution its function is limited to seeing to it that they are safeguarded and protected through procedural mandates.

In this case a petition was filed in the lower court requesting the aid of assessors in the determination of two criminal proceedings against the petitioner in accordance with the Revised Charter of Manila.[30] Respondent judge denied the petition. Hence this petition for mandamus.

In the Supreme Court, respondent assailed the validity of the provision of the Revised Charter of Manila[31] relied upon by the petitioner, in that it violated the provision that rules of court "shall be uniform for all courts of the same grade * * *." Respondent argued that the right to have assessors sit at trial has been abrogated by the Rules of Court and its reenactment in the Revised Charter of Manila was unconstitutional.

The Supreme Court overruled the objection and granted mandamus. In arriving at its conclusion, the Court again through Justice Bautista Angelo, distinguished between procedural and substantive laws, thus:

> "Rules of procedure should be distinguished from substantive law. A substantive law creates, defines, or regulates rights concerning life, liberty, or property or powers of agencies or instrumentalities for the administration of public affairs, whereas rules of procedure are provisions prescribing the methods by which substantive rights may be enforced in the courts of justice."

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[29] G. R. No. L-6120, prom. June 30, 1953.

[30] Sec. 49, Republic Act No. 409.

[31] *Ibid.*

With this distinction the court rightfully held that the right to assessors is a substantive right and therefore could not be embraced in the rule-making power of the Supreme Court. The Supreme Court has only "the power to promulgate rules concerning pleading, practice, and procedure in all courts * * * " but "said rules * * * shall not diminish, increase or modify substantive rights."

The present Rules of Court was promulgated pursuant to this provision in order to provide for adequate remedy to obtain redress. The power to create substantive rights is lodged in Congress and the Supreme Court even if it wanted to incorporate this right in the Rules of Court, could not have done so without encroaching on the powers of Congress. The Supreme Court, visibly aware of its constitutional limitations, chose well not to disturb the substantive rights provided in the old Code of Civil Procedure.[32]

This substantive right not having been repealed is still available in all courts and parties litigant may apply for the aid of assessors to sit at trial. The fact that this right is so provided in the Revised Charter of Manila is no indication that it partakes of class legislation for, as has been said, parties litigant may avail of this substantive right in any court by virtue of the provision in the former Code of Civil Procedure considered substantive and therefore not repealed by the Rules of Court.

It is made mandatory on the court upon demand to appoint assessors to sit at trial. This right is absolute and substantial. As the court said:

> "The intervention of the assessors is not an empty formality which may be disregarded without violating either the letter or the spirit of the law. It is another security given by the law to the litigants and as such, it is a substantial right of which they cannot be deprived without violating all the proceedings. Were we to agree that for one reason on another, the trial of assessors may be done away with, the same line of reasoning would force us to admit that the parties litigant may be deprived of their right to be represented by counsel, to appear and be present at the hearings, and so on, to the extent of omitting the trial in a civil case, and thus set at naught the essential rights granted by the law to the parties with consequent nullity of the proceedings."

ENRIQUE M. FERNANDO *
DOLORES GARCIA

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[32] Sec. 154, Code of Civil Procedure. Rights of Parties to Have Assessors, and Manner of Selecting Them.—Either party to an action may apply in writing to the judge for assessors to sit in the trial. Upon the filing of such application, the judge shall direct that assessors be provided, and that the parties forthwith appear before him for the selection of the asssesors. The assessors shall be selected from the list provided for in the preceding section, and shall be selected in the following manner, in the presence of the judge or clerk: * * *.

* Faculty Editor, Philippine Law Journal.