SURVEY OF 1955 CASES IN INTERNATIONAL LAW

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As usual there is a dearth of cases applying the principles of international law. More than ten years have passed since liberation but still most of the cases involved the effects of war or the Japanese occupation in the Philippines. Considering, however, that we have really very few cases in our Philippine jurisprudence regarding international law, we have enough of our share for the survey of 1955.

BELLIGERENT MILITARY OCCUPATION.

The rights and powers of the military occupant cease upon the termination of military occupation as accorded to it under International Law. In the case of *Tan Se Chiong v. Director of Posts and Auditor General* [1] the importance of the time a military occupation ceases and commences and the period when there is an effective military occupation has been shown. This case was brought to the Supreme Court by petition to review the decision of the Auditor General denying the claim of the petitioner for the redemption of money orders (amounting to ₱41,600) issued by the postmaster of Guiuan, Samar, between May 6 to December 11, 1943, in favor of the petitioner as remitter, payee, and indorsee. According to the Auditor General such money orders were purchases after the official occupation of the Japanese forces, in contravention to Administrative Order No. 1 (1947) of the Director of Posts which reads as follows:

> "5. Money orders issued during the war or on and after Dec. 8, 1941. —Any money order regularly issued in the Philippines on and after December 8, 1941 (except those falling under paragraph 6) which is in good condition and regular in all respects, may be paid only upon statement under oath in triplicate of the claimant stating:
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> "b. That the order was issued in the regular course of business at the post office indicated therein as the office of issue for which legal currency (Treasury or Philippine National Bank notes or Government checks or warrants but scrip money or emergency notes) was paid (sec. 831 [4], Service Manual);
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* LL.B. (U.P.), 1956; Member, Student Editorial Board, *Philippine Law Journal*, 1954-56.

[1] G.R. No. L-5920, June 25, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 702-4 (1955).

> "d. That the post office where the money order was issued was at the time still under the control of the Commonwealth Government and the place where it was located was not yet occupied by the enemy."

The issue in this case was whether or not Guiuan, Samar, was occupied by the Japanese invaders at the time such money orders were issued. The Supreme Court agreed with the contention of the Solicitor General that Guiuan, Samar did not come within requirement (d) as above quoted.

After citing the case of *Co Kim Cham v. Valdez*[2] the Court added:

> "There is no proof that when the Japanese withdrew in 1942 they had no intention of returning; or that the retirement was coerced by the military action of the guerilla forces; or that the latter were able to resist the enemy's efforts to dislodge them and reoccupy the town. On the contrary, the records is clear that the guerrillas were only able to control Guiuan as long as the Japanese were not minded to return. In fact, the Japanese returned in 1944 and reoccupied the town without the guerilla forces being able to prevent it. So that the absence of a Japanese garrison in 1948 did not mean that the belligerent occupation had ceased or become ineffective."

Furthermore, the petitioner admitted that part of the money he paid for the money orders were Cebu Emergency notes, thus violating paragraph (b). However, he may recover what he had paid in genuine money upon proof thereof.[3]

MEANING OF "TERMINATION OF WAR" WITH REFERENCE TO PRIVATE CONTRACTS.

The phrase "termination of war" in relation to private contracts was interpreted by our Supreme Court in the case of *Fabie v. Court of Appeals and Moreno*[4] Here, a contract of sale with the right to repurchase was executed during the Japanese occupation, the vendor having reserved such right within the period of "three months from and after the termination of the war at present raging." On April 8, 1946 vendor *a retro* offered to repay but vendee *a retro* refused to accept, claiming that the time to repurchase had already elapsed. The complaint was filed on May 24, 1947 for the return of the premises upon repayment of the amount received.

In reversing the ruling of the Court of Appeals and affirming the decision of the CFI, the Supreme Court observed that the opin-

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[2] 75 Phil. 371, 373-74 (1945).
[3] Citing Lichauco v. Martinez, 6 Phil. 594 (1906).
[4] G.R. No. L-6368, March 29, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 546-47 (1955).

ion of the Court of Appeals resulted from a failure to appreciate correctly the cases cited by it to support its decision. The same cases enunciated the principle that war ends when peace treaties are signed and ratified or peace is formally proclaimed and not when hostilities ceased. The same authorities specifically qualify the rule where the parties to a contract so intend or in determining the intent of the parties.

In the present case there was nothing to indicate that the parties had actually intended mere cessation of hostilities as termination of the war. On the contrary, the short period of three months indicated that both parties had contemplated the return of complete normalcy, not merely the end of armed conflict, for it was a known fact that the months and years after such ending were periods of reconstruction and economic hardship.

Anyway, the Court continued, in this jurisdiction the language of a writing "is to be interpreted according to *the legal meaning* it bears in the place of its execution" [4a] and as stated in several decisions the war terminates *in a legal sense* upon official proclamation of peace. Undoubtedly in 1946 when the offer of repurchase was made no peace treaty had yet been signed between the United States and Japan, and no formal declaration of peace had been published (President Truman issued his proclamation in December, 1946). Therefore, in the month of April, 1946 plaintiffs' period for repurchase had not yet expired.

APPLICABILITY OF THE BALLANTYNE SCALE OF VALUES.

In the case of *Nicolas & Matias v. Matias, et al.*[5] the deed of mortgage provided that the obligation of the mortgagors was to be paid one year after the expiration of five (5) years from June 29, 1944, which was the date of said instrument. Therefore, the obligation was not payable until June 29, 1949. On July 15, 1944, the mortgagors offered to pay the debt, with interest for five years, but the mortgagees rejected the offer. Wherefore, the mortgagors made a judicial deposit.

The Court held that the contracting parties were free to stipulate on the currency in which their respective obligations were to be settled, and that whenever, pursuant to the terms of an agreement, an obligation assumed during the Japanese occupation was not payable until after liberation of the Philippines, the parties to the agreement are deemed to have intended that the amount stated

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[4a] See Rule 123, § 58, Rules of Court.
[5] G.R. No. L-8093, Oct. 29, 1955.

in the contract be paid in such currency as may be legal at the time when the obligation became due. This was precisely the situation in the case at bar. The Court held that the mortgagors were not entitled to accelerate, without the consent of the mortgagees who could not be compelled and who were under no obligation to accept the tender of payment made on July 15, 1944. Consequently, the consignation effected simultaneously with the institution of civil case in August 1944, was null and void. The obligation had to be satisfied, peso for peso, in Philippine currency and not in accordance with the Ballentyne scale. Obligations contracted before the war, which became due during the occupation could be validly paid with the Japanese war notes which were then legal tender. Obligations contracted during the war which became due and payable before liberation or could have been paid during that time, may be judicially enforced, after liberation on the basis of the Ballantyne schedule. Obligations contracted during the occupation payable after the war should be paid peso for peso.[5a]

EFFECT OF WAR AND DEBT MORATORIUM UPON THE STATUTE OF LIMITATION.

While it may be said that in those places where our courts of justice resumed their functions, the statute of limitations may not be said to have been suspended by the state of war, because then any citizen or national could invoke the aid of the courts for the enforcement or vindication of his rights, as stated by this Court in a number of cases,[6] the same situation does not obtain when the parties affected are enemy aliens who by the laws of war are generally interned or placed in concentration camps. And while it has been held that "a resident alien of any nationality is not necessarily debarred from maintaining an action by the circumstance of his interment as a civilian prisoner of war," [7] however, this only holds true in the absence of any governmental regulation to the contrary, and as a rule, for obvious reasons, an occupation government adopts a restricted measure on this matter.[8] And so it has been generally held that "a foreign or international war suspends the operation of the statute of limitations between citizens of the countries at war as long as the war lasts, at least as regards enemy aliens resident

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[5a] See Notes, *Recent Decisions*, 30 PHIL. L.J. 978 (1955).

[6] Palma, et al. v. Celda, 46 O.G. (Supp.) 198 (1950); España v. Lucido, 8 Phil., 419 (1907).

[7] 56 AM. JUR., 247.

[8] *Ex parte* Kawato, 317 U.S. 69 (1942). But see Porter v. Fruedenberg, Gr. Br. Ct. App. 1915.

in enemy territory." [9] And in connection with enemy aliens residing in the Philippines during the war, the Japanese Military Administration issued Instruction No. 28 decreeing the suspension of court actions affecting enemy aliens except in cases where express authority was obtained from military authorities.[9a]

Such was the holding of the Supreme Court in the case of *Intestate Estate of the Late Agustin B. Montilla, Jr., Vda. de Montilla v. Pacific Commercial Co.*[10] Here, case two claims were filed in the intestate proceedings of the deceased debtor on October 2, 1951 and it therefore appeared that a period of more than 11 years had elapsed before this step was taken since the right to enforce their collection by judicial action had arisen in the year 1940. The Pacific Commercial Company was a corporation organized under the laws of the Philippines but all its stockholders were Americans.

In concluding the Court said that our statute of limitations cannot apply to herein appellant which is an American owned company whose stockholders and officers were enemy aliens who were then interned or hiding during the occupation and who because of their precarious situation were not in a position to invoke the aid of the courts, even if they wanted to, for the protection of their interest or of their company. And it would now be most unfair to apply to appellant the effects of such statute simply because of the alternative afforded to enemy aliens by the military order that they could secure the requisite authority for the enforcement of their right..

Furthermore, the adoption of Executive Orders Nos. 25 and 32 relative to Debt Moratorium promulgated on November 18, 1944 and March 10, 1945, respectively, and Republic Act No. 342 passed on July 26, 1948, limiting the moratorium to war sufferers had the effect of tolling further the limitation of the period for the institution of a court action and therefore suspended the statute of limitations. Reference has been made by the Supreme Court to this moratory legislation in order to bring home earlier decision in the case of *Rutter v. Esteban*,[10a] such moratorium law had been declared unreasonable and oppressive and therefore null and void.

TRADING WITH THE ENEMY ACT.

The Supreme Court has already rejected the theory of collective or general duress allegedly exercised by the Japanese military oc-

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[9] 54 C.J.S. 289 .
[9a] 1 O.G. No. 5, 216 (1942).
[10] G.R. No. L-8223, Dec. 20, 1955.
[10a] G.R. No. L-3708, May 18, 1953.

cupant over the inhabitants of this country as a ground to invalidate acts that would otherwise be valid and voluntary if done in times of peace. In deciding the case of *Fernandez and Fernandez v. The Honorable J. Howard,*[11] the Court therefore weighed the proof presented by the parties carefully. Even though the land was allegedly bought by the Osaka Boeki Kaisha, Inc. (a Japanese corporation) because it was allegedly needed by the Japanese Navy, there can be no presumption that there was coercion or force used. The evidence of the appellants, especially the testimony of the notary and even the documentary evidence belied the testimony of the appellees that there was duress employed. Even the fact that the vendors made withdrawals of the purchase price from time to time further showed that the sale was regular and was voluntary on the part of the vendors. Therefore the disallowance of the claim by the Enemy Property Custodian in accordance with the Trading with the Enemy Act was correct.

Following the cases of *Hodges v. Gay, et al.*[12] and *Haw Pia v. China Banking Corporation,*[13] the Court reiterated its ruling that Japanese military authorities through the Enemy Property Custodian were authorized to receive payment under Article 1162 of the Civil Code.[14]

The cases heretofore reviewed fall within the realm of Public International Law. However, in Private International Law or Conflict of Laws, there is merely a reiteration of previous rulings on the nationality of business associations and the right of foreign corporations to sue and to do business in the Philippines.[14a]

RIGHT OF FOREIGN CORPORATION TO SUE IN THE PHILIPPINES.

In the case of *Pacific Vegetable Oil Corporation v. Angel O. Singzon,*[15] the Court through Justice Bautista-Angelo held that "it appearing that appellant corporation has not transacted business in the Philippines and as such it is not required to obtain a license before it could have personality to bring a court action, it may be stated that said appellant, even if a foreign corporation, can maintain the present action because, as aptly said by this Court, 'it was never the

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[11] G.R. No. L-4436, Jan. 28, 1955; 51 O.G. 713 (1955).
[12] 48 O.G. 136 (1952).
[13] 45 O.G. No. 9 (Supp.) 229 (1949).
[14] See the case of Testate Estate of Isabel de Rohde v. Intestate Estate of Manuel Urquico, G.R. No. L-6833, Oct. 10, 1955.
[14a] See Western Equipment and Supply Co. v. Reyes, 50 Phil. 115 (1927); Marshall Wells & Co. v. Elser, 46 Phil. 71 (1924), and Mentholatum Co. v. Mangaliman, 72 Phil. 524 (1941).
[15] G.R. No. L-7917, April 29, 1955.

purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts, and thus, in effect, to permit persons to avoid their contracts made with such foreign corporation." Therefore the corporation has personality to maintain the present action.