1954 DECISIONS ON CONSTITUTIONAL LAW

IRENE R. CORTEZ*

Included in this survey are all cases involving the application or interpretation of provisions of the Constitution. There are not very many of them and except for a few cases of first impression, the decisions are a reiteration of earlier doctrines. As in earlier surveys the constitutional questions involved will be discussed under the headings of *governmental activity and separation of powers, political rights, civil rights,* and *economic and social rights.*

I. GOVERNMENTAL ACTIVITY AND SEPARATION OF POWERS

The Constitution recognizes the principle of separation of powers by distributing the legislative, executive, and judicial functions of government among the legislative, executive, and judicial departments, respectively. It does not, however, establish an absolute separation of powers. By express constitutional provision concurrent powers are sometimes vested in different departments. Likewise, the delegation of legislative powers in certain instances and within prescribed limits is allowed.

The powers of the governmental agencies established and created by the Constitution are therein defined and delimited. When any of these agencies exceeds those limits or encroaches upon the powers of another or when one department to whom a particular power has been entrusted unlawfully delegates them to another, the acts performed may be set aside as a violation of the Constitution.

Several decisions of the past year involve the constitutionality of acts of certain governmental agencies and the Supreme Court had occasion to pass upon acts of Congress,[1] of the President,[2] of the Commission on Elections,[3] and of the Auditor General.[4] In two cases the doctrine of state immunity from suit was invoked but the Supreme Court declined to apply it.[5] The effect of the abolition of an office on the security of tenure guaranteed by the Constitution to civil service officials was also passed upon by the Court.[6]

---

* LL.B. (U.P.) Assistant Professor of Law, College of Law, University of the Philippines.

[1] *Resolution in the matter of the petition for admission to the Bar of unsuccessful candidates of 1946 to 1953; Albino Cunanan et al, petitioners,* 50 O.G. (4) 1602 (1954).

[2] *Donnelly v. Agregado,* 50 O.G. (9), 4269 (1954).

[3] *De Leon v. Imperial,* G.R. No. L-5758, March 30, 1954.

[4] *Philippine Operations, Inc. v. Auditor General,* G.R. No. L-3659, April 30, 1954.

[5] *Festejo v. Fernando,* G.R. No. L-5156, March 11, 1954; *Froilan v. Pan Oriental Shipping Co.,* G.R. No. L-6060, September 30, 1954.

[6] *Manalang v. Quitoriano,* 50 O.G. (6), 2561 (1954).

A. *Judicial and Legislative Power over Admission to the Practice of Law*

The Constitution which recognizes the power of the Supreme Court to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law, gives Congress the power to "repeal, alter, or supplement" those rules. What is the nature and extent of these powers in so far as they affect the admission to the practice of law?

Under the Rules of Court, to qualify for membership in the Philippine Bar, a person must pass an examination given by the Supreme Court and "in order that a candidate (for admission to the Bar) may be deemed to have passed his examinations successfully, he must obtain a general average of 75 per cent in all subjects, without falling below 50 per cent in any subject" (Rule 127, sec. 14, Rules of Court.) However, due to the varying difficulties of the different bar examinations held since 1946 and the varying degree of strictness with which the examination papers were graded, the Supreme Court passed and admitted to the bar those candidates who obtained an average of only 72 per cent in 1946, 69 per cent in 1947, 70 per cent in 1948, and 74 per cent in 1949. In 1950 to 1953 the 74 per cent was raised to 75 per cent. Unsuccessful candidates who obtained averages a few percentages lower than those admitted, feeling that they had been discriminated against, agitated and secured in 1951 the passage of a bill which among other things reduced the passing average in the bar examinations to 70 per cent effective since 1946. The President vetoed this measure. In the election year 1953 another bill embodying substantially the same provisions was passed by Congress and was allowed to become a law without the President's signature. This is the controversial Bar Flunkers' Act which unsuccessful postwar candidates now invoke in their petitions[7] for admission to the bar. Asked to enforce the law, the Supreme Court heard the petitions on the sole question of whether or not Republic Act No. 972 is constitutional. The law in full reads as follows:

REPUBLIC ACT No. 972

AN ACT TO FIX THE PASSING MARKS FOR BAR EXAMINATIONS FROM NINETEEN HUNDRED AND FORTY-SIX UP TO AND INCLUDING NINETEEN HUNDRED AND FIFTY-FIVE

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Notwithstanding the provisions of section fourteen, Rule numbered one hundred and twenty-seven of the Rules of Court, any bar candidate who obtained a general average of seventy per cent in any bar examination after July fourth, nineteen hundred and forty-six up to August nineteen hundred and fifty-one bar examinations;

[7] *In re admission to the Bar of unsuccessful candidates of 1946 to 1953; Albino Cunanan et al, petitioners*, Supra, See note 1.

seventy-one per cent in the nineteen hundred and fifty-two bar examinations; seventy-two per cent in the nineteen hundred and fifty-three bar examinations seventy-three per cent in the nineteen hundred and fifty-four bar examinations; seventy-four per cent in the nineteen hundred and fifty-five bar examinations with out obtaining a grade below fifty per cent in any subject, shall be allowed to take and subscribe the corresponding oath of office as member of the Philippine Bar; *Provided, however,* That for the purpose of this Act, any exact one-half or more of a fraction shall be considered as one and included as part of the next whole number.

SECTION 2. Any bar candidate who obtained a grade of seventy-five per cent in any subject in any bar examination after July fourth, nineteen hundred and forty-six shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing general average that he may take.

SECTION 3. This Act shall take effect upon its approval.

Because of the far-reaching effects of the law on legal education, the practice and standards of the legal profession, and the administration of justice in this country, this case aroused much public interest and concern. Oral and written arguments were submitted not only by the petitioners and their counsels, but also by law teachers, practicing attorneys, and various bar associations. The original resolution denying the petitions promulgated on March 18, 1954 was written for the majority by the late Justice Diokno. The Chief Justice dissented, and two justices did not take part in the voting. A motion for reconsideration was presented and given due course but reconsideration was denied and the case finally disposed of on March 30, 1955.

The declared object of the law according to its authors is to admit to the Bar those candidates who suffered from insufficiency of reading materials and the inadequacy of preparation." To the Supreme Court this objective is contrary to public interest which requires of the legal profession adequate preparation and efficiency because to it is entrusted the protection of property, life, honor, and civil liberties. Notwithstanding this, the Supreme Court declared that if Republic Act No. 972 is valid, it would be enforced. The petitions were thereupon considered on the sole question of constitutionality. This involved an inquiry into the nature of the function of admission to the bar and an interpretation of Article VIII, section 13 of the Constitution.

Quoting extensively from the cases of *State v. Cannon* (1932) *240 NW 441, In re Day, 54 NE* 646 and other American decisions the Supreme Court declared that "in the judicial system from which ours has evolved, the admission, suspension, disbarment and reinstatement of attorneys at law in the practice of the profession and their supervision have been indisputably a judicial function and responsibility. Because of this attribute, its continuous and zealous possession and exercise by judicial power have been demonstrated during more than six centuries, which certainly 'constitutes the most solid of titles.' Even considering

the power granted to Congress by our Constitution to repeal, alter and supplement the rules promulgated by this Court regarding the admission to the practice of law, to our judgment the proposition that the admission, suspension, disbarment, and reinstatement of attorneys at law is a legislative function, properly belonging to Congress is unacceptable. The function requires (1) previously established rules and principles, (2) concrete facts, whether past or present, affecting determinate individuals, and (3) decision as to whether these facts are governed by the rules and principles in effect, a judicial function of the highest degree. And it becomes more indisputably judicial, and not legislative, if previous judicial resolutions on the petitions of these same individuals are attempted to be revoked or modified." The Court concluded that the legislature was usurping a judicial function in decreeing that the bar candidates who obtained in the bar examinations of 1946 to 1951 a general average of 70 per cent and in 1952, 71 per cent, without falling below 50 per cent in any subject may be admitted in mass to the practice of law. It was attempting to revoke judgments or decrees of the Supreme Court denying admission to such candidates. The retroactive feature of the law strengthens this conclusion of the Court. It was argued that the law was curative, therefore, constitutional. But the law does not intend to undo what the Supreme Court did from 1946 to 1953 by cancelling the licenses of those who did not obtain 75 per cent. What the legislature decried was that the Court did not consider 69.5 obtained by the condidates from 1946 to 1951 sufficient to qualify them for admission to the Bar. In view of this, the Court declared:

> "Hence, it is the lack of will or defect of judgment of the Court that is being cured, and to complete the cure of this infirmity, the effectivity of the disputed law is being extended up to the years 1953, 1954, and 1955, increasing each year the general average by one per cent, with the order that said candidates be admitted to the Bar. This purpose, manifest in the said law, is the best proof that what the law attempts to amend and correct are not the rules promulgated, but the will or judgement of the Court, by means of simply taking its place. This is doing directly what the Tribunal should have done during those years according to the judgment of Congress. In other words, the power exercised was not to repeal, alter or supplement the rules which continue in force. What was done was to stop or suspend them. And this power is not included in what the Constitution has granted to Congress, because it falls within the power to apply the rules. This power corresponds to the judiciary to which such duty has been confided."

But the Constitution expressly confers Congress with the authority to repeal, alter or supplement the rules promulgated by the Supreme Court concerning the admission to the practice of law and it was contended that Republic Act No. 972 is a valid exercise of this authority. Section 13, Article VIII of the Constitution provides:

> "Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts,

and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Court subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines".

Evidently, while this section recognizes in the Supreme Court the rule-making power, it gives Congress concurrent power to repeal, alter, or supplement the rules promulgated by the Court. This provision as it touches on the admission to the practice of law, is interpreted by the Supreme Court in this manner:

"It will be noted that the Constitution has not conferred in Congress and this Tribunal equal responsibilities concerning the admission to the practice of law. The primary power and responsibility which the Constitution recognizes, continue to reside in this Court. Had Congress found that this Court has not promulgated any rule on the matter, it would have nothing over which to exercise the power granted it. Congress may repeal, alter and supplement the rules promulgated by this Court, but the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys at law and their supervision remain vested in the Supreme Court. The power to repeal, alter and supplement the rules does not signify nor permit that Congress substitute or take the place of this Tribunal in the exercise of its primary power on the matter. The Constitution does not say nor mean that Congress may admit, suspend, disbar or reinstate directly attorneys at law, or a determinate group of individuals to the practice of law. Its power is limited to repeal, modify or supplement the existing rules on the matter, if according to its judgment the need for a better service of the legal profession requires it. But this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and supervise the practice of the legal profession.

"Being coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires. These powers have existed together for centuries without diminution on each part; the harmonious delimitation being found in that the legislature may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility. The legislature may, by means of repeal, amendment, or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting suspending, disbarring, and re-

> instating attorneys at law is realized. They are powers which, exercised within their proper constitutional limits, are not repugnant, but rather complementary to each other in attaining the establishment of a Bar that would respond to the increasing and exacting necessities of the administration of justice."

The case of *In Re Guariña*, 24 Phil, 37 (1913) was given to illustrate the proposition that the ultimate power to grant license for the practice of law belongs exclusively to the Supreme Court and the law passed by Congress on the matter is of permissive character, or merely to fix the minimum conditions for the license.

The Supreme Court found two other defects in the law. One was the unexplained classification of candidates by years which was arbitrary and unreasonable because there was no valid reason for discriminating against candidates who failed before 1946. The other was the inclusion of section 2 of the law which provides for partial passing of examinations at indefinite intervals. This section is permanent in nature and is not embraced in the title of the Act which declares that the law will be effective only from 1946 to 1955. It therefore violates the constitutional requirement that "No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill." (Article VI, sec. 21 (1)) Since section 2 is inseparable from the whole law, its nullity affects the entire act. The contested law was found to suffer from three defects: first, it is not within the legislative powers of Congress to enact, or Congress has exceeded its powers; second, it creates or establishes arbitrary methods or forms that infringe constitutional principles; and third, its purpose or effects violate the Constitution or its basic principles.

The Supreme Court summarizing its reasons for finding Republic Act No. 972 unconstitutional declared:

> "1. Because its declared purpose is to admit 810 candidates who failed in the bar examinations of 1946-1952, and who it admits, are certainly inadequately prepared to practice law, as was exactly found by this Court in the aforesaid years. It decrees the admission to the Bar of these candidates, depriving this Tribunal of the opportunity to determine if they are at present already prepared to become members of the Bar. It obliges the Tribunal to perform something contrary to reason and in an arbitrary manner. This is manifest encroachment on the constitutional responsibility of the Supreme Court.
>
> "2. Because it is, in effect, a judgment revoking the resolution of this Court on the petitions of these 810 candidates, without having examined their respective examination papers, and although it is admitted that this Tribunal may reconsider said resolution at any time for justifable reasons, only this Court and no other may revise and alter them. In attempting to do it directly Republic Act No. 972 violated the Constitution.
>
> "3. By the disputed law, Congress has exceeded its legislative power to repeal, alter and supplement the rules on admission to the Bar. Such additional or amendatory rules are, as they ought to be, intended to regulate acts subsequent to its promulgation and should tend

to improve and elevate the practice of law, and this Tribunal shall consider these rules as minimum norms towards that end in the admission, suspension, disbarment and reinstatement of lawyers to the Bar, inasmuch as a good bar assists immensely in the daily performance of judicial functions and is essential to a worthy administration of justice. It is therefore the primary and inherent prerogative of the Supreme Court to render the ultimate decision on who may be admitted and may continue in the practice of law according to existing rules.

"4. The reason advanced for the pretended classification of candidates, which the law makes, is contrary to facts which are of general knowledge and does not justify the admission to the Bar law students inadequately prepared. The pretended classification is arbitrary. It is undoubtedly class legislation.

"5. Article 2 of Republic Act No. 972 is not embraced in the title of the law, contrary to what the Constitution enjoins, and being inseparable from the provisions of article 1, the entire law is void.

"6. Lacking in eight votes to declare the nuulty of that part of article 1 referring to the examinations of 1953 to 1955, said part of article 1, insofar as it concerns the examinations of those years shall continue in force."

The Supreme Court declared that the portion of section 1 of Republic Act No. 972 which referred to the examniations of 1949 to 1952 and all of section 2 are null and void. But for lack of unanimity in the eight justices, that part of section 1 which refers to examinations subsequent to the passage of the act, that is, from 1953 to 1955 remains in force.

An examination of the resolution and the reasons above given fails to show how after declaring that section 2 of the law is unconstitutional and that "being inseparable from the provisions of article (sic) 1 the entire law is void" the Supreme Court can declare a portion of the Act valid. It would seem that if the entire law is void, no part of it can remain in force.

Considering the factual background of the law and its declared objective it seems highly doubtful if Congress would have passed the prospective portion of the law alone had it known that the rest of the Act could not meet the test of constitutionality. The whole act is obviously primarily intended to accommodate the candidates who failed in the bar examinations from 1946 to the date of its passage.

The necessary majority of the Court having reached the conclusion that section 2 is invalid and that its inseparability makes the whole act void it should necessarily follow that no part of Republic Act 972 can be enforced. The declaration of its complete invalidity would have been more in keeping with the desire to elevate the standards of the legal profession which because of its popularity requires no artificial measures in order to swell the number in its already crowded ranks.

B. *Delegation of Legislative Power to the President*

While in the foregoing case the legislative department was found to have exceeded its powers and encroached upon the judiciary, in *Donnelly v. Agregado*[8] it was charged that Congress had made an undue delegation of its powers to the Executive.

Commonwealth Act No. 728 making it unlawful for any person, association or corporation to export agricultural or industrial products, merchandise, articles, materials and supplies without a permit from the President, confers on the President authority to "regulate, curtail, control, and prohibit the exportation of materials abroad and to issue such rules and regulations as may be necessary to carry out the provisions of this Act, through such department or office as he may designate." The President promulgated an order prohibiting the exportation of certain enumerated materials, but allowed the exportation of other articles like scrap metals, provided an export license is first obtained from the Philippine Sugar Administration and the Chief of the Executive Office by authority of the President, sent a communication to the Philippine Sugar Administration authorizing the exportation of scrap metals upon payment by the applicants of a certain fee. Subsequently, the Cabinet approved a resolution fixing the schedule of royalty rates to be charged on metal exports. The petitioner who exported large amounts of scrap metals for which it paid by way of royalty rates a total of ₱54,862.84 demanded a refund of this amount on the ground that the resolution of the Cabinet fixing the schedule of royalty rates on metal exports and providing for their collection constituted an undue delegation of legislative power because in substance it created and imposed an *ad valorem* tax.

The Supreme Court found the resolution perfectly legal. Under the Constitution "The Congress may by law authorize the President, subject to such limitations and restrictions as it may impose, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage duties." (Art. VI, sec. 22 (2).) Commonwealth Act No. 728 is expressly authorized by this provision and the resolution in question was approved to implement the broad authority given by the statute. The fact that the resolution was approved by the Cabinet and the collection of the royalty rates was not decreed by virtue of an order issued by the President himself does not, according to the Court, invalidate said resolution because it cannot be disputed that the act of the Cabinet is deemed to be, and essentially is, the act of the President. Citing the case of *Villena v. The Secretary of the Interior*[9] the Court said that the reason for this is that "the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such depart-

[8] 50 O.G. (9), 4269 (1954).
[9] 67 Phil. 451 (1939).

ments performed and promulgated in the regular course of business, are unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive." And with regard to the acts of the Cabinet, this conclusion acquires added force because, unless shown otherwise, the Cabinet is deemed to be presided over always by the President himself.

As to the contention that the royalty rates prescribed by the Cabinet resolution are not fees but in effect partake of the nature of an *ad valorem* tax the imposition of which cannot be delegated by Congress to the President, the Court pointed out: "The rule which forbids delegation of legislative power is not absolute. It admits of exceptions as when the Constitution itself authorizes such delegation (Constitution of the Philippines, by Tañada and Fernando, p. 449 (1953). In the present case, our Constitution expressly authorizes such deleagtion. (Art. VI, sec. 22 (2).) This is so because the royalty rates may take the form of tariff rates. At any rate, Commonwealth Act No. 728 confers upon the President authority to regulate, curtail, control, and prohibit the exportation of scrap metals and in this authority is deemed included the power to exact royalties for permissive or lawful use of property right. (*Raytheon Mfg. Co. vs. Radio Corporation of America*, 190, N.E. 1, 5, 286 Mass. 84, cited in Words and Phrases, Vol. 37, p. 810)."

Mr. Justice Bengzon, however, maks a vigorous dissent. To him the crucial question in the case is whether the Cabinet approved the resolution by authority of Commonwealth Act No. 728. In his opinion the royalty rates were demanded without lawful authority and should be returned because the power to regulate and to require the payment of fees on exports was not delegated by the President to the Cabinet and it is doubtful if the President could validly delegate it. He said: "The authority to regulate—and to require payment of fees on—exports was entrusted to the President. That power was not expressly delegated by the President to the Cabinet. (It is doubtful whether he could validly do so.) And the Cabinet is not the President. True, the President presides Cabinet meetings, but his voice is only one, convincing though it may be. Furthermore, the Cabinet may meet without the presence of the President. The conclusions of the Cabinet and its resolutions are not necesarily the President's. We may not, therefore, hold that, in the eyes of the law the Cabinet's resolution of October 24, 1947 was the act of the President. It was the act of the Cabinet, that had *no statutory authority* to require payment of royalties or export fees. Our ruling in the *Villena* case followed by the majority, applies to *executive* powers of the President—not to legislative powers delegated to him."

As to the doubt expressed in the dissent regarding the power of the President to delegate the power entrusted to him by Congress through Commonwealth Act No. 728, it may be pointed out that the law in express terms gives the President authority "to regulate, curtail, control,

and prohibit the exportation of materials abroad and to issue such regulations as may be necessary to carry out the provisions of this Act, *through such department or office as he may designate.*" It would seem that the President could designate his Cabinet to carry out these functions or he could, as the majority of the Court found, perform the powers vested in him through his Cabinet. But if the royalty rates were indeed *ad valorem* taxes or tariff rates, it would, as the dissenting opinion points out be doubtful if the President can delegate their imposition.

C. *Administrative Powers of the Commission on Elections*

Another case involving the exercise by a constitutional agency of powers vested in it by the Constitution is the case of *De Leon v. Imperial.*[10] The facts show that Isidro de Leon and Fortunato Gutierrez were among the candidates for municipal councilor of the municipality of Makati. Eight councilors were to be elected and according to the canvass made by the board of canvassers de Leon occupied eighth place in the elections having obtained some 3,160 votes. More than four months after the proclamation, Gutierrez filed a petition with the Commission on Elections asking for a new canvass on the ground that due to a mistake in addition the municipal board of canvassers had credited de Leon with 3,160 votes when in fact he obtained no more than 3,060 votes whereas Gutierrez had obtained 3,098 votes or a majority of 38 votes over de Leon. The Commission on Elections after a hearing ordered the board of canvassers to reconvene and as a result of a recanvass of votes conducted by the board, Gutierrez was proclaimed elected in place of de Leon. In a petition for certiorari de Leon challenged the validity of the order of the Commission on Elections under which the recanvass and new proclamation were made. He also filed with the Court of First Instance an election protest contesting the election of Gutierrez.

The Constitution provides that the Commission on Elections "shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. . It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and other election officials." (Art. X, sec. 2) The Revised Election Code supplements what other powers may be exercised by the Commission. It is clear that powers not expressly or impliedly granted to it are deemed withheld.

The Supreme Court found that the applicable provisions of the election code on the canvass and proclamation of the election of municipal officials provide that any alteration or amendment in any of the statements of election, or any contradiction or discrepancy appearing

[10] G.R. No. L-5758, March 30, 1954.

therein, whether due to clerical error or otherwise, cannot be made without the intervention of a competent court, once the announcement of the result of the election, or the proclamation of the winners has been made. These provisions (secs. 154 and 168) are all-inclusive in the sense that the power to authorize the correction can only be made by a competent court under the conditions established by the law regarding the nature of the action and the period within which the action may be brought. Mandatory provisions of the election law limit the period within which election contests may be filed. If the Commission had power to order the board of canvassers to correct a mistake they made after the proclamation and to make a recanvass and a new proclamation, the result would be that a protest may be filed within the legal period counted from the date of the new proclamation. According to the Court, this would have the effect of "a clear circumvention of the law which is destructive of the very essence and spirit which underlie the summary nature of an election proceeding while it sets a precedent which enlarges to a dangerous extreme the administrative powers conferred upon the Commission on Election by the Constitution."

In a concurring opinion, Justice Diokno said that the Commission on Elections has the active duty of insuring the faithful performance by the different boards of canvassers of the functions assigned to them and to forestall fraud and irregularity. Its function is not to sit as a court and wait for interested parties to ask for its intervention. On the other hand the candidates are expected to be vigilant and to call the attention of the proper authorities to errors or irregularities. The mistake in this case could have been avoided by the exercise of such vigilance. After the proclamation of election has been made, only the proper court can order the correction of a mistake. Many decisions were cited tending to show that mandamus when brought within the reglamentary period may be availed of by the aggrieved party. As to whether mandamus may be sought from the Commission on Elections, the opinion gave a negative answer since under the Judiciary Act and the Rules of Court mandamus is a judicial prerogative. It was also pointed out that as stated by Justice Tuason in the case of *Ramos v. Commission on Elections*[11] the Commission on Elections is an administrative body endowed with administrative functions only. As to the claim that the case of *Mintu v. Enage*[12] settled the question on the power of the Commission on Elections to correct any error committed by administrative officials which do not call for the exercise of judgment, Justice Diokno said that this is subject to the limitation that the power can only be exercised before any interested party can show an indisputable claim to the office by virtue of the expiration of the time for making the electoral protests.

---

[11] 45 O.G. (9th Supp.) 348-349 (1949).
[12] G.R. No. L-1834, December 31, 1947.

Mr. Justice Alex. Reyes dissented. He said that the correction of a patent error committed by a municipal board of canvassers is a purely clerical and ministerial task not calling for the exercise of judgment. The authority of the Commission on Elections in a proper case to annul a proclamation made by a municipal board of canvassers and order a new canvass of the election returns can no longer be doubted because of the resolution in the *Mintu v. Enage* case.

But the *Mintu v. Enage* case may be distinguished from the instant case. In the former the board of canvassers did not count the results from 8 of the 18 precincts in a Cavite municipality. The Supreme Court held that the Commission on Elections could order the board of canvassers to reconvene and count all the votes, because by counting only some of them, it had not fully performed its duty. Besides on the very day the board of canvassers announced the result of its canvass of some precincts only, the interested parties appealed for the intervention of the Commission. In the instant case the board of canvassers had fully performed its duty of making a canvass, although it made a mistake in addition. The mistake was not discovered and the intervention of the Commission was not discovered and the intervention of the Commission was not sought until after four months had passed and long after the period for filing election protests had expired. The petitioner here had certainly slept on his rights.

The dissenting opinion asserts that the "doctrine of estoppel or laches cannot properly be invoked in this case for the office of the municipal councilor is a public trust and it is against the law to have it occupied by one who is not the true choice of the electorate." As pointed out in the concurring opinion this error cannot be cured by recognizing the existence of an authority the Commission on Elections does not possess. Whether or not quo warranto proceedings may be instituted against the incumbent Gutierrez is an open question. But legal remedies must be sought from the proper authorities and in accordance with the prescribed regular procedure.

D. *Authority of the Auditor General to Decide Unliquidated Claims*

Philippine Operations, Inc. v. Auditor General[13] was an appeal from a decision of the Auditor General denying a claim brought by the Philippine Operations, Inc. against the Government in the amount of ₱105,000 representing the value of undelivered timber plus damages averred to have resulted from an alleged failure of the Bureau of Prisons to comply with a barter agreement it had with the appellant. The case involves the existence of the authority of the Auditor General to pass upon claims for unliquidated damages against the Government. An examination of the Jones Law and the laws in force at the time of the adoption of the Constitution reveals that the Auditor General did not

[13] G.R. No. L-3659, April 30, 1954.

have such power. Under the Constitution he is authorized among other things to "examine, audit, and settle all accounts . . ." (Art. XI, sec. 2) and this according to the Supreme Court does not include the authority to determine unliquidated damages since the term *accounts* as used by the Constitution is to be understood as having the same meaning it had under the laws in force prior to the Constitution. It has been generally held that an account is something which may be adjusted and liquidated by an arithmetical computation, and that claims for unliquidated damages cannot be considered accounts.

In a case decided while the Jones Law was still in force[14] the Supreme Court held:

> "Section 584 of the Administrative Code of 1917 is very similar in its terms to section 236 of the Revised Statutes of the United States which reads as follows:
>
> "'All claims and demands whatever by the United States and against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors shall be settled and adjusted in the Department of Treasury.'
>
> "Nevertheless, the words, 'all claims and demands whatever . . . against' the United States as used in this statute have been held repeatedly not to authorize the officers of the Treasury Department to entertain unliquidated claims against the United States for damages. In the case of *Power vs. United States* (18 C. Cls. R., 275), Judge Davis, writing the opinion of the court said:
>
> "'An account is something which may be adjusted and liquidated by an arithmetical process . . . But no law authorizes Treasury officials to allow and pass in accounts a number not the result of numerical computation upon a subject within the operation of a mutual part of a contract. Claims for unliquidated damages require for their settlement and discretion. They are frequently, perhaps generally sustained by extraneous proof, having no relation to the subjects of the contract which are common to both parties. . . . The results to be reached in such cases can in no sense be called an account, and are not committed by law to the control and decision of Treasury accounting officers.'"

The petitioners argue that under Commonwealth Act No. 3038, secs. 1 and 2 the Auditor General has been granted the power to pass upon "any moneyed claim involving liability arising from contract, express or implied, which could serve as a basis for civil action between private parties." The Supreme Court said that this could not have been contemplated unliquidated claims, or cases where the liability of the Government or its non-liability is in issue. In these cases, according to the Court, the most important questions to be determined are judicial in nature, involving the examination of evidence and the use of judicial discretion. To assume that the legislature granted this jurisdiction to an administrative officer like the Auditor General is not warranted, because it would amount to an illegal act, as a delegation of judicial power to an executive officer. If the power were interpreted as having been granted

---

[14] *Compañia General de Tobacos v. French*, 39 Phil. 34, 42 (1918).

to the Auditor General to pass upon the rights of private persons, without the judicial process established by the Constitution and the laws, private parties would be deprived of their property without due process of law.

E. *Civil Service*

Where an office has been abolished, the right of its incumbent thereto is necessarily extinguished and the termination of this right does not constitute a violation of the constitutional mandate that "no officer or employee in the civil service shall be removed or suspended except for cause as may be provided by law." This is illustrated in the case of *Manalang v. Quitoriano*[15] where the petitioner was for sometime director of the Placement Bureau created by an executive order issued pursuant to the Reorganization Act of 1952. Subsequently, Congress enacted a law creating the National Employment Service and expressly abolishing the Placement Bureau. Although the petitioner was recommended for the position of Commissioner of the National Employment Service, the respondent was designated to the position. The petitioner claimed that such designation was illegal and equivalent to his removal from office without cause. *Held*: "This pretense can not be sustained. To begin with, petitioner has never been Commissioner of the National Employment Service and, hence, he could not have been, and has not been removed therefrom. Secondly, to remove an officer is to oust him from office before the expiration of his term. A removal implies that the office exists after the ouster. Such is not the case of petitioner herein, for Republic Act No. 76, *expressly abolished* the Placement Bureau, and, by implication, the office of director thereof, which, obviously, cannot exist without said Bureau. By the abolition of the latter and of said office, the right thereto of its incumbent, petitioner herein, was necessarily extinguished thereby. Accordingly, the constitutional mandate to the effect that 'no officer or employee in the civil service shall be removed or suspended except for cause as provided by law' (Art. XII, sec. 4 Phil. Const.), is not in point, for there has been neither a removal nor a suspension of petitioner Manalang, but an abolition of his former office of Director of the Placement Bureau, which, admittedly, is within the power of Congress to undertake by legislation."

F. *State Immunity from Suit*

In two 1954 decisions the Supreme Court declared that the doctrine that the state may not be sued without its consent had no application. In the first case action for damages was instituted against a public official and in the second, a counterclaim was presented against the Government which had come in as an interventor in a civil case.

---

[15] 50 O.G. (6), 2461 (1954).

Festejo v. Fernando[16] was an action brought against Isaias Fernando, Director, Bureau of Public Works for unlawfully taking possession of portions of land belonging to the plaintiff and causing an irrigation canal to be constructed thereon. The plaintiff demanded a return of the land or its value together with costs, damages, and attorney's fees. The lower court dismissed the action for lack of jurisdiction sustaining the contention of the defendant that the action amounted to a suit against the Republic of the Philippines which had not consented to be sued. On appeal, the Supreme Court declared that the action is against the defendant personally and that the law does not exempt him from liability for exceeding his authority in the exercise of official functions. The case of *Nelson v. Babcock*[17] was cited in support of the rule that in committing trespass on a person's land, a public official commits acts outside the scope of his authority, and may be held personally liable for damages caused. The Supreme Court also referred to article 32 of the Civil Code which allows the recovery of damages against public officials and remanded the case for further proceedings.

Where the government files a complaint in intervention and a counterclaim is made in answer to such complaint, the government cannot escape liability by wrapping itself with the mantle of state immunity.[18] The Supreme Court declared that by filing its complaint in intervention the government in effect waived its right to non-suability. In support of this conclusion the Supreme Court quoted with approval the following passage:

> "The immunity of the state from suits does not deprive it of the right to sue private parties in its own courts. The state as plaintiff may avail itself of the different forms of action open to private litigants. In short, by taking the initiative in an acton against a private party, the state surrenders its privileged position and comes down to the level of the defendant. The latter automatically acquires within certain limits, the right to set up whatever claims and other defenses he might have against the state. The United States Supreme Court thus explains:
>
> "'No direct suit can be maintained against the United States. But when an action is brought by the United States to recover money in the hands of a party who has a legal claim against them, it would be a very rigid principle to deny him the right of setting up such claim in a court of justice, and turn him around to an application to Congress.'" (Sinco, Philippine Political Law, Tenth Ed. pp. 36-37, citing *U.S. vs. Tingfold*, 8 Pet. 150, 8 L. ed. 899.)

II. Political Rights: Citizenship and Naturalization

Citizenship by naturalization may be obtained only upon the terms and conditions established by law and our courts have consistently adhered to the strict interpretation and application of the provisions of

---

[16] G.R. No. L-5156, March 11, 1954.
[17] 90 ALR 1472, 1476, 1477.
[18] *Froilan v. Pan Oriental Shipping Co.*, G.R. No. L-6060, September 30, 1954.

our Naturalization Laws.[19] No new doctrines were enunciated in the naturalization cases decided in 1954. The Supreme Court reiterated old rulings and clarified some of them.

A. *The Residence Requirement.*

Section 7 of Commonwealth Act No. 473 requires among other things that the applicant "will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship." In *Uytengsu v. Republic of the Philippines*,[20] the applicant was born in the Philippines and received his primary and secondary education in the prescribed Philippine schools. After one semester of college work, he left for the United States to study where he stayed from 1947 to 1950. In April of 1950 he came back to the Philippines for a four months vacation, filed his application for naturalization in July of the same year and forthwith returned to the United States for postgraduate study and did not return to the Philippines until October 1951 so that the hearing of his petition scheduled for July 1951 had to be postponed until his return. The only question for determination in the case is whether or not the application may be granted despite the fact that the petitioner left the Philippines immediately after filing his petition and did not return until several months after the first date set for the hearing thereof. The lower court decided in his favor, hence, this appeal.

The petitioner's contention was that the requirement of "residence" under the provision of law involved is synonymous with domicile which once acquired is not lost by physical absence, until another domicile is obtained and that he continued to be domiciled in, and hence a resident of, the Philippines from 1947 to 1951, his stay in the United States being merely to study there.

The Supreme Court in rejecting this contention said that residence has in the strict legal sense, a meaning distinct from that of domicile and that section 7 of the Naturalization Law requires actual and substantial residence not merely legal residence or domicile. The Court said:

> "It should be noted that to become a citizen of the Philippines by naturalization, one must reside therein for not less than 10 years, except in some special cases, in which 5 years of residence is sufficient (Sections 2 and 3 Commonwealth Act No. 473). Pursuant to the provision above quoted, he must also file an application stating therein, among other things, that he "has the qualifications required" by law. Inasmuch as these qualifications include the residence requirement already referred to, it follows that the applicant must prove that he is a resident of the Philippines at the time, not only of the filing of the application, but, also of its hearing. If the residence

[19] Article IV sec. 1 (5) of the Constitution provides that "those who are naturalized in accordance with law" are citizens of the Philippines.

[20] G.R. No. L-6379, September 29, 1954.

> thus required is the actual or constructive permanent home, otherwise known as legal residence or domicile, then the applicant must be domiciled in the Philippines on both dates. Consequently, when Section 7 of Commonwealth Act No. 473 imposes upon the applicant the duty to state in his sworn application "that he will reside continuously in the Philippines" in the intervening period, it can not refer merely to the need of an uninterrupted domicile or legal residence, irrespective of actual residence, for said legal residence or domicile is obligatory under the law, even in the absence of the requirement contained in said clause, and, it is well settled that, whenever possible, a legal provision must not be so construed as to be a useless surplusage, and, accordingly meaningless, in the sense of adding nothing to the law or having no effect whatsoever thereon. These consequences may be avoided only by construing the clause in question as demanding actual residence in the Philippines from the filing of the petition for naturalizaton to its determination by the Court."

The Court pointed out that the law provides that after the filing of the application for naturalization, it has to be published with a notice of the date of hearing, which cannot be earlier than six months after the last day of the publication. The purpose of this requirement is to give the government sufficient time to check the statements made in the statements made in the petition. The government would be in a better position to draw its own conclusions if its officers could personally observe the applicant and confer with him. In this case the government had no chance to keep a watchful eye on the applicant because notwithstanding the promise he made under oath in his petition for naturalization to reside continuously in the Philippine from the time of the filing of his petition until his admission to citizenshp he returned to the United States. The Court consequently denied him citizenship because it found that at the time the application was made the petitioner was a resident of the United States and hence, he had failed to comply with the requirements of the law.

B. *Declaration of Intention*

One of the procedural requirements for naturalization is the filing of a declaration of intention to become a citizen. The law requires that this declaration of intention should be made one year prior to the filing of the petition for naturalization. The requirement is mandatory. In *Tam Tam v. Republic*[21] an applicant was denied naturalization because he filed his petition for naturalization before the expiration of the one year period counted from the filing of his declaration of intention. The Supreme Court held that the issue of non-compliance of this requirement may be raised for the first time on appeal.

This requirement may be dispensed with in favor of three classes of persons enumerated in the law. One of the exempted class are persons born in the Philippines who have received their primary and

---

[21] G.R. No. L-5799, June 30, 1954.

secondary education in public schools or private schools recognized by the Government and not limited to any race or nationality. In the *Uytengsu* case the applicant was thus exempt from this requirement but that fact was taken by the Supreme Court to enhance the adverse effects of his continued absence from the Philippines after he had filed his petition for naturalization.

It is now well-settled that to be considered as having received his secondary education in the Philippines an applicant must have successfully completed his four year high school course. It is not enough to finish the third year[22] nor is it enough to complete the second year of high school and subsequently take a vocational course in a radio school, since the radio course is not the equivalent of the third and fourth year high school.[23] In these cases the failure of the applicants otherwise qualified to become citizens by naturalization to make the required declaration of intention proved fatal to their applications for citizenship.

C. *Education of Minor Children of School Age*

Following a long line of earlier decisions the Court denied the application of aliens who had failed to enroll their minor children of school age in any public schools or private schools recognized by the government where Philippine history, government, and civics are taught or prescribed as part of the curriculum during the entire period of the residence required of the alien prior to the hearing of his petition for naturalization.

An applicant cannot give the excuse that his minor children are outside the Philippines.[24] He is supposed to bring his children here and enroll them in the prescribed schools. The Supreme Court refused to accept the excuse that the war prevented the applicant from bringing his children to the Philippines[25] or that during the period the minor children had died or had reached the age of majority.[26] Elaborating on its rejection the Supreme Court said:

> "As to the effect of the war, it would suffice to make reference to our decision in the case of *Oscar Anglo v. Republic*, G.R. No.L-5104, April 29, 1953, wherein we rejected the contention now insisted upon by the petitioners. Neither may the death of the petitioner's two children in China be set up as an exemption, since there was already non-compliance on his part with the requirement to have them enrolled in a local public or private school before their death, and during the entire period prior to the hearing. Such non-compliance was not cured by his children's subsequent death. . . .[27]

---

[22] *Tan v. Republic*, G.R. No. L-5663, April 30, 1954.
[23] *Ng v. Republic*, 50 O.G. (4), 1599 (1954).
[24] *Chan Ho Lay v. Republic*, G.R. No. L-5666, March 30, 1954; *Quing Ku Chay v. Republic*, G.R. No. L-5477, April 12, 1954.
[25] *Chua v. Republic*, L-6269, March 30, 1954.
[26] Ibid; *Quing Ku Chay v. Republic*, L-5477, April 12, 1954.
[27] *Chua v. Republic, supra.*

The reason for this strict requirement is that upon the naturalization of an alien his minor children automatically become Filipino citizens and the policy is to prepare them for good Filipino citizenship. The requrement is also imposed as an additional qualification for naturalization.

The concealment by an applicant of the fact that besides the nine minor children of school age whom he had enrolled in the local schools he also had another child whom he brought to China at the age of 2 years and who had remained there until she reached the age of majority and contracted marriage, was the basis for denying the application for naturalization in *Manzano v. Republic*.[28] The reason for the denial was that the applicant had not only failed to comply with a mandatory requirement of the law regarding the education of his children but had also suppressed a material fact. This showed the absence of good moral character which the naturalization law requires.

D. *Good Moral Character, Mending of Ways.*

A petition for naturalization was denied by the trial court because the applicant was not of good moral character since he kept a Filipino woman in his house with whom he had three children without benefit of marriage. Before the decision became final a motion for reconsideration was filed on the ground that the petitioner had married the woman with whom he was living. The court allowed the presentation of evidence to prove the marriage but held that the immoral life of five years was not removed by the subsequent marriage. The Solicitor General expressed the belief that since the petitioner in this case had legalized his relation with the woman he was living with the petition could have been granted since in a previous case[29] where the Supreme Court also denied an application for the same reason, the Court said that the "denial of the appellant's petition for naturalization is without prejudice to a renewal thereof if and when the petitioner shall have seen his way clear to mending his ways such as for instance, legalizing his relations with the mother of his children by marriage, civil or religious, so as to comply with the requisite of the law on naturalization. In such a case, the evidence in this case may be availed of and utilized in addition to any other evidence that may be introduced by petitioner or by Government, favorable or adverse." The Supreme Court, however, affirmed the lower court's denial of the petition without prejudice to the filing of a new petition for naturalization. According to the Court, the petitioner in this case obviously intended to nullify the effect of the decision by hastening to marry before it had become final, thereby avoiding the formalities and delay necessarily ensuing from a renewal of his petition.

---

[28] G.R. No. L-6430, August 31, 1954.
[29] *Yu Lo v. Republic*, L-4725, October 15, 1952.

To ward off and forestall any suspicious design the Court insisted that the procedure indicated in the *Yu Lo* case be followed.

E. *Lucrative Trade*

To prevent the naturalization of aliens who will become a burden to the state, the law places a property or occupation qualification on applicants. In *Tiong v. Republic*,[30] it was held that an alien who does not receive monthly pay but can get when needed advances on account of his annual compensation has the essential qualification of "a known lucrative trade, profession, or lawful calling."

F. *Taking of the Oath of Allegiance*

An alien in whose favor a judgment for naturalization has been rendered cannot be allowed to take his oath of allegience notwithstanding the lapse of 2 years after the decree if at that time criminal cases are pending against him. The presumption of innocence until the contrary is proved guaranteed by the Constitution cannot be invoked by an alien who has been accused of certain crimes, in order that he may be allowed to take his oath as a Filipino citizen. Under Republic Act No. 530 it is not indispensable that the applicant be convicted or that there be a judicial declaration to the effect that he has committed any of the acts therein mentioned. The provision states: "nor shall any decision granting the application become executory until after two years from its promulgation and after the court, on proper hearing, with the attendance of the Solicitor General or his representative, is satisfied, and so finds, that during the intervening time the applicant has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed any act prejudicial to the interests of the nation or contrary to any Government announced policies." Only after this finding may the order of the court granting citizenship be registered and the oath provided by existing laws be taken by the applicant, whereupon, and not before, will he be entitled to all the privileges of a Filipino citizen. Pending the determination of the criminal cases the Supreme Court declared that the applicant cannot be allowed to take the oath of allegiance.[31]

G. *Declaration of Citizenship in Naturalization Proceedings.*

In *Pitallano v. Republic*[32] a petition for naturalization was filed by a person born in the Philippines of a Filipino mother and an unknown father. Evidence was presented to show that the petitioner possessed all the qualifications and none of the disqualifications for naturalization. After hearing, the Court dismissed the petition on the ground

---

[30] 50 O.G. (3), 1025 (1954).
[31] *Chinq Leng contra Republica*, G.R. No. L-6268, May 10, 1954.
[32] G.R. No. L-5111, June 28, 1954.

that the applicant being a Filipino need not be naturalized. The Government appealed contending that it was error for the trial court to declare the applicant a Filipino citizen in a naturalization proceeding. *Held*: "The ground for appeal is unmeritorious. The applicant filed a petition for naturalization believing that it was the proper and lawful way of having his citizenship defined and settled. But the Court found that he need not be naturalized because he is a Filipino citizen. (*U.S. v. Ong Tianse*, 29 Phil. 332; (1915). *Santos Co v. Government*, 52 Phil. 543 (1928) and dismissed the petition for that reason. (*Palanca v. Republic*, 45 Off. Gaz. 9th Supp. 204, 211 (1949); *Serra v. Republic*, G.R. No. L-4223, 12 May 1952) An order that dismisses a petition without stating the ground therefor would be violative of a constitutional provision. (Section 12, Article VIII, Constitution of the Philippines.)

III. Civil Rights

A. *Right Against Self-Incrimination*

When can a person invoke his constitutional right not to be compelled to be a witness against himself? In an administrative investigation conducted by the Wage Administration Service, an employer against whom a claim had been filed was called to testify and was placed under oath. Before any question could be asked, he invoked his constitutional right not to be compelled to be a witness against himself, calling attention to the fact that the law on overtime pay involved in the investigation provides a penalty for its violation. This contention was upheld by the agency and sustained by the Secretary of Labor. Hence, a petition for a writ of certiorari was presented seeking to annul the ruling. The Supreme Court in granting the writ and setting aside the order complained of held that except in criminal cases, there is no rule prohibiting a party litigant from utilizing his adversary as witness, subject to the constitutional injunction not to compel a person to testify against himself. But the privilege against self-incrimination must be invoked at the proper time and the proper time is when the question calling for a criminating answer is propounded.[33]

B. *Protection Against Double Jeopardy*

A unanimous Court declared that the state cannot appeal in a case where the trial court has imposed on the accused a penalty much lower than that provided in the law. In the celebrated case of *People v. Ang Cho Kio*,[34] the accused killed the purser and the pilot of a passenger plane which he had hijacked in an attempt to escape to a foreign territory and a plea of guilty was entered in the two cases brought against him. For kiling the purser, a penalty ranging from 12 years of prision mayor to 20 years of reclusion temporal with the duty to indemnify

---

[33] *Gonzales v. Hon. Secretary of Labor*, 50 O.G. (8), 1080 (1954).
[34] G.R. Nos. L-6687, 6688, July 29, 1954.

the heirs of the deceased the sum of ₱6,000 and costs was imposed. In the second case involving the murder of the pilot, the penalty imposed was reclusion perpetua with indemnization of ₱6,000 to the heirs of the victim and costs. The state appealed and the Solicitor General contended that the trial court erred in imposing penalties which were lower than those which should have been imposed. The Supreme Court said that there was indeed error in imposing the penalty in the first case. Even so the appeal was dismissed on the ground that the state cannot appeal in a criminal case when to allow appeal the defendant will be placed in double jeopardy. On this point the Court declared:

> "Este Tribunal nunca ha resuelto una cuestion parecida a la causa presente en que el acusado fue condenado por una pena menor que la señalada por la ley y el ministerio fiscal, en apelación, pide que, de acuerdo con el Codigo Penal Revisado, se imponga al acusado una pena mayor. Si el fiscal como el acusado-puede apelar para corregir un error de ley, entonces sera forzoso imponer el acusado la pena de reclusion perpetua. Despues de haber sido ya—por error-condenado por el apelante, no tendria derecho a quejarse si se le impusiera una pena de reclusion temporal, no es poner otra vez al acusado en peligro de ser condenado a mayor pena por el mismo delito? Si el acusado fuese el apelante, no tendria derecho a quejarse si se le impusiera una pena mayor; en el caso presente el que apela es el ministero fiscal, y dicha apelacion pone en peligro al acusado de recibir otra condena mayor. Creemos que en el caso presente se pone al acusado en doble *jeopardy*, esto es, en el peligro de recibir la condena de reclusion perpetua despues de haber sido condenado ya por el juzgado inferior a una pena menor. Por este peligro, el ministerio fiscal no puede apelar, de acuerdo con el articulo 2 de la Regla 118 y siguiendo la garantia constitucional de que 'no se pondra a una persona en peligro de ser castigada dos veces por la misma infraccion' o en jeopardy."

IV. Social and Economic Rights

A. *The Right to Labor; Due Process*

In *Philippine Movie Workers Association v. Premiere Productions, Inc.*[35] the Supreme Court set aside an order of the Court of Industrial Relations on the ground that the laborers were not given a full hearing and were thus deprived of their property without due process of law. The facts of the case show that the Premiere Productions, Inc. filed with the Court of Industrial Relations an urgent petition seeking authority to lay off some of its men on the ground that there was lack of work and that the company was incurring financial losses. At the request of the company an ocular inspection was conducted in its premises and in the presence of the counsels for both parties, workers found in the place were interrogated and cross-examined, their testimonies taken, and the judge looked into some records of the company. On the strength of the findings made at that ocular inspection, the lay off of workers was

[35] 50 O.G. (3), 1096 (1954).

authorized. The petitioning labor union filed with the Supreme Court a petition for review on the ground that because of the procedure adopted by the Court of Industrial Relations, the workers were deprived of their employment without due process of law. The only issue submitted for decision was: May the Court of Industrial Relations authorize the layoff of workers on the basis of an ocular inspection without receiving full evidence to determine the cause or motive of such layoff? In answering this question the Supreme Court passed upon the nature of the right to labor, saying:

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

The Supreme Court emphasized the rule that while the Court of Industrial Relations is given the broad power to adopt its own rules of procedure and may act in accordance with justice and equity without regard to technicalities, it cannot ignore or disregard the fundamental requirements of due process. It held that an ocular inspection of the establishment or premises is proper if the court finds it necessary, but such is authorized only to help the court in clearing a doubt, reaching a conclusion or finding the truth. But it is not the main trial nor should it exclude the presentation of other evidence which the parties may deem necessary to establish their case. It is merely an auxiliary remedy which the law affords the parties or the court to reach an enlightened determination.

B. *Sale of Lands to Aliens*

The Supreme Court once more refused to revise its doctrine in the *Cabauatan v. Uy Hoo*[86] case denying Filipino citizens who sold lands to aliens in violation of the Constitution recovery of the lands sold on the ground that the parties being in *pari delicto*, the law will not help either of them.[87]

B. *Lease of Land to Aliens*

Does the provision of the Constitution which states that "save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations or associations qualified to acquire lands of the public domain in the Philippines" prohibit the lease of land to aliens? The Supreme Court with an almost una-

---

[86] G.R. No. L-2207, January 23, 1951.
[87] *Arambulo v. Chua So.* G.R. No. L-7196, August 31, 1954.

nimous vote answered this question in the negative in the leading case of *Smith, Bell & Co. Ltd. contra Registrador de Titulos de Davao.*[38]

Smith, Bell & Co., an alien corporation, obtained a 25 year lease of a parcel of land in Davao with option to renew the lease for another 25 years. Registration of the lease was refused by the Register of Deeds of Davao and this action before the Supreme Court seeks an order to compel the registration. It was contended that under the provisions of article 1491 in relation to article 1496 of the Civil Code aliens who by constitutional prohibition cannot acquire land by purchase cannot obtain them by lease. The Supreme Court after examining the provisions of the Civil Code declared that the prohibition against acquisition by the persons enumerated in article 1491 is based on reasons of morality and arise from the peculiar relations of these persons to the property which they are prohibited from acquiring. Applying the rule of *ejusdem generis*, the Supreme Court interpreted the last paragraph of the article which refers to "any others specially disqualified by law" to apply only to those persons who bear a peculiar relation to the property and not to all persons in general.

The Court pointed out that although apparently the contracts of lease and sale are similar there exists substantial differences between them. Thus, an alien who buys a parcel of land becomes its owner and exercised the rights of ownership; while one who obtains its lease gets no more than its possession or use. There is no danger of the lessee becoming owner. The ownership remains with the lessor. The reason for prohibiting the sale of land to aliens is to preserve our national heritage. But to extend the prohibition to the lease of land to aliens would, according to the Court, impair the beneficial ownership over the property. Most of the commercial lots of the country are leased to foreigners. Moreover, the Constitution does not prohibit the lease of public lands to foreigners and the Court gave specific instance of such existing leases made by the government. But, the Supreme Court added that under article 1643 of the Civil Code, "no lease for more than *ninety-nine* years shall be valid."

D. *Expropriation of Lands to Be Subdivided and Sold at Cost*

Consistently following the *Guido*[39] and subsequent cases making the size of the land sought to be expropriated the principal criterion for determining the propriety of expropriation, the Supreme Court disallowed in three cases the expropriation of lands to be subdivided into small lots to be sold at cost to individuals.[40]

---

[38] G.R. No. L-1784, October 27, 1954. 9 justices voted for the validity of the lease, 1 justice did not take part. However, at the time of writing, the decision is pending reconsideration.

[39] 47 O.G. 1848 (1951).

[40] *Municipality of Caloocan v. Manotok*, G.R. No. L- 6444, May 14, 1954; *Republic v. Gabriel*, G.R. No. L-6161, May 28, 1954; and *Municipality of Caloocan v. Choan Huat*, G.R. No. L-6302, October 30, 1954.

In *Municipality of Caloocan v. Manotok*[41] the plaintiff proposed to subdivide the property of the defendant for resale to the actual tenants thereof. The property in question with an area of hardly four hectares was purchased by the defendant for his nine children each of whom became the registered owner of one ninth of the property or 4,375 square meters. Later these persons organized a corporation to administer their interests. The Supreme Court held that the government cannot consider 4,375 square meters a landed estate for expropriation purposes and that "grouping the 9 persons together, or suing them together as a corporation does not conceal the resultant deprivation of 9 individuals of their landed portions of 4,375 square meters each. It would undoubtedly be unfair to implead 20 owners of small contiguous lands and then maintain that they own a large estate subject to condemnation."

In *Republic v. Gabriel*[42] the land involved had an area of 41,674 square meters and was partly agricultural, partly residential. Distributed among the heirs of the original owner each heir would get no more than one hectare. In spite of the allegation that there was continuous strained relations and conflicts between the tenants and their owners, the Supreme Court held that the land was not a proper subject for expropriation in order to resell it at cost to the tenants.

Even if the land is allegedly owned by a corporation disqualified to hold lands in the Philippines because most of its stock is owned by aliens, if the area is no more than 12,068 square meters it cannot be expropriated for the purpose of resale. The land is not landed estate and if it is true that the corporation is disqualified to hold it, expropriation is not the proper remedy to take it away from such corporation since expropriation proceeds on the postulate that the person proceeded against is the owner of the property and it is inconsistent in the same proceeding to recognize ownership and at the same time deny it.[43]

---

[41] *Supra*, See Note 40.

[42] G.R. No. L-6161, May 28, 1954.

[43] *Municipal Government of Caloocan v. Choan Huat*, G.R. L-6301, October 30, 1954.