A THIRD YEAR OF CONSTITUTIONAL LAW: 1953

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Constitutional government was put to a severe test in 1953 and was not found wanting. It was an election year; the Presidency was at stake. It could have been 1949 all over again, with fraud, corruption, and intimidation on a widespread scale. Due to the overwhelming popularity of the candidate for the coalesced minority, now President Ramon Magsaysay, and the resolute and determined effort of his leaders and followers not to be cheated of their just victory at the polls, the electorate, on the whole, had the opportunity to express their wishes freely. The people asserted their sovereignty. Students of the science of government and of public law, both here in the Philippines and abroad, are agreed that the Philippines had cause to congratulate itself. As of last year at least, democracy was safe and secure.

For this happy state of affairs, credit should likewise go to the judiciary, particularly the Supreme Court. Doubts, some of them well-founded, were entertained by many thoughtful citizens concerning the devotion of the executive branch of the government to constitutionalism. There were times when it seemed that the Congress of the Philippines could not serve as a check to its excesses, notwithstanding the presence of some of the best minds of the country. On the Supreme Court then was thrust the burden of safeguarding and defending constitutional processes. This task it discharged ably and well.

It was appealed to several times to correct the abuses of the party in power. Its response was on the whole gratifying. In one case, only its courage and vigilance stood in the way of a nefarious scheme to demoralize the Opposition and make a mockery of the elections by the arrest on trumped-up charges of the main leaders of the Opposition, including its candidate for the Presidency.[1] No wonder it has earned the esteem and respect of the citizens, except perhaps of some rabid Liberals.

In the field of Constitutional Law, it was thus a year of great decisions. Even before the people had opportunity to repudiate the leadership of a President, who obviously had difficulty understand-

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[1] *E. Rodriguez, Sr. et al v. Castelo*, G.R. No. L-6724.

ing that his power was not unlimited, the Supreme Court time and time again in no uncertain language took him to task. If there were any doubts before, there cannot be any now concerning the supremacy of the Constitution.

This is not to say that all decisions rendered are free from criticism. In some cases, in the opinion of the writer, the challenged acts sustained by the Supreme Court ought to have been repudiated.[2] By and large, however, the Supreme Court has again proved itself a faithful guardian of the Constitution.

As in the past years, questions of constitutional law will be discussed under the headings of *separation of powers, political rights, civil rights and social and economic rights.*

I. Separation of Powers

A. Emergency Powers That May Be Exercised by the President

That there would be no toleration of unwarranted pretension to executive authority under the emergency powers clause of the Constitution[3] was made clear by the Supreme Court, this time in a decisive manner in the case of *Rodriguez and Tañada v. Gella.*[4] 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,[5] annulled one executive order on rentals promulgated by the late President Roxas, one on export control 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 control are concerned, the opinion of the Supreme Court as to their nullity was

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[2] The cases are: *Gamalinda v. Yap*, G.R. No. L-6121, prom. May 30, 1953; *Villena v. Roque*, G.R. No. L-6512, prom. June 19, 1953; and *Ykalina v. Oricio*, G.R. No. L-6951, prom. October 30, 1953.

[3] Article VI, Section 26 provides: "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."

[4] 49 O.G. 465.

[5] 45 O.G. 4411.

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 the 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 orders 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.

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.[6]

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 P37,850,500 for urgent and essential public works, and the second setting

[6] 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.

> 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." [7]

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." [8]

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." [9]

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

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[7] 49 O.G. 465, at page 466.
[8] 49 O.G. 465, at page 467.
[9] 49 O.G. 465, at page 468.

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 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." [10]

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.

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 the President for an indefinite period would be unconstitutional because it is against the

[10] 49 O.G. 465, at pages 470-471.

express provision of the Constitution. It would be an abdication of legislative powers. • • •" [11]

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." [12] 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 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." [13]

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.[14]

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[11] 49 O.G. 465, at page 472.
[12] 49 O.G. 465, at page 473.
[13] 49 O.G. 465, at pages 473-474.
[14] 49 O.G. 465, at pages 476-489.

B. GENERAL SUPERVISION OVER LOCAL GOVERNMENTS

It is to be remembered that under the Constitution,[15] the President exercises control over the executive departments, bureaus, or offices, but only *general supervision over local governments as may be provided by law.*

Why the Constitution distinguished between control by the President of all the executive departments, bureaus and offices, and general supervision over all local governments, is explained by Justice Laurel in the case of *Planas v. Gil.*[16] Thus—

> "The deliberations of the Constitutional Convention show that the grant of the supervisory authority to the Chief Executive in this regard was in the nature of a compromise resulting from the conflict of views in that body, mainly between the historical view which recognized the right of local self-government (People ex rel. L. Roy vs. Hurlbut, 1871, 24 Mich. 44) and the legal theory which sanctions the possession by the state of absolute control over local governments (Booten vs. Pinson, L.R.A. [N.S., 1917-A], 1244; 77 W. Va. 412 [1915].)"

Lacson v. Roque[17] is the leading case in point. Here the Supreme Court adjudged that the President could not suspend Mayor Lacson.[18] 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 contempletes 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, are 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

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[15] Article VII, section 10, paragraph 1 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."

[16] 67 Phil. 62.

[17] 49 O.G. 93.

[18] Briefly the action arose under the following circumstances: 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.

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. * * *
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> "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 vs. Brophy, 120 P., 2nd, 946; 49 Cal. App., 2nd, 15)." [19]

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." [20] 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

[19] 49 O.G. 93, at page 98.
[20] 49 O.G. 93, at page 107.

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. * * *" [21]

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 predicating 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 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 further 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. All that the Charter yields on this point is the highly unsatisfactory phrase: "He shall hold office for four years, unless sooner removed." [22] 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.[23]

Instead, the Justices of the Supreme Court, both the majority and the dissenting, construed the City Charter with the other provi-

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[21] 49 O.G. 93, at page 109.

[22] Charter of the City of Manila, Section 9.

[23] 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.

sions 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 Reviesd 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 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." [24]

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." [25]

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[24] 49 O.G. 93, at page 106.

[25] 49 O.G. 93, at pages 109-110. *Cf.* This sly 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

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.'
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> "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 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." [20]

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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."

[20] 49 O.G. 93, at page 103.

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 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 be respected in the absence of abuse of discretion." [27]

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 the minority justices united in the view that presidential authority is limited by the Constitution and the applicable statutes.

Jover v. Borra,[28] continues this desirable trend of restricting presidential authority over local governments to what the Constitution ordains. This is a petition for quo warranto to test the legality of the removal of petitioner Jover from the office of the Mayor of the City of Iloilo and the designation of the respondent as acting Mayor of the said City. The facts according to the Court follow:

> "That on 9 February 1953 the petitioner was appointed Mayor of the City of Iloilo and on 26 March 1953 his appointment was confirmed by the Commission on Appointments; that on 28 June 1953 the petitioner was

[27] 49 O.G. 93, at pages 116-117.
[28] G.R. No. L-6782, prom. July 25, 1953.

> advised by the Secretary to the President by telegram followed by a letter both dated 27 June 1953 that he was relieved from his office as Mayor and that in his place and stead the respondent was designated as acting Mayor; and that on 27 June 1953 the respondent was designated as acting Mayor of the City of Iloilo by the President of the Philippines and took his oath of office."

It is the contention of petitioner that pursuant to the charter of the City of Iloilo, his tenure of office is six years and for that reason he may be removed only for cause as provided by law. On the other hand the respondent raised the special defense that as the office of Mayor of Iloilo is policy determining and primarily confidential, its incumbent may be removed at the pleasure of the President, any statute depriving the President of the power to remove amounting to an unconstitutional encroachment on his authority.

The Supreme Court in a unanimous decision, the opinion being penned by Justice Padilla, sustained the right of petitioner. According to Justice Padilla:

> "Granting that the office of Mayor of the City of Iloilo is policy-determining—a point we need not decide—still we find that the appointment of this class of officers is only an exception to the general rule that it 'shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination.' The above-quoted constitutional provision does not say that officers appointed under the exception are removable at pleasure.
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> "'The Legislative power shall be vested in a Congress of the Philippines, which shall consist of a Senate and a House of Representatives.' In the exercise of that power the National Assembly of the Philippines passed Com. Act No. 158 amending Com. Act No. 57."

The above statute, Section 8 of which was amended provides that the Mayor of Iloilo "shall hold office for six years unless removed, * * *" was held valid by the Supreme Court.

As Justice Padilla pointed out:

> "The fixing by Congress of a period of time during which the Mayor of the City of Iloilo is to hold office is a valid and constitutional exercise of a legislative power."

Then came that portion of the opinion explaining why under the limited presidential authority over local government, the definiteness of tenure accorded a city mayor cannot be assailed on constitutional grounds.

> "The legislative intent to provide for a fixed period of office tenure for the Mayor of the City of Iloilo and not to make him removable at the pleasure of the appointing authority may be inferred from the fact

that whereas the appointment of the Vice-Mayor of the same city, as provided for in an amendatory act, and those of the Mayors and Vice-Mayors of other cities are at pleasure, that of the Mayor of the City of Iloilo is for a fixed period of time, as provided for in the original charter, and this continued unchanged despite subsequent amendatory acts.

" '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.' The President cannot derive from this constitutional provision the authority to relieve or remove the petitioner from office, because his power is merely one of general supervision over all local governments and such supervision over all local governments and such supervision is to be exercised 'as may be provided by law.' " [29]

In the light of the above, the Supreme Court could make the following categorical declaration:

"The legislative department having provided for an office tenure of six years for the Mayor of the City of Iloilo, the President cannot remove the petitioner without cause as provided by law."

With the conclusion that the removal of petitioner is illegal came the corollary:

"The designation of the respondent as acting Mayor is also without authority of law."

Rodriguez v. Del Rosario [30] is faithful to this concept of limited presidential power over local governments as provided for in the Constitution. In this quo warranto proceeding, it was shown that petitioner Rodriguez, who was nominated and confirmed as mayor of

[29] After the above excerpt, Justice Padilla quoted from *Lacson v. Roque*:—"The most liberal view that can be taken of the power of the President to remove the Mayor of the City of Manila is that it must be for cause. Even those who would uphold the legality of the Mayor's suspension do not go so far as to claim power in the Chief Executive to remove or suspend the Mayor at pleasure. Untrammelled discretionary power to remove does not apply to appointed officers whose term of office is definite, much less elective officers. As has been pointedly stated, 'Fixity of tenure destroys the power of removal at pleasure otherwise incident to the appointing power * * *. The reason of this rule is the evident repugnance between the fixed term and the power or arbitrary removal. * * *"

"An inferential authority to remove at pleasure cannot be deduced, since the existence of a defined term, ipso facto, negatives such an inference, and implies a contrary presumption, i.e., that the incumbent shall hold office to the end of his term subject to removal for cause." (State ex. Gallaghar vs. Brown, 57 M. Ap., 203, expressly adopted by the Supreme Court in State ex rel. vs. Maroney, 191 Mo., 548; 90 S.W., 141; State vs. Crandell, 269 Mo., 44; 190 S.W., 899; State vs. Salval, 450, 2d, 995; 62 C.J.S. 947.)

[30] G.R. No. L-6715, prom. October 30, 1953.

Cebu, received a letter from the Executive Secretary notifying him that he was designated as technical assistant in the Office of the President. On the same day, respondent was designated as Acting Mayor of Cebu and commenced to discharge his functions as such a few days later.

Under the Charter of the City of Cebu [31] the tenure of the Mayor was for three years unless sooner removed. His designation as technical assistant had the effect of removal which, according to the Supreme Court, could be based only on disloyalty, dishonesty, oppression, and misconduct in office in accordance with *Lacson v. Roque*. Petitioner Rodriguez was not guilty of any such act and could not therefore be deprived of his position as such by the President. He was restored to his office.

Once again, there was a clear demonstration of the firm determination of the Supreme Court to apply with undiminished force the literal language of the Constitution that the power of the President over local governments is limited to that of general supervision as provided for by law.

1. Decisions of doubtful validity.

This exceptionally fine record of the Supreme Court in the past year concerning this phase of constitutional law was marred by three decisions of doubtful validity: *Gamalinda v. Yap*,[32] *Villena v. Roque*,[33] and *Ykalina v. Oricio*.[34]

In *Gamalinda v. Yap*, petitioner instituted a *quo warranto* proceeding to test the right of the respondent to the post of acting Mayor of Victoria, Tarlac pending the election and qualification of the permanent mayor. Respondent was proclaimed elected in the November, 1951 election as mayor of said municipality. He was ousted in an election protest declaring him ineligible. Thereafter, on September 8, 1952, the acting Executive Secretary, by order of the President, designated the respondent to the position as acting mayor, giving rise to this quo warranto proceeding, the petitioner being the duly elected and qualified vice-mayor of said municipality.

Petitioner was unsuccessful, the Supreme Court dismissing the petition on the ground that as the elective vice-mayor, he could not rely on the provision of the Revised Administrative Code [35] as the assumption of office of vice-mayor is predicated on "absence, suspension, or temporary disability." Such a situation did not exist as there

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[31] Com. Act No. 588.
[32] G.R. No. L-6121, prom. May 30, 1953.
[33] G.R. No. L-6512, prom. June 19, 1953.
[34] G.R. No. L-6951, prom. October 30, 1953.
[35] Sec. 2195.

was a failure to elect, the vacancy created under the Revised Election Code being filled by the President as soon as practicable, issuing a proclamation calling for a special election. Such a failure to elect created a temporary vacancy within the meaning of said Election Code provision.[36] It is to be noted that under said Code, a temporary vacancy in an elective local office must be filled by the provincial board if it is a municipal office. Nonetheless, and so admitted by the Supreme Court, it was looked upon as having been done in accordance with law. Chief Justice Paras, for the Court, said that the "designation carry the sanction of the provincial governor and provincial board." The Court then, according to him was necessarily led "to conclude that the disputed appointment may be deemed as having been extended in effect by the provincial governor, with the consent of the provincial board."

This decision of the Court is opposed to the basic doctrine of government of laws and not of men. Here under the statutory provision which is deemed unobjectionable, only the provincial governor with the consent of the provincial board could fill by appointment the temporary vacancy. Clearly then, the President lacked both constitutional and statutory authority to designate respondent as acting mayor. The Supreme Court, in accordance with the long line of decisions above-quoted, should have stigmatized the appointment of respondent as illegal and ousted him from his position.

Villena v. Roque seems to be at war likewise with this principle. 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.

In the light of the principles so clearly presented in *Lacson v. Roque*,[37] it was expected that the action taken by the President would

[36] Sec. 21 (a) provides: "Whenever a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the President if it is a provincial or city office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office."

[37] 49 O.G. 93.

have been nullified. There was a disappointment of expectations. In upholding the challenged presidential action, the majority could rationalize, notwithstanding the explicit provisions of the Revised Administrative Code [38] conferring the power to investigation upon the provincial board, that it is "not exclusive." This view did not find acceptance with Justice Tuason who, in dissenting, stated:

> "• • • 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 pronouncements 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 likewise noted that the presidential power to suspend is concurrent with that of the provincial governor, thus enabling him to order the suspension in this case. While this statement is correct insofar as it goes, it loses sight of the fact that where jurisdiction is concurrent the first body to act assumes jurisdiction to the exclusion of the other. And this body was the provincial board. Moreover, Justice Tuason likewise correctly observed that the power of the President in this case should yield to the authority of the provincial board as the statutory provision on which the competence of the latter agency is based is "especial in character."

Justice Tuason could not agree to the proposition that the President, having the power to suspend provincial officials, is likewise vested with authority to suspend municipal officials. Such a conclusion, according to Justice Tuason, "does not so easily follow the premise." As the dissenter correctly observed, the power of the President on which the suspension in this case was sought to be justified is found in the chapter of the Code dealing with provinces [39] whereas Sections 2188-2190 come under the chapter dealing with municipalities. To Justice Tuason "both sets of provisions are clear and specific, each sufficient unto itself." Moreover, he reiterated his view that the power to suspend and remove "is not acquired by inference, much less inference that would upset express statutory enactments."

The main objection to his decision is the seeming adherence to the discredited theory of broad presidential powers in the earlier

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[38] Secs. 2188 and 2190.
[39] Sec. 2078, Rev. Adm. Code.

Villena [40] and *Planas* [41] 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* [42] represented a retreat to the Constitution. It is to be deplored that the Supreme Court did not maintain that position.

Ykalina v. Oricio [43] seems to be far from unassailable likewise. In the 1951 elections in Valladolid, Occidental Negros, Manuel Z. Ykalina came out as Mayor and one Antipas Junio as Vice-Mayor. Among the councilors elected, petitioner Ykalina obtained the highest place and respondent the fourth. Thereafter, the Vice-Mayor resigned in 1953. On August 8 of the same year the acting Executive Secretary suspended Mayor Manuel Ykalina by reason of certain administrative charges and designated as Vice-Mayor respondent Oricio. Petitioner instituted this quo warranto proceedings alleging that under the Revised Administrative Code,[44] in the absence of the Vice-Mayor the councilor who at the last election received the highest number of votes is entitled to the position of Mayor if the latter is suspended. The contention of the respondent is that as acting Vice-Mayor he had a right to the office.

The Supreme Court agreed with him notwithstanding the seemingly cogent argument of petitioner that his designation came not from the President as the law requires [45] but from the Executive Secretary purportedly acting for the President. The Supreme Court nonetheless remained unconvinced.

The Supreme Court admitted that the power to appoint "is intrinsically an executive act involving the exercise of discretion which may not be validly delegated by the President to the Executive Secretary, * * *." However, the designation was sustained in view of the finding that the Executive Secretary was purportedly acting "by order of the President." To the Supreme Court that was a clear indication that the President himself "had selected the appointee and had instructed Secretary Roque to extend the formal written appoint-

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

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

[43] See note 37.

[44] See note 34.

[44] Sec. 2195.

[45] Sec. 21(b) provides: "Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor."

ment." It was suggested in its opinion that the Presidential order may be written or oral.

The above principle, while acceptable, loses force when it is remembered, as petitioner insisted, that on July 25, 1953, the President had undergone stomach operations at the Johns Hopkins Hospital. Hovering as he was between life and death, it is not easy to believe that he had ordered the Executive Secretary to make the designation. The Supreme Court, however, did not find this objection insuperable.

> "* * * The trouble with the argument is its assumption that the directive to appoint Oricio was communicated by the President precisely on July 25, 1953. Such directive could have been made *days before*, considering that Vice-Mayor Junio's resignation had been submitted one week earlier. And it must be presumed that Secretary Roque committed no usurpation of authority nor any disloyalty to the Chief Executive. Anyway, if His Excellency has not actually ordered the appointment, it should be easy for petitioner to secure an official statement to that effect."

Even if the above observation of the Supreme Court is given its due weight, certain troublesome questions persist. On the face of the order itself it would appear that acting Executive Secretary Roque assumed authority to appoint presumably on order of the President which might or may not have been issued. Since there is no presumption of power, the burden of proof was on the Executive Secretary to show how and under what circumstances the designation was made. Considering that the President was away and was seriously ill, that was not an easy burden to meet. The statement by the Supreme Court that if the President "has not actually ordered the appointment, it should be easy for petitioner to secure an official statement" concerning that matter, is easier said than done. Precisely, what is reprehensible, considering that only the President may exercise the power of general supervision under the Constitution, is the assumption of such an authority by his subordinate, the Executive Secretary.

In the event, then, as seems to have happened in this case, that the Executive Secretary went ahead and acted on his own authority, it would not be unusual that the President, considering his many other duties and multifarious responsibilities, to merely accept the *fait accompli*. If adherence be paid therefore to what was said in *Villena v. Secretary of the Interior* [46] that the Executive, in those cases where he is required by the Constitution to act in person, should himself discharge the duty, then the Supreme Court perhaps should not have gone out of its way to justify the pretention to office of respondent

[46] See note 40.

Oricio. At any rate, in case of doubt, acceptance of the principle that this is a government of laws and not of men requires the most exacting scrutiny of validity of official act. The Supreme Court in this case apparently has not so acted.

C. THE PRESIDENTIAL DUTY TO TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED

Under the Constitution, the President is required to "* * * take care that the laws be faithfully executed." [47] In the opinion of Justice Laurel, this provision is more "the imposition of a duty rather than the conferment of a power." [48] As Corwin noted, through the path to duty may be the road to power. This is true in the Philippines in view of the accepted principle that by virtue of this constitutional authority, the President may issue executive orders implementing statutory provisions.[49] Through this provision then, the possibility of presidential law-making is not remote. One way of guarding against it is to construe as Justice Douglas, concurring in the *Steel Seizure Case*,[50] as "starting and ending with the laws the Congress has enacted."

That point of view must have recommended itself to the Supreme Court in the case of *UST v. Board of Tax Appeals* [51]. Petitioner here, 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.[52] The question posed before the Supreme Court was whether such Executive Order was valid under a Republic Act [53] 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."

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[47] Article VII, Section 10(1).
[48] See note 41.
[49] *Matute v. Hernandez*, 66 Phil. 68.
[50] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579.
[51] G.R. No. L-5701, prom. June 23, 1953.
[52] Executive Order No. 401-A.
[53] Republic Act No. 422.

Pursuant to this grant of power, the President issued an Executive Order [54] 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 relying on the grant of jurisdiction by the President.

The Internal Revenue Code expressly vests jurisdiction in actions for the recovery of taxes on the courts.[55] The Judiciary Act gives to Courts of First Instance original jurisdiction in all civil actions involving the legality of a tax.[56] 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.

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 cannot 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."

D. PRESIDENTIAL POWER OF REMOVAL AND SECURITY OF TENURE

The Constitution provides that "no officer or employee in the Civil Service shall be removed or suspended except for cause as pro-

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[54] See note 52.
[55] Sec. 306, National Internal Revenue Code.
[56] Sec. 44(b), Republic Act No. 296.

vided by law." [57] There is thus a guarantee of security of tenure to officers and employees in the Civil Service. This guarantee is of utmost value in maintaining morale and in promoting efficiency. Any employee whose continuance in office is dependent upon the whim and fancy of his superior, is likely to be the victim of fear and insecurity. His inefficiency can be expected to follow as a matter of course. Under the above provision, if faithfully enforced, the members of the Civil Service can be confident of staying in their respective positions as long as they do their work efficiently and well. For the requirement that the removal must be for cause implies at the very least that the ground for either suspension or removal must be related to the functions of the office which he holds.

This provision constitutes a limitation of the implied power of the President to remove his appointees, if they belong to the civil service. For those discharging highly technical, policy determining or confidential functions, there would seem to be no sound objection to allowing their removal if the President so wills. To keep them in the office even as against the President's wishes, when the President feels that they cannot help him in the promotion of his policies, might prejudice the success of his administration.[58] In all other cases, his power to remove is subject to this constitutional provision.

Prior to 1958, two leading cases—*Lacson v. Romero* [59] and *De los Santos v. Mallare* [60]—had been decided expressly affirming the principle that presidential appointees both included in the classified and unclassified civil service, in the former case, a city fiscal, and in the latter, a city engineer, came within the protection of the above constitutional provision.

Then, early last year in *Lacson v. Roque*,[61] the Supreme Court declared void the suspension of an elective city mayor, petitioner Lacson. The Justices, however, admitted that the President still retains his power to remove local government officials, which power carries the lesser power of suspension. The suspension must be "for cause" though. In the main opinion penned by Justice Tuason,

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[57] Article XII, Section 4, Constitution.

[58] *Cf.* "Granting that the office of Mayor of the City of Iloilo is policy-determining—a point we need not decide—still we find that the appointment of this class of officers is only an exception to the general rule that it shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination. The above-quoted constitutional provision does not say that officers appointed under the exception are removable at pleasure." *Jover v. Borra*, G.R. No. L-6782, prom. July 25, 1953.

[59] 47 O.G. 1778.

[60] 48 O.G. 1787.

[61] See note 37.

there was a reiteration of the meaning of the term "for cause" as found in the *De los Santos v. Mallare decision.* Since in this particular case, the suspension of Mayor Lacson was decreed by the President by virtue of a libel complaint filed against him arising from an outspoken criticism during a radio interview of a decision rendered by the judge of the Court of First Instance, Justice Tuason likewise had occasion to quote the following:

> "The eccentric manner of an officer, his having exaggerated notion of his own importance, indulgence in coarse language, or talking loudly on the streets, however offensive, would not warrant any interference with his incumbency. Rudeness of an officer not amounting to illegality of conduct or oppression is not such misconduct as will give cause for removing him from office."

Jover v. Borra[62] presented the question of the power of the President to remove an appointive city mayor whose tenure of office, according to law, is six years. Again, the Supreme Court adjudged invalid a removal ordered by the President, as a provision of that character implies that the city officials "may be removed only for cause as provided by law."

In a still later case, *Rodriguez v. Del Rosario,*[63] the Supreme Court, after referring to *Lacson v. Romero, Santos v. Mallare* and

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[62] G.R. No. L-6782, prom. July 25, 1953.

[63] G.R. No. L-6715, prom. October 30, 1953. See also *Batungbakal v. National Development Co.*, G.R. No. L-5127, prom. May 27, 1953, *Cf.*: "Article XII, Sec. 4, of the Constitution provides that 'no officer or employee in the civil service shall be removed or suspended except for cause as provided by law.' Section 694 of the Administrative Code has a similar provision. Interpreting these two laws, basic and statutory, we have held in the cases of Lacson v. Romero, G.R. No. L-3031, 47 O.G. 1778 and De los Santos v. Mallari, G.R. No. L-3881, August 31, 1952 that a civil service official may not be removed from office except for cause. We have here a case of a civil service employee, suspended and later dismissed without cause as shown by the fact that after a re-investigation he was exonerated and found guiltless of the charges of gross negligence filed against him, and was even recommended for reinstatement by the Government Committee that investigated him. In other words, his suspension and removal were illegal and in violation not only of the Administrative Code but of the Constitution itself. To remedy the evil and wrong committed, the least that could be done is to restore to him the office and post of which he had been illegally deprived, and to include in that remedy or redress payment of the salary which he should have received during this period of illegal suspension and dismissal is far from unreasonable and unjust.

"But the Auditor General contends that under the law which gives him the right to appoint the personnel in the office of the Comptroller of the NDC, he has full discretion to appoint or not to appoint any person in that office; that as Auditor General vested by the Constitution and Section 584 of the Administrative Code with jurisdiction over the accounts of the Government including claims against it, he also has full discretion to grant or withhold back salaries corresponding to the period of sus-

Jover v. Borra, adhered to the principle that an appointive city mayor, this time of Cebu, could not be removed from office against his will, not even indirectly under the pretext of being designated as a technical assistant of the President, unless it be for cause as provided by law.

In the light of the above, it seems well settled in this jurisdiction that the constitutional provision prohibiting the removal or suspension of an officer or employee in the Civil Service except for cause is self-executing in character, no additional legislation being necessary for the Supreme Court to give it full force and effect even as against the President himself.

E. JUDICIAL INDEPENDENCE SAFEGUARDED BY EXEMPTION FROM INCOME TAX

In the case of *Perfecto v. Meer,*[64] the Supreme Court upheld the immunity of justices and judges from paying the income tax. It

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pension or dismissal of an employee appointed by him. It is also claimed that to reinstate Batungbakal to his former position would mean the removal without cause of the present incumbent. We cannot agree with the Auditor General. His theory and contention if accepted and followed would lead to an unfortunate and intolerable situation, incongruous with basic principles of justice and the constitutional protection of civil service employees against Government abuse and unjustified suspension or removal. Without reference to the present Auditor General, let us imagine in the future an arbitrary and wrong minded Auditor General dismissing an employee from his office or in an office under his control, without cause, and later appointing another person to the same position. Such dismissed employee may establish to the satisfaction of the Government and the courts that he was innocent and was dismissed without reason or cause, and yet under the theory aforementioned, such dismissed employee is utterly helpless and without redress because his reinstatement and the payment of his back salary are wholly within the Auditor General's discretion which may not be controlled by mandamus, to say nothing of the fact that having already filled the position, there is no vacancy to which the dismissed employee may be reappointed. The unreasonableness and fallacy of the theory and contention above-mentioned is patently revealed and brought home by the case just imagined.

"When a citizen after due hearing establishes his right in court, said right is paramount and must be given force and effect. The way must be cleared for its enforcement, and technicalities in procedure, judicial as well as administrative, must give way.

"Having proven that he (the plaintiff) had been suspended and dismissed without cause, contrary to the express provision of the Constitution, his reinstatement becomes a plain ministerial duty of the Auditor General, a duty whose performance may be controlled and enjoined by mandamus. (Ynchausti & Co. v. Wright, 47 Phil. 866; Tan C. Tee & C. v. Wright, 53 Phil. 194) There is no room for discretion. The Auditor General is not being directed to perform an act which he may or may not execute according to his discretion. He is being asked and enjoined to redress a grievance, to right a wrong done. And the payment of the back salary is merely incidental to and follows reinstatement, this, aside from the parallel and analogy which may be found in Sec. 260, par. 1, Rev. Adm. Code which provides for the payment of back salary upon reinstatement."

[64] G.R. No. L-2348, prom. Feb. 27, 1950.

stated that the "undiminishable character of judicial salaries is not a mere privilege of judges—personal and therefore waivable—but a basic limitation upon legislative or executive action imposed in the public interest." Our Supreme Court followed the case of *Evans v. Gore* [65] where the American Supreme Court held that the tax imposed on the salary of the judge of the district court under the Revenue Act of 1919 was contrary to the constitutional prohibition and so must be adjudged invalid.

It is to be noted that in the United States, the above case of *Evans v. Gore*, however, no longer controls where a judge is appointed subsequent to the statute imposing as income tax is enacted. Thus in the case of *O'Malley v. Woodrough*,[66] it was held that the salary is taxable under such income tax statute.

According to our Supreme Court in this case of *Perfecto v. Meer*,[67] "the O'Malley case declares no more than that Congress *may validly enact a law* taxing the salaries of judges appointed after its passage." Here in the Philippines no such law has been approved. It is not relevant to the issue then.

As if taking the cue from that portion of the opinion, Congress enacted the following:

> "No salary wherever received by any public officer of the Republic of the Philippines shall be considered as exempt from the income tax, payment of which is hereby declared not to be a diminution of his compensation fixed by the Constitution or by law."

It is obvious from the above that Congress instead of expressly taxing salaries of justice and judges invaded the judicial field by itself construing a statutory provision. It furnished opportunity to the Supreme Court to annul in *Endencia v. David* [68] the provision thus:

> "By legislative fiat as enunciated in Section 13, Republic Act No. 590, Congress says that taxing the salary of a judicial officer is not a decrease of compensation. This is a clear example of interpretation or ascertainment of the meaning of the phrase 'which shall not be diminished during their continuance in office,' found in Section 9, Article VIII of the Constitution, referring to the salaries of judicial officers. This act of interpreting the Constitution or any part thereof by the Legislature is an invasion of the well defined and established province and jurisdiction of the Judiciary."

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[65] 253 U.S. 409.
[66] 307 U.S. 277.
[67] See note 64.
[68] G.R. Nos. L-6355 & 6356, prom. August 31, 1953.

Moreover the Supreme Court through Justice Montemayor took pains to explain how the imposition of an income tax on judicial salary amounts to "an actual and evident diminution thereof."

The Supreme Court reaffirmed the view that the "exemption was not primarily intended to benefit judicial officers, but was grounded on public policy." In support, reliance was placed on *Evans v. Gore*.[69] Thus:

> "The primary purpose of the prohibition against diminution was not to benefit the judges, but, like the clause in respect of tenure, to attract good and competent men to the bench and to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations and pervading principles of the Constitution and to the administration of justice without respect to persons and with equal concern for the poor and the rich. Such being its purpose, it is to be construed, not as a private grant, but as a limitation imposed in the public interest; in other words, not restrictively, but in accord with its spirit and the principle on which it proceeds."

The opinion closed with a reiteration of the doctrine in *Perfecto v. Meer*.[70]

> "In conclusion we reiterate the doctrine laid down in the case of Perfecto v. Meer, • • • to the effect that the collection of income tax on the salary of a judicial officer is a diminution thereof and so violates the Constitution. • • •"

There was a feeling among certain legislators that members of the Supreme Court should not enjoy an exemption and that as citizens out of patriotism and love of country they should pay income tax on their salaries. Such a feeling is understandable. To quote from *O'Malley v. Woodrough*:

> "To suggest that a non-discriminatory income tax makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship by making them bear their aliquot share of the cost of maintaining the government is to trivialize the great historic experience on which the framers based the safeguard of the constitutional provision concerned."

The above argument is not without plausibility. It is not inherently unreasonable. If conditions in the Philippines were otherwise, it ought to apply with undiminished force. But conditions are precisely different. The Executive has not hesitated, as recent deci-

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[69] See note 65.

[70] See note 64.

sions indicate, to decide to take action even when his power to do so is very much in doubt. There is even the suspicion that even when there is no doubt as to his lack of authority, he has not been reluctant to make use of non-existent power. The constitutional commands and prohibitions would then be reduced to a barren form of words if there were no organ that could enforce it. The Supreme Court is the authority to check the Executive when he disregards such limits. Its very independence therefore, and that of the various judicial agencies as well, is of the utmost importance not in the interest of justices and judges but for the sake of constitutionalism.

If, as the opinion in *Endencia v. David* indicates, the exemption from taxation aids in assuring that continuing independence, the price is well worth it. Moreover, the price is by no means exorbitant.[71]

F. RULE-MAKING POWER OF THE SUPREME COURT

Where substantive rights are concerned, the Supreme Court ruled in the case of *Primicias v. Ocampo*,[72] 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.[73] 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,[74] 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.

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[71] Approximate loss incurred by the government annually on account of the exemption of judges from payment of income tax—₱50,000. (This estimate includes exemption of judges of inferior and superior courts.)

On the basis of the returns filed by 87 judges of inferior courts and courts of first instance for the year 1952, the government stands to lose ₱46,383.

Information furnished the Chairman, Student Editorial Board by Messrs. Sebastian Battad, Chief Statistician, Bureau of Internal Revenue, and Castor Ayeras, Chief, Income Tax Division, Bureau of Internal Revenue.

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

[73] Sec. 49, Rep. Act No. 409.

[74] *Ibid.*

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 right 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."

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, the 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, undeniably aware of such constiutional limitations, chose well not to disturb the substantive rights provided in the old Code of Civil Procedure.[75]

This substantive right to assessors not having been repealed is still available in all courts and parties litigant may apply for their aid 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:

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[75] 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 assessors. 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: * * *.

> "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 or 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."

II. Political Rights: Citizenship and Suffrage

A. Citizenship by Naturalization

The past year was hardly notable for novel doctrines in the field of naturalization. That was to be expected, considering that the latitude accorded the judiciary in naturalization cases is not wide. The provisions of the Naturalization Law are rather specific.[76] It is sufficient then that the decisions on this subject rendered the past year be summarized to give an idea as to the present state of the law.

There is a reiteration of the view concerning the qualifications of applicants for naturalization that they establish affirmatively their being qualified for the privilege of Filipino citizenship.[77] One of the provisions of the Naturalization Law is that the ten-year period of continuous residence may be reduced to five if the applicant is married to a Filipina.[78] The Supreme Court held in *Corbet v. Republic*[79] that the fact that applicant married a Filipina after filing his original application does not deprive him of the benefit of the shorter period, there being no evidence of bad faith.

It is likewise required by the law that the petitioner must show that he believes in the principles underlying the Philippine Constitution.[80] An applicant replied to a question concerning the principles underlying the Constitution thus: "The Philippine Government is run under three departments: executive, legislative, and the judiciary." He satisfied the requirement.[81]

The same section of the Act further requires that petitioner must have conducted himself in a proper and irreproachable man-

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[76] Com. Act No. 473.
[77] *Yap Chin v. Republic*, G.R. No. L-4177, prom. May 29, 9953.
[78] Sec. 3, Com. Act No. 473.
[79] G.R. No. L-4144, prom. April 29, 1953.
[80] Sec. 2, Com. Act No. 473.
[81] *Siock Boon v. Republic*, G.R. No. L-4668, prom. Feb. 16, 1953.

ner during the entire period of his residence in the Philippines, in his relation with the constituted government as well as with the community in which he is living.[82]

In *Yu Singco v. Republic*,[83] the Supreme Court firmly stated that what constitutes "proper and irreproachable conduct" within the meaning of the law must be determined not by the law of the country of which the petitioner is a citizen but by the standards of morality prevalent in this country and these in turn by religious beliefs and social concepts existing therein. Petitioner, a polygamist, was therefore denied Filipino citizenship. In an earlier case, the Supreme Court held that failure to file an income tax return, not shown to be intentional, is not violative of the requirement that he should have conducted himself in a proper and irreproachable manner.[84]

As to property qualification, it was held in a 1952 decision that a student does not have a lucrative trade, profession or lawful occupation.[85] A student, however, who is employed in a business firm receiving monthly salary with free board and lodging was considered as having satisfied this requirement.[86] So likewise does a commission agent or employee on a salary basis.[87]

It is further required of the applicant that he must have enrolled his minor children of school age, in any of the public or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. The applicant must show affirmatively that he has complied with this provision, otherwise, the petition will be denied.[88] This doctrine was reiterated in *Co Cai v. Republic* [89] to the effect that the above provision constitutes a condition precedent, non-compliance with which is ground for denying application.

In *Uy Yu v. Republic*,[90] the opposition to an application for naturalization was based on the alleged absence of proof that the pri-

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[82] See note 80.
[83] G.R. No. L-6162, prom. Dec. 29, 1953.
[84] *Tang Chong Yao v. Republic*, G.R. No. L-5074, prom. March 3, 1953.
[85] *Lim Tao v. Republic*, G.R. No. L-4397, prom. Oct. 24, 1952.
[86] *Lim v. Republic*, 49 O.G. 122.
[87] *Ong Veloso v. Republic*, G.R. No. L-5117, prom. May 15, 1953.
[88] *Chan Su Hok v. Republic*, G.R. No. L-3470, prom. Nov. 27, 1951.
[89] G.R. No. L-5461, prom. Dec. 17, 1953.
[90] G.R. No. L-5592, prom. Dec. 21, 1953.

vate school attended by the minor child of petitioner has been "duly recognized by the government and that it is teaching Philippine history, government, and civics." In overruling the objection, the Supreme Court found as established that before petitioner enrolled his son he made the necessary investigation and was assured that said school was recognized by the government. The contention of the Solicitor General, however, was that mere recognition by the government is not evidence that the subjects of Philippine history, government, and civics are taught. The Supreme Court rejected the contention on the ground that recognition implies that the school "has the minimum standard requirement of instruction required by the government, including the teaching of such subjects as Philippine history, government, and civics."

In another case, *Anglo v. Republic*,[91] the assertion of petitioner that he should be excluded from compliance with the above requirement insofar as his children who were in China were concerned, on account of the Civil War there and his consequent inability to communicate with them, was held untenable by virtue of a previous ruling.[92]

There was likewise last year adherence to the well-settled doctrine that perfect knowledge of any language is not required, it being sufficient that the applicant knows enough words required for the ordinary purposes of life.[93]

One of the grounds for disqualification is that the petitioner has not, during the period of his residence in the Philippines, mingled socially with the Filipinos.[94] This requirement was deemed satisfied where it was shown that the applicant finished his elementary and secondary education in public schools and his collegiate course in a duly recognized university.[95]

Concerning the persons exempted from filing a declaration of intention it was held that the mere fact that petitioner was qualified to elect Philippine citizenship under clause 4 of section 1 of Article IV but failed to do so does not exempt him from filing a declaration of intention.[96] In *Dy v. Republic*,[97] it was held that where the applicant was shown to have in fact graduated from a duly recognized school by the government and it appearing that he was in all re-

[91] G.R. No. L-5104, prom. April 29, 1953.
[92] *Ang Yee Koe Sen Kee v. Republic*, G.R. No. L-3863, prom. Dec. 27, 1951.
[93] *Uy Guat v. Republic*, G.R. No. L-5593, prom. Dec. 29, 1953.
[94] Sec. 4, Com. Act No. 473.
[95] *Ting v. Republic*, G.R. No. L-5341, prom. Dec. 29, 1953.
[96] *Kiat Chua Tan v. Republic*, G.R. No. L-4803, prom. April 29, 1953.
[97] G.R. No. L-5098, prom. Nov. 27, 1953.

spects qualified for naturalization, he was thereby exempted from filing a declaration of intention.

B. THE RIGHT TO VOTE

1. *Annulment of Registry of Voters*

In *Feliciano v. Lugay,* [98] the Supreme Court reviewed a resolution of the Commission on Elections holding that it "has the power to annul fraudulent registry lists of voters notwithstanding the fact that they have been used in an election and therefore, hereby order the Secretary of the Commission to furnish the petitioner and respondent copies of this resolution and to summon them to appear before this Commission on June 8, 1953 at 10:00 o'clock in the morning in the Office of this Commission, the petitioner to present whatever evidence he may have in support of his claims in the Bill of Particulars and the oppositor to present his side of the case."

The petition to annul the aforesaid registry lists was filed on November 2, 1951 in the form of a letter, not reduced to proper form until the 7th of the same month. According to law, November 3 was the last day after which the existing list of voters had become permanent and unrenewable until the expiration of 12 years or in 1963.

The Supreme Court sustained the Commission on Elections thus:

> "That the Commission on Elections is authorized to annul illegal registry of voters has in effect already been decided by this Court in *Remigio Prudente et al. v. Angel Genuino et al.*, G. R. No. L-5222, Resolution of November 6, 1951. Upon the other hand, the contention that the disputed lists had become permanent is of no moment, because we find that, assuming said lists to have become permanent on November 3, 1951 (according to the very dissenting opinion of Chairman Imperial), the petitioners filed with the Commission as early as November 2, 1951, a petition in the form of a letter, praying for the annulment of the lists in question. Although upon order of the Commission the respondents filed the petition in proper form only on November 7, 1951, we are inclined to rule that, for the purpose of giving to the constitutional powers of the Commission, the petition presented on November 2 was sufficient.
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> "There is also no merit in the argument that the failure of the Commission to dispose of the proceeding for annulment within fifteen days, as required in section 5 of the Revised Election Code, has resulted in the loss of its jurisdiction, inasmuch as said provision must be considered merely directory, in the same way that similar provisions for the disposition of election contests (sections 177 and 178 of the Revised Election Code) were held directory. (*Querubin v. Court of Appeals et al.*, 46 O. G. 1554, followed in *Cachola v. Cordero*, G. R. No. L-5780, February 28, 1953.) More or less the same considerations control as regards the jurisdiction of

[98] G.R. No. L-6756, prom. September 16, 1953.

> the courts over election contests and the authority of the Commission on Elections over matters placed under it by the Constitution."

The above decision merits approval. The importance of the political rights of suffrage in a democracy cannot be overestimated. It is a truism that under this form of government, the people combined represents the sovereign power which is exercised through the ballot of qualified voters.[99] In the words of Justice Laurel,

> "* * * Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it. * * *"[100]

The experience in the past elections dating back in 1947 has been on the sad side. Political parties and political leaders in many places of the Philippines have not hesitated through frauds, coercion and terrorism to pad up registry lists. As a result, even now there is the widespread belief that the presidential elections in 1949 did not reflect the choice of the qualified electors.[101] The power thus assumed by the Commission on Elections and sustained by the Supreme Court is an insurance against the continued perpetration of frauds and other anomalies in defeating popular will.

As a matter of fact, the Supreme Court should have gone further. Here, no valid objection could be interposed against the exercise of authority by the Commission on Elections as in the opinion of the Court the petition was filed a day before the list became permanent. The decision does not cover a case where the evidence as to illegal padding of the lists of voters may be available only after said list has become permanent according to law.

That is an open question. To preserve the purity of the electoral process, the writer submits that for the lists of voters to become permanent within the meaning of the Election Code, only those having the qualifications and none of the disqualifications can remain therein. If it could be shown than at any time before the next election that persons not entitled to exercise said rights are registered, then the list should not be considered permanent and the Commission on Elections empowered to rid of such names in an appropriate pro-

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[99] *Garchitorena v. Crescini*, 39 Phil. 259 (1918).

[100] *Moya v. del Fierro*, 69 Phil. 199 (1939).

[101] If the presidential election in 1949 were not vitiated by wholesale fraud, coercion and terrorism, Senator Jose P. Laurel would have been an easy victor.

ceeding. Only then would the right to suffrage receive its due protection.

2. *The right to vote of lepers*

In the Revised Election Code approved in 1947, the procedure to be followed for those qualified to vote but confined in the leprosaria was expressly set forth.[102] Thus no question could be raised as to their enjoyment of the right of suffrage. In 1951 with the amendment of certain provisions of the Revised Election Code,[103] the above sections were repealed. The question then arose as to whether or not such a repeal brought with it the loss of the right to vote of lepers.

In two important decisions decided last year, *Macolor v. Amores* [104] *and Abendante v. Relato* [105] the Supreme Court expressly affirmed their right to vote. Thus by these two decisions the Supreme Court once again manifested its determination to maintain in the Philippines the widest possible base for a truly democratic regime.

In the former case, *Macolor v. Amores*, the Supreme Court held that lepers confined in the Culion Leprosaria are not disqualified from voting simply because of their ailment. The mere fact that they are segregated "for precautionary measures" does not amount according to the court to "a disqualification." If they have the requisite residence in the leper colony then they can exercise therein their right of suffrage.

In the opinion prepared by Justice Bautista Angelo, it was held that the Culion Leper Colony constituting as it does a national reservation with an administrative organization separate and distinct from the municipal government of Coron, the lepers there confined "can only take part in elections involving national officials and not those referring to a municipal government."

The reason for this conclusion follows:

> "• • • Inasmuch as they have no connection whatsoever with the municipal government of Coron, politically or otherwise, they should not be expected to intervene in the election of its officials upon the theory that they do not form part of the people to be governed by said officials. The right of suffrage is predicated upon the theory that the people who bear the burden of government should share in the privilege of choosing the officials of that government. That is the theory of a representative form of government. • • •"

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[102] Secs. 14 and 15.
[103] Rep. Act. No. 599.
[104] G.R. No. L-6806, prom. Nov. 5, 1953.
[105] G.R. No. L-6813, prom. Nov. 5, 1953.

In the next case, *Abendante v. Relato*, the Supreme Court, again in an opinion by Justice Bautista Angelo, after affirming the doctrine in *Macolor v. Amores*, recognized the right to vote in municipal elections of those lepers confined in the Bicol Treatment Station for the election of the municipal officers of Cabusao, the reason being that the leprosarium has not been segregated from such municipality.

In distinguishing this case from the *Macolor* decision, the opinion states:

> "* * * The establishment of the Culion Leper Colony is a class by itself, which should be distinguished from other leprosaria. While the administration of the Culion Leper Colony is expressly provided for in the Revised Administrative Code (Sections 1066-1068), the Bicol Treatment Station was established by virtue merely of an administrative order issued by the Department of Health segregating a portion of the municipality of Cabusao for the treatment of lepers in the Bicol region. This segregation cannot have the effect of separating the leprosarium from the political territory of the municipality comprising it. It still continues to be part and parcel of it and under its municipal government. This has to be so unless there is an express law to the contrary. Here there is none. This being so, it follows that the lepers who voted in precinct No. 11 who are all residents of said municipality should be declared as having the requisite residence to vote in said precinct if their intention is to vote in that municipalty." [106]

III. Civil Rights: Constitutional Rights of an Accused

A. Right to a Speedy Trial

There is a reaffirmation, at least verbally, of the right to a speedy trial last year in *Manabat v. Provincial Warden*.[107] Petitioner Manabat filed a petition for habeas corpus, in effect alleging that he was charged with two offenses in November, 1945, that since

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[106] As to the claim that the lepers who cast their votes in Precinct No. 11 did not have their qualifications because they were allegedly residing in another municipality, the Supreme Court, after noting that the claim involved a question of fact which should be established by sufficient evidence which was wanting in this case, held: "The Board of Inspectors is presumed to have passed upon the qualifications of said voters when they presented themselves for registration and when the Board entered their names in the list, it must be because they were qualified. Even supposing that said voters are disqualified for lack of residence qualifications this matter should have been brought up before the Board of Inspectors during the period provided for by law for the exclusion of voters. Having failed to do so, it is now too late to raise this question in these proceedings. Moreover, the law is clear that 'in an election contest proceedings, the registry list, as finally corrected by the board of inspectors, shall be conclusive in regard to the question as to who had the right to vote in said election.' (Section 176, paragraph (f), Revised Election Code). This injunction is mandatory. (Dizon v. Cailles, 56 Phil. 695.)"

[107] G. R. No. L-6438, prom. November 27, 1953.

that date he had been confined in jail, and that save for two hearings wherein only two out of several witnesses for the prosecution testified, no effort was thereafter made by the court and the prosecution attorney to have the cases tried and terminated.

Respondent presented several circumstances to justify the delay. One is that petitioner, who broke jain on April 13, 1946, was not recaptured by the authorities until October 7, 1949. Another is that the cases were set for joint trial on several dates in 1951, but the hearings were postponed sometimes at the instance of the fiscal, other times upon agreement of both parties, and still at other times, at the instance of the defense itself. Respondent also attempted to explain why the cases were not tried in 1952 and up to February 6, 1953, when this petition was filed, stating that some prosecution witnesses transferred their residences and the presiding judge was designated to another office.

The Supreme Court found the delay in the trial of the two cases in some if not in great measure due to petitioner. He escaped from jail and was at large for about four months. He agreed to and requested for postponements in 1951.

It did find though that since 1952 the trial has been delayed without justification, especially so as here the petitioner has been kept under detention. Instead of granting habeas corpus, however, which would have erased all doubts as to its continuing determination to give actuality to the right to speedy trial, the petition for release in this habeas corpus proceeding was denied. The Supreme Court, in the opinion prepared by Justice Montemayor, contented itself with urging and enjoining the Court of First Instance of Nueva Ecija and the Provincial Fiscal to have the cases tried and terminated as early as possible.

Its reason was that:

> "• • • the circumstances obtaining in the present case do not in our opinion justify the application of the ruling laid down in said case of Conde, because here the delay was in part due to the petitioner himself, and because the delay which was not so long was partly although not wholly justified." [108]

B. PROTECTION AGAINST SELF-INCRIMINATION

In *Isabela Sugar Co. and Montilla v. Macadaeg*,[109] the constitutional right of a person not to be compelled to be a witness against

[108] The *Conde* case adverted to is *Conde v. Judge of First Instance of Tayabas*, 45 Phil. 173 (1923).

[109] G. R. No. L-5924, prom. October 28, 1953.

himself[110] was further vitalized. In that proceeding instituted to annul the order of respondent judge compelling petitioner Montilla to answer certain questions of a deposition against petitioner's objection, the Supreme Court, in granting the writ prayed for, stated that the question would have the tendency to incriminate petitioner and was thus within the prohibition.[111] In thus ruling, the Supreme Court through Justice Labrador adopted the view of Chief Justice Marshall concerning the scope of the constitutional privilege. As was pointed out by the latter, usually a crime or a criminal act may contain two or more elements and that a question may have a tendency to incriminate even if it turns out to elicit only one of said elements.[112]

Had petitioner Montilla been compelled to answer the above question, it would have appeared that he paid only ₱68,000 for property which he had sold for ₱200,000, thus increasing his net worth within the meaning of the War Profit Tax Law.[113] He would thus be admitting he made a profit, which is one of the elements of the offense defined in the Act.

It was likewise contended that the petitioner had waived the privilege when he answered all the questions about the purchase of the property, the date thereof, the price paid, with "I do not remember." In rejecting the contention, the Court considered such answer as "clearly a refusal to answer, and the privilege is not deemed waived thereby."

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[110] Art. III, Sec. 1, Cl. 18, Constitution.

[111] The question propounded was: "Did you pay any war profit tax for the sale of those three properties mentioned by you?"

[112] According to Chief Justice Marshall: "Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the Court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible but a probable case that a witness, by disclosing a single fact, may complete the testimony against himself, and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing; but all other facts without it would be insufficient. While that remains concealed within his bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description. * * * It would seem, then, that the Court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws. (Marshall in Aaron Burr's Trial, Robertsons Rep. I, 208, 244, quoted in VIII Wigmore, p. 355.)"

[113] Rep. Act No. 55.

C. PROHIBITION AGAINST INFLICTION OF CRUEL AND UNUSUAL PUNISHMENT

Under the Constitution, there is a prohibition against the infliction of cruel and unusual punishment.[114] In a resolution by the Supreme Court denying a motion for reconsideration,[115] it was expressly held that imprisonment for five years for illegal possession of firearms is not violative of the above constitutional provision. To fall within its terms the penalty must be more than merely harsh, excessive, out of proportion, or severe. What is banned is punishment that is "flagrantly and plainly oppressive" or "wholly disproportionate to the nature of the offense as to shock the moral sense of the community." It was the opinion of the Supreme Court that, having in mind the necessity for a radical measure and the public interest at stake, confinement for five years for possessing firearms cannot be said "to be cruel and unusual, barbarous, or excessive to the extent of being shocking to public conscience."[116]

It is to be noted that in another case decided last year,[117] the same question was raised. In this case the accused was sentenced to

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[114] Art. III, Sec. 1, Cl. 19.

[115] *People v. Estoista*, G. R. No. L-5793, prom. December 3, 1953.

[116] The resolution further stated: "It is of interest to note that the validity on constitutional grounds of the Act in question was contested neither at the trial nor in the elaborate printed brief for the appellant; it was raised for the first time in the course of the oral argument in the Court of Appeals. It is also noteworthy, as possible gauge of popular and judicial reaction to the duration of the imprisonment stipulated in the statute, that some members of the Court at first expressed opposition to any recommendation for executive clemency for the appellant, believing that he deserved imprisonment within the prescribed range."

In the decision rendered in the *Estoista* case, prom. Aug. 27, 1953, the Supreme Court did not pass squarely on the question of whether or not the 5-year period of imprisonment is contrary to the above constitutional provision: "Without deciding whether the prohibition of the constitution against infliction of cruel and unusual punishment applies both to the form of the penalty and the duration of imprisonment, it is our opinion that confinement from 5 to 10 years for possessing or carrying firearm is not cruel or unusual, having due regard to the prevalent conditions which the law proposes to suppress or curb. The rampant lawlessness against property, person, and even the very security of the Government, directly traceable in large measure to promiscuous carrying and use of powerful weapons, justify imprisonment which in normal circumstances might appear excessive. If imprisonment from 5 to 10 years is out of proportion to the present case in view of certain circumstances, the law is not to be declared unconstitutional for this reason. The constitutionality of an act of the legislature is not to be judged in the light of exceptional cases. Small transgressors for which the heavy net was not spread are, like small fishes, bound to be caught, and it is to meet such a situation as this that courts are advised to make a recommendation to the Chief Executive for clemency or reduction of the penalty. (Art. 5, Revised Penal Code; *People vs. De la Cruz*, G. R. No. L-5790.)"

[117] *People v. De la Cruz*, G. R. No. L-5790, prom. April 17, 1953.

pay a fine of ₱5,000 and five years imprisonment as well as barred from engaging in wholesale and retail business for the same period of time for having sold a can of milk for ₱.10 more than the price prescribed by law. The Supreme Court through Justice Bengzon was able to avoid a definite ruling on the subject by exercising its discretion and lowering the penalty complained of to 6 months and the fine to ₱2,000. Thus, in its own words, it reached an area of compromise "which skirts the constitutional issue, yet executes substantial justice." [118]

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[118] This case is valuable for the rather extensive discussion on the implications of the above constitutional provision.

An earlier case referred to in the *de la Cruz* case, *U. S. v. Borromeo* (23 Phil. 279 [1912]), 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 theretofore 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 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.

D. DOUBLE JEOPARDY

People v. Acierto [119] **is authority for the principle that there is no double jeopardy in the prosecution of an accused in a civil court even if he had been previously tried and convicted by a military court martial, if the military tribunal had no jurisdiction over him.**

Here the accused, a court martial reporter in a U.S. Army base and later employed on a piece-work basis, was charged with falsification of private documents. On the belief that he was an employee of the U.S. Army and therefore subject to military law, the American military authorities tried him before a court martial. He questioned its jurisdiction unsuccessfully. He was convicted, but his sentence was set aside by the Commanding General on the ground of lack of jurisdiction. Subsequently tried before a Philippine court, he again raised the question of jurisdiction and invoked the protection against being placed in double jeopardy.

The Supreme Court held that he was not thereby placed in double jeopardy. It also noted that "this is the exact reverse of the position defendant took at the military trial." This, the court said, the de-

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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 ₱2,000, 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 derive, 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 5 years and ₱5,000 is cruel and unusual for a violation that merely resulted in a ₱.10 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."

[119] G. R. No. L-2708, prom. Jan. 30, 1953.

fendant cannot do. "The defendant was estopped from demurring to the Philippine court's jurisdiction and pleading double jeopardy on the strength of his trial by the court martial. A party will not be allowed to make a mockery of justice by taking inconsistent positions which if allowed would result in brazen deception. It is trifling with the courts, contrary to the elementary principles of right dealing and good faith, for an accused to tell one court that it lacks authority to try him and, after he has succeeded in his effort, to tell the court to which he has been turned over that the first has committed error in yielding to his plea."

In rejecting the defendant's stand, the high court further observed that the United States Military law, as construed by the Judge Advocate General of the U.S. Army, is to the effect that where a civilian working with the Army is not a regular employee thereof, such as the defendant who "worked as he pleased and was not amenable to daily control and disciplines of the Army," he "cannot be subjected under it to a military trial in time of war with any more legality than he could be subjected to such a trial in time of peace." [120]

Under the above view, the court martial had no jurisdiction and jeopardy could not have then attached. It is well-settled in this jurisdiction that the protection against being twice placed in jeopardy may be lost by the accused consenting to a dismissal of the case. The Supreme Court considers such consent as amounting to a waiver of said protection.[121]

In *People v. Romero*,[122] the cases were dismissed in view of the failure of six principal witnesses for the prosecution to appear notwithstanding a motion filed by the fiscal to postpone the trial until their arrival. A motion for reconsideration was filed by the fiscal but was denied. From such order of denial the prosecution appealed to the Supreme Court.

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[120] Colonel Wurfel, citing Winthrop's Military Law and Precedents, 2d ed., Vols. 1 and 2, p. 100 as cited in *People v. Acierto*.

[121] *People v. Salico*, 47 O. G. 1765. Sec. 9, Rule 113, Rules of Court, provides: "*Former conviction or acquittal or former jeopardy.*—When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated, without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in he offense charged in the former complaint or information."

[122] G. R. No. L-4517-20, prom. May 25, 1953.

One of the issues raised by the accused is that of double jeopardy. The Supreme Court disposed of it by referring to its resolution of July 31, 1951, in the same cases. The resolution referred to was issued as a result of the dismissal, the judge refusing postponement of trial sought by the fiscal on the ground that his witnesses were not sufficient to insure conviction.

In that resolution, the Supreme Court stated:

> "Whatever explanation that may be given by the attorneys for the defendant, it is a fact which cannot be controverted that the dismissal of the cases against the defendant was ordered upon the petition of the defendant's counsel. In opposing the postponment of the trial of the cases and insisting on the compliance with the order of the court dated May 25, 1950 that the cases be dismissed if the Provincial Fiscal was not ready for trial on the continuation of the hearing on June 14, 1950, he obviously insisted that the cases be dismissed. The fact that the counsel for the defendant and not the defendant himself, *personally* moved for the dismissal of the cases against him, had the same effect as if the defendant had personally moved for such dismissal, inasmuch as the act of the counsel in the prosecution of the defendant's cases was the act of the defendant himself, for the only case in which the defendant cannot be represented by his counsel is in pleading guilty according to Section 3, Rule 114, of the Rules of Court."

The Court in *People v. Salico* [123] set forth the proper procedure that a defendant is to take when the fiscal seeks postponement because of insufficient witnesses in order that subsequent prosecution after dismissal would be barred by double jeopardy.

> "If the defendant wants to exercise his constitutional right to a speedy trial, he should ask, not for the dismissal, but for the trial of the case. If the prosecution asks for the postponement of the hearing and the court believes that the hearing cannot be postponed anymore without violating the right of the accused to a speedy trial, the court shall deny the postponement and proceed with the trial and require the fiscal to present the witnesses for the prosecution; and if the fiscal does not or cannot produce his evidence and consequently fails to prove the defendant's guilt beyond reasonable doubt, the Court, upon the motion of the defendant, shall dismiss the case. Such dismissal is not in reality a mere dismissal although it is generally so called, but an acquittal of the defendant, because of the prosecution's failure to prove the guilt of the defendant, and it will be a bar to another prosecution for the same offense even though it was ordered by the Court upon motion or with the express consent of the defendant in exactly the same way as a judgment of acquittal obtained upon the defendant's motion."

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[123] See note 121.

In another case, *Pendatun v. Aragon*,[124] the prosecution for physical injuries and slander against petitioner Pendatun was "provisionally" dismissed on motion of the private prosecution, the complainant's witnesses being ill. Counsel for defendant-petitioner wrote the words "No objection" on the motion and signed his name below it.

Under such facts the Supreme Court held that the case can be reinstated without the accused being placed in jeopardy. The reason of the court follows:

> "The words 'No objection' written on the motion to dismiss directly conveyed, as undoubtedly they were intended to convey, the idea of full accordance with the proposed dismissal. It was not the same as acquiescence manifested by signs, actions, facts, inaction or silence. It was the same as saying 'I agree' although it was not as emphatic as the latter expression. Having manifested 'no objection' to the motion for the express purpose of obtaining a ruling of the court upon such motion, counsel could not have meant other than that he was in agreement with the dismissal, and there is no question that that was what the court and the prosecution understood him to mean; otherwise, trial could have been postponed instead of the case being temporarily dismissed, there being good grounds for continuance."

An interesting aspect of the question of double jeopardy was presented by *Lim v. Oreta*.[125] Petitioner Lim along with twenty-one others was accused of gambling. He pleaded guilty but he reserved his right to present evidence to prove that the sum of ₱1,000 which was seized from his pocket during the gambling raid by the peace officers and which was then in the custody of the authorities of Caloocan was not a part of the proceeds or instrument of the crime.

The court then issued a decision ordering petitioner to pay a fine. Petitioner did pay the fine. When the case was called for hearing to pass upon the disposition of the ₱1,000, petitioner pleaded double jeopardy. He filed a petition for prohibition against the justice of the peace who is the respondent herein, and the Rizal court of first instance granted the prohibition.

The Supreme Court rejected the contention of the petitioner, saying that the court of first instance "overlooked both the reservation made by the accused, and the directive of the Justice of the Peace calling for a hearing * * * which was part and parcel of the sentence * * *."

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[124] G. R. No. L-5469, prom. September 25, 1953.
[125] G. R. No. L-6247, prom. November 27, 1953.

The decision handed down by the respondent judge was not meant to be final, for he said, "once the accused is found guilty and has paid the fine, the decision is final." The Supreme Court held that such a decision was not final so as to make the court lose its jurisdiction to hear further the said case. It left something to be done later, *i. e.*, the determination of the question whether the money should be confiscated—a proper issue in the criminal proceeding. At any rate, the Supreme Court added, "Unless and until that issue (expressly reserved for subsequent adjudication) was passed upon, the judgment could not be regarded final." If the Court has not lost jurisdiction, further proceedings on the same case would not be considered double jeopardy.

IV. Social and Economic Rights

A. The Non-Impairment Clause

In *Rutter v. Esteban*, [126] the basic purpose for which the non-impairment clause of the Constitution was adopted, namely the immunity from legislative interference of contractual 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 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."

The question of the validity of Republic Act No. 342, approved by Congress on July 26, 1948, was unavoidable as it was the basis for the lower court's dismissing an action filed by the plaintiff Rutter to recover the balance of the purchase price of property sold by him

[126] G. R. No. L-5790, prom. April 17, 1953.

to the defendant on August 20, 1941 and payable during the occupation period. [127]

Republic Act 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.[128]

At the time of the issuance of the executive orders and presumably of the enactment of Republic Act 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 be restored and an improvement in her economy noted. No

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[127] 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 hereon, 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 his appeal."

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

wonder then that the suspension of enforcement of payment of the obligations then existing was declared 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.[129]

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*.[130] 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

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[129] 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 fulfillment 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 right 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."

[130] 290 U.S. 398 (1934).

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 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. 1928, 1801-1303). 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*,[131] 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.

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[131] 31 Phil. 218.

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.
>
> "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. * * *" [132]

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 Republic Act 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."

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

Three American Supreme Court decisions [133] and six state cases [134] 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 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 operation 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."

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[133] *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).

[134] *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).

B. WHEN EXPROPRIATION FOR SUBDIVISION INTO SMALL LOTS ALLOWABLE

Under the Constitution, the Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals.[135] The above provision of the Constitution stresses the importance of economic rights. It removes any doubt that the expropriation of lands for the purpose of subdividing them into small lots and conveying them at cost to individuals who need them is in accordance with the concept of public use. This is an affirmation of the view that the government is not supposed to stand idly by and not do its share in ending economic conditions that cause social maladjustments. One of them is the existence of big estates which with its usual feature of absentee landlordism has been responsible for tenant unrest. Likewise, this provision of the Constitution is a recognition that while tenancy legislation may be remedial in character, one way of extirpating the evil arising from the existence of tenancy in the Philippines is to enable tenants to own the lands they till.

The power of eminent domain as conferred by the above constitutional provision is limited to "expropriation of large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city" and does not extend to "condemnation of a small property * * *." [136] In such a case, it "bears a direct relation to public welfare." Expropriation would not lie where it is "instituted for the economic relief of a few families devoid of any consideration of public health, public peace and order, or other public advantage."

The doctrine in the *Guido* case that while the government may expropriate urban lands to remedy the housing shortage, it could not exercise the power when the taking does not insure to the community at large but benefits at the most a mere handful of people, was followed in the later cases of *Borja v. Commonwealth of the Philippines*,[137] *City of Manila v. Arellano Law College*,[138] *Urban Estates v. Montesa*,[139] and *Republic v. Samia*.[140] In the *Guido* case, the property sought to be expropriated was over two hectares, in the *Borja* case about a hectare, in the *Arellano Law* case less than a

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[135] Art. XIII, Sec. 4.
[136] *Guido v. Rural Progress Administration*, 47 O.G. 1848.
[137] G. R. No. L-1496, prom. November 29, 1949.
[138] 47 O.G. 4197.
[139] G. R. No. L-3830, prom. March 15, 1951.
[140] G. R. No. L-3900, prom. July 18, 1951.

hectare, in the *Urban Estates* case about five hectares, and in the *Samia case* more than half a hectare, all urban lands.

There has been no inflexible adherence, however, to the above doctrine. In October of last year, in *Rural Progress Administration v. Reyes,*[141] the Supreme Court sustained the expropriation of a two hectare lot, more than one-half of which is occupied by fishponds, forming part of a bigger area consisting of three parcels, more than ten hectares in extent. These parcels, originally belonging to the San Juan de Dios Hospital, were from time immemorial occupied by various individuals. The actual occupants, four families, were not however given preference in their sale, the purchaser being a third party, defendant Reyes. Hence this action for expropriation at the instance of the Rural Progress Administration for the benefit of those who are living there.

In holding that the *Guido* doctrine does not apply, the Supreme Court, in an opinion penned by Justice Pablo, concurred in by only two other justices, with two other justices concurring in the result and one filing his own concurring opinion, considered the disputed parcel as part of an extensive immovable property, occupied and improved from time immemorial by the actual occupants and their predecessors and therefore considered as pertaining to the type which were and are classified as friar lands.

To show the drift away from the thinking dominant in the *Guido* decision, the three justices seemed to view with approval the legislative determination to consider as subject to expropriation not only big haciendas but any immovable property or interest causing serious conflicts which may be settled by the exercise of the power of eminent domain. The same justices likewise manifest their difference with the *Guido* holding when they emphasize not so much the extent of the land sought to be condemned but the requirement of social justice.

C. ESCHEAT OR REVERSION TO STATE SOLUTION TO SALE MADE TO ALIENS HELD INVALID UNDER KRIVENKO DECISION

It is to be remembered that in *Krivenko v. The Register of Deeds of Manila* [142] the majority of the Supreme Court over strong dissents held that *residential* and *commercial* lots may be considered agricultural within the meaning of the constitutional provision prohibiting the transfer of any private agricultural land to individuals, corpora-

[141] G. R. No. L-4703, prom. October 8, 1953. See Dean Vicente G. Sinco's "The Constitutional Policy on Land Tenure," 28 *Phil. Law Journal* 6, p. 837.

[142] 44 O.G. 471.

tions or associations not qualified to acquire or hold lands of the public domain in the Philippines save in cases of hereditary succession.[143]

That provision of the Constitution took effect on November 15, 1935 when the Commonwealth Government was established. The interpretation as set forth in the *Krivenko* decision was only handed down on November 15, 1947. Prior to that date there were many who were of the opinion that the phrase *agricultural land* should be construed strictly and not be made to cover *residential* and *commercial lands*. Acting on that belief, several transactions were entered into transferring such lots to alien vendees.

After the *Krivenko* decision the Filipino vendors sought recovery of the lots in question on the ground that the sales were null and void. No definite ruling was made by the Supreme Court on the matter until September of last year when on the 29th of said month, *Rellosa v. Gaw Chee Hun*,[144] *Bautista v. Uy Isabelo*,[145] *Talento v. Makiki*,[146] *Caoile v. Chiao Peng* [147] were decided.

Before discussing the holding on the above issue in these four cases, it is to be noted that the sales in question occurred during the period of the Japanese occupation, 1944 in the *Rellosa* case, and 1943 in the other cases.[148] As to transactions occurring prior to the period of Japanese occupation in 1942 but after the effectivity of the Constitution in 1935, the leading cases are those of *Cortes v. O Po Poe* [149] and *Cortes v. Dee Chian Hong*.[150] In both cases, the ruling announced in the earlier decisions above noted dealing with transactions entered into during the occupation period was followed.

Of the four decisions in September, 1953, the most extensive discussion of the question is found in *Rellosa v. Gaw Chee Hun*, the

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[143] Art. XIII, Sec. 5.

[144] G. R. No. L-1411, prom. September 29, 1953.

[145] G. R. No. L-3007, prom. September 29, 1953.

[146] G. R. No. L-3529, prom. September 29, 1953.

[147] G. R. No. L-4068, prom. September 29, 1953.

[148] The period of sale is material in view of the holding in the earlier case of *Cabautan v. Uy Hoo*, G. R. No. L-2207, prom. January 23, 1951, where the Supreme Court erroneously, in the opinion of the author, held that the Constitution was not in force being of a political character, ignoring thereby the fact that while the Constitution was suspended as to the belligerent occupant it could not be so insofar as the Filipinos were concerned who continued to owe allegiance to the legitimate sovereign as the Supreme Court itself held in *Laurel v. Misa*, 44 O.G. 1176. Under the constitution imposed by the belligerent occupant (Art. VIII, Sec. 5), there was a similar provision found in our Constitution prohibiting the transfer of private agricultural land to aliens.

[149] G. R. No. L-2943, prom. October 30, 1953.

[150] G. R. No. L-3107, prom. November 27, 1953.

opinion being penned by Justice Bautista Angelo with the concurrence only of one Justice. Justices Labrador, Paras, Tuason and Montemayor concurred in the result. The necessary sixth vote for a decision was given by Justice Bengzon who had a two-paragraph concurring opinion disagreeing with Justice Bautista Angelo on the two cases,[151] cited by him to sustain his ruling. There were two dissenting opinions by Justices Pablo and Reyes. Justice Padilla who did not take part in this decision wrote a dissenting opinion in *Caoile v. Yu Chiao Peng.*

The doctrine as announced in the *Rellosa* case is that while the sale by a Filipino-vendor to an alien-vendee of a residential or a commercial lot is null and void as held in the *Krivenko* case, still the Filipino-vendor has no right to recover under a civil law doctrine, the parties being *in pari delicto.* The only remedy to prevent this continuing violation of the Constitution which the decision impliedly sanctions by allowing the alien vendees to retain the lots in question is, in the opinion of Justice Bautista Angelo, either escheat or reversion. As expressed by the Court:

> "By following either of these remedies, or by approving an implementary law as above suggested, we can enforce the fundamental policy of our Constitution regarding our natural resources without doing violence to the principle of *pari delicto.* With these remedies open to us, we see no justifiable reason for pursuing the extreme, unusual remedy now vehemently urged by the *amici curiae.*" [152]

The earnest and learned effort of Justice Bautista Angelo to discover the correct solution is undeniable. With all due respect, it is submitted however that he failed. Unwittingly his opinion did violence not only to the principle of *pari delicto* but even more so to the Constitution. As it is, it appears that the Court neither enforced "the fundamental policy of our Constitution regarding our natural resources" nor avoided "doing violence to the principle of *pari delicto.*"

Assuming however that the Court was in fact confronted with a choice between a well-settled doctrine of civil law known as *pari delicto* and a mandate of the Constitution, the choice should not have proved too difficult. It would appear from the above excerpt that Justice Bautista Angelo was of another mind. The Constitution is

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[151] *Bough v. Cantiveros,* 40 Phil. 210 (1919) and *Perez v. Herranz,* 7 Phil. 693 (1907).

[152] The author of this article is one of the *amici curiae* in this case along with his law partners Ambrosio Padilla and Gil R. Carlos. They are likewise counsel in the *Dee Chian Hong* and *O Po Poe* cases. They sustain the view that the Filipino-vendor has the right to recover.

supreme, but not when it does "violence to the principle of *pari delicto*." Is that to accord deference to the fundamental law?

It is submitted that the Supreme Court was mistaken in holding that both Filipino-vendor and alien-vendee cannot be considered as innocent parties as both are *in pari delicto*. Had the sale by and between Filipino-vendor and alien-vendee occurred after the decision in the *Krivenko* case, then the above finding of the court would be correct that both Filipino-vendor and alien-vendee can not be considered as innocent parties within the contemplation of the law. Both of them would be held equally guilty of evasion of the constitution.

Since, however, the sales in question took place prior to the *Krivenko* decision, at a time when the assumption could be honestly entertained that there was no constitutional prohibition against the sale of commercial or residential lots to alien-vendee, in the absence of a definite decision by the Supreme Court, neither Filipino-vendor nor alien-vendee, therefore, can be held to have been equally guilty of evading the Constitution. For evidently evasion implies at the very least knowledge of what is being evaded.

The new Civil Code expressly provides:

> "Mistake upon a doubtful or difficult question of law may be the basis of good faith." [153]

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[153] Art. 526, par. 3. The above provision is merely a reiteration of the doctrine announced in the case of *Kasilag v. Rodriguez*, decided on December 7, 1939 (40 O.G. [3rd Sup.] 27), the pertinent excerpt follows:

"This being the case, the question is whether good faith may be premised upon ignorance of the laws. Manresa, commenting on article 434 in connection with the preceding article, sustains the affirmative. He says:

"'We do not believe that in real life there are not many cases of good faith founded upon an error of law. When the acquisition appears in a public document, the capacity of the parties has already been passed upon by competent authority, and even established by appeals taken from final judgments and administrative remedies against the qualification of registrars, and the possibility of error is remote under such circumstances; but, unfortunately, private documents and even verbal agreements far exceed public documents in number, and while no one should be ignorant of the law, the truth is that even we who are called upon to know and apply it fall into error not infrequently. However, a clear, manifest, and truly unexcusable ignorance is one thing, to which undoubtedly refers article 2, and another and different thing is possible and excusable error arising from complex legal principles and from the interpretation of conflicting doctrines.

"'But even ignorance of the law may be based upon an error of fact, or better still, ignorance of a fact is possible as to the capacity to transmit and as to the intervention of certain persons, compliance with certain formalities and appreciation of certain acts, and an error of law is possible in the interpretation of doubtful doctrines.' (Manresa, Commentaries on the Spanish Civil Code, Volume IV, pp. 100, 101 and 102.)

According to Justice Bautista Angelo, both parties are equally guilty of evasion of the Constitution, based on the broader principle that "both parties are presumed to know the law." This statement that the sales entered into prior to the *Krivenko* decision were at that time already vitiated by a guilty knowledge of the parties is unrealistic, to say the least. A proper understanding of a constitutional system, wherein the words of the Constitution acquire meaning through judicial decisions, would have avoided such an error.

Reference may be made by way of analogy to a decision adjudging a statute void. Under the orthodox theory of constitutional law, the act having been found unconstitutional was not a law, conferred no rights, imposed no duty, afforded no protection.[154] As pointed out by Chief Justice Hughes though in the recent case of *Chicot County Drainage District v. Baxter State Bank*:[155]

> "It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination."

After the *Krivenko* decision, there is no doubt that an alien-vendee can not hold on to the property acquired before its promulgation. It is as if an act granting aliens the right to acquire residential and commercial lots was annulled by the Supreme Court as contrary to the provision of the Constitution [156] prohibiting aliens from acquiring private agricultural land.

The question before the Court, therefore, was how to divest the alien of such property right on terms equitable to both parties. That question was to be justly resolved in accordance with the mandates of the Constitution not by a wholesale condemnation of both parties for entering into a contract at a time when there was no ban as yet

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"According to this author, gross and inexcusable ignorance of the law may not be the basis of good faith, but possible, excusable ignorance may be such basis." (at pp. 260-261).

[154] *Norton v. Shelby County*, 118 U.S. 425.

[155] 308 U.S. 731.

[156] Art. XIII, Sec. 5.

arising from the Supreme Court's decision, which could not have been anticipated. After all, there were four strong and vigorous dissents.

Yet the Supreme Court just assumed both parties of being *in pari delicto* and let it go at that. This is rather judicial abdication.

Before concluding this brief discussion of this case, the author submits that the Court should have held that the Constitution does require the restitution of the property sold by the Filipino-vendor. The *Krivenko* decision has held in clear, explicit and unambiguous language that:

> "We are deciding the instant case under section 5 of Article XIII of the Constitution which is more comprehensive and more absolute in the sense that it prohibits the transfer to aliens of any private agricultural land including residential land whatever its origin might have been.
>
> "This prohibition makes no distinction between private lands that are strictly agricultural and private lands that are residential or commercial. The prohibition embraces the sale of private lands of any kind in favor of aliens.
>
> "It is well to note at this juncture that in the present case we have no choice. We are construing the Constitution as it is and not as we may desire it to be. Perhaps the effect of our constitution is to preclude aliens, admitted freely into the Philippines, from owning sites where they may build their homes. But if this is the solemn mandate of the Constitution, we will not attempt to compromise it even in the name of amity or equity.
>
> "For all the foregoing, we hold that under the Constitution aliens may not acquire private or public agricultural lands, including residential lands, and, accordingly, judgment is affirmed, without costs."

Alien-vendee is therefore incapacitated or disqualified to acquire and hold real estate. That incapacity and that disqualification should date from the adoption of the Constitution on November 15, 1935. That incapacity and that disqualification, however, was made known to Filipino-vendor and to alien-vendee only upon the promulgation of the *Krivenko* decision on November 15, 1947. Alien-vendee, therefore, cannot be allowed to continue owning and exercising acts of ownership over said property, when it is clearly included within the Constitutional prohibition. Thus it is respectfully submitted that alien-vendee should be made to restore the property with its fruits and rents to Filipino-vendor, its previous owner, who in the utmost good faith transferred his title over the same to alien-vendee.

The Constitution bars alien-vendees from owning the property in question. By dismissing these actions though the lots remained in alien hands. Notwithstanding the solution of escheat or reversion offered, they are still, at the moment of writing, in alien hands.

Yet it is clear that alien-vendee cannot consistently with the constitutional provision, as interpreted in the *Krivenko* decision, continue owning and exercising acts of ownership over the real estate in question. It ought to follow then, if such a continuing violation of the fundamental law is to be put an end to, that the Filipino-vendor, who in good faith entered into a contract with an incapacitated person, transferring ownership of a piece of land after the Consitution went into full force and effect, should, in the light of the ruling in the *Krivenko* case, be restored to the possession and ownership thereof. Any other construction would defeat the ends and purposes not only of this particular provision in question but the rest of the Constitution itself.

The Constitution frowns upon the title remaining in the alien-vendees. Restoration of the property upon payment of price received by Filipino vendor or its reasonable equivalent as fixed by the court is the answer.

To give the constitutional provision full force and effect, in consonance with the dictates of equity and justice, the restoration to Filipino-vendor upon the payment of a price fixed by the court is the better remedy. He thought he could transfer the property to an alien and did so. Now that the *Krivenko* case had made clear that Filipino-vendor had no right to sell nor the alien-vendee to purchase the property in question, the obvious solution would be for Filipino-vendor to reacquire the same. That way the Constitution would be given, as it ought to be given, respect and deference.

The surmise had been made above that numerous transactions affecting real estate in this character were entered into after the Constitution went into full force and effect. As a matter of fact, it is the possibility that such transactions may continue that convinced this Court in the *Krivenko* case to rule definitely on the matter, notwithstanding the efforts of both parties to withdraw the case from it. Thus—

> "• • • What is material and indeed very important, is whether or not we should allow interference with the regular and complete exercise by this Court of its constitutional functions, and whether or not after having held long deliberations and after having reached a clear and positive conviction as to what the constitutional mandate is, we may still allow our conviction to be silenced, and the *constitutional mandate to be ignored or misconceived*, with all the harmful consequences that might be brought upon the national patrimony. For it is but natural that the new circular be taken full advantage of by many, with the circumstance that perhaps the constitutional question may never come up again before this court,

> because both vendors and vendees will have no interests but to uphold the validity of their transactions, and very unlikely will the registers of deeds venture to disobey the orders of their superior. Thus, the possibility for this court to voice its conviction in a future case may be remote, with the result that our indifference of today *might signify a permanent offense to the Constitution.*" [157]

From the above, it would seem that concern was expressed by the Supreme Court over the possibility that transactions prohibited by the Constitution might continue in the absence of a definitive ruling on the matter. As to future transactions, such possibility is now remote, if not entirely non-existent. As to past transactions entered into at a time when the scope of the prohibition regarding the sale and transfer of private agricultural land was still in doubt, the *Krivenko* ruling, while it indicated the direction that judicial action will take, did not settle the matter with the requisite degree of precision. The Supreme Court could not have done so, because the issue in that particular case did not call for such a pronouncement. What was involved therein was only the power of the Register of Deeds to deny registration to a document transferring private agricultural land to an alien. In view of the *Rellosa* and other decisions noted, there cannot be the slightest doubt either that the force of the *Krivenko* doctrine was considerably impaired. As things stand, the lands are still in the possession of aliens. That the Constitution, as interpreted by the Supreme Court in the *Krivenko* case, prohibits. The same Constitution under the *Rellosa* doctrine does not seem to speak unequivocally.

In fairness to the Supreme Court, however, it is not to be lost sight of that a remedy to this continuing violation of the Constitution was offered, by way of an *obiter*, it is true. Thus:

> "If we go deeper in the analysis of our situation we would not fail to see that the best policy would be for Congress to approve a law laying down the policy and the procedure to be followed in connection with transactions affected by our doctrine in the Krivenko case. We hope that this should be done without much delay. And even if this legislation be not forthcoming in the near future, we do not believe that public interest would suffer thereby if only our executive department would follow a more militant policy in the conservation of our natural resources as ordained by our Constitution. And we say so because there are at present two ways by which this situation may be remedied, to wit, (1) action for reversion, and (2) escheat to the state. An action for reversion is slightly different from escheat proceeding, but in its effects they are the same. They only differ in procedure. Escheat proceedings may be instituted as

[157] At pages 475-476. Italics the author's.

a consequence of a violation of Article XIII, Section 5 of our Constitution, which prohibits transfers of private agricultural lands to aliens, whereas an action for reversion is expressly authorized by the Public Land Act (Sections 122, 123, and 124 of Commonwealth Act No. 141)."

V. The Close of an Era and the Beginning of a New

The verdict is clear. In the field of constitutional law, the Supreme Court had a task to do, and it did it. What is more, subject to the qualifications above noted, it did it well. It proved both courageous and wise. The way things were in 1953, wisdom needed courage.

Without such qualities constitutional democracy, as we know it, might not have endured. The truth of the above observation was demonstrated in the various decisions noted. Its most conspicous instance however remains to be told.

Faith in the purity of the electoral process in 1949 was seriously undermined. Lacking the base of popular support, the Quirino Administration went out of its way to court it by measures of dubious legality. These measures were challenged, and successfully too in most cases. The Supreme Court saw to it that constitutional limitations were observed. These judicial decisions certainly did not increase the popularity of the party then in power.

Unmindful of the quite evident public demand for a change, President Quirino sought anew a mandate from the electorate. As a measure of desperation, there were some elements in his party not averse to stamping out, except in form, democracy in this country by the none too subtle device of detaining, with the semblance but without the reality of due process, no less than the presidential candidate of the Opposition Party, who from all appearances, and as expected, was unbeatable, and some of the most patriotic and eminent opposition leaders, including Senators Rodriguez, Laurel, Recto, and Tañada. This act of desperation might have succeeded too, the writ of habeas corpus being then under suspension. Fortunately the plot failed. The Supreme Court was not asleep. It issued a writ of preliminary injunction. For its failure then, the Supreme Court deserves full and entire credit.

The people went to the polls in November last year. The result was never in doubt. The repudiation of the former Administration was clear-cut and complete. The vote of confidence in President Magsaysay is well-nigh overwhelming.

The leaders who all this while had sought refuge in the Constitution are now in power. As of December 30, 1953 then, when the

new President took office, a period of stress and strain to constitutionalism closes and a new era begins.[158]

The author realizes the perils of prediction. There are too many imponderables. Problems, new and vexing problems, might come up. One never can tell just what is in store. Nonetheless the author makes bold to assert that the constitutional issues which the Supreme Court will face in the future, unlike in the immediate past, will deal not so much with unjustified pretentions to power on the part of the Executive nor with infringement of the liberties of the citizen[159] but with the reconciliation of the conflicting claims to property and economic security for the bulk of our citizens.

President Magsaysay is pledged to bring to life for all the principle of social justice "to improve the living conditions of our fellow citizens in the barrios and neglected rural areas and of laborers in our urban and industrial centers."[160] That pledge cannot be fulfilled without the moneyed classes feeling the impact of social legislation. They have a right to test their validity, and they can be expected to do so. The Supreme Court is not likely to be idle.

The new era for constitutional law promises to be exciting.

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[158] Incidentally, on November 24, 1953 a proclamation was issued by former President Elpidio Quirino lifting the suspension of the privilege of the writ of habeas corpus which he decreed way back on October 22, 1950.

[159] As President Ramon Magsaysay said in his inaugural address last December 30, 1953: "The Bill of Rights shall be, for me and members of my administration, a bill of duties. We shall be guardians of the freedom and dignity of the individual.

"More than this, we shall strive to give meaning and substance to the liberties guaranteed by our Constitution—by helping our citizens to attain the economic well-being so essential to the enjoyment of civil and political rights.

"The separation of powers ordained by our Constitution—as an effective safeguard against tyranny—shall be preserved zealously. Mutual respect for the rights and prerogatives of each of the three great departments of government must be observed.

"The legislative power vested by the Constitution, in the elected representatives of the people will, I trust, operate vigorously to prosecute our common program of honest, efficient and constructive government. As Executive, I look forward to intimate cooperation with the members of Congress, particularly with those statesmen who have stood guard over the rights and liberties of our people.

"The independence of the judiciary shall be strengthened. Our courts must be freed from political and other baneful influence, so they may function with the same integrity and impartiality which have made our Supreme Court the fortress of law and justice."

[160] President Magsaysay's inaugural address.