SURVEY OF 1955 CASES IN CONSTITUTIONAL LAW

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In 1955, quite a number of interesting cases in the field of Constitutional Law was decided by the Supreme Court. It was last year that *Ocampo v. Secretary of Justice*,[1] which involved the issue of the independence of the judiciary, was decided. It was in that year, too, that the decisions in the cases of *Mondano v. Silvosa*,[2] on the presidential power of supervision over local governments, *Republic v. Imperial*,[3] on the tenure of commissioners on election, *Arnault v. Balagtas*,[4] regarding the power of the Congress to punish a witness for contempt, and *Gorospe v. Vera*,[5] regarding tenure of civil service employees, and many others, were promulgated.

As in the past years, the volume of cases dealing with citizenship by naturalization was sizeable. Some of them laid down new doctrines; most of them reiterated settled ones.

These cases will be reviewed under the headings of "Governmental Activity and Separation of Powers" and "Constitutional Rights."

I. GOVERNMENTAL ACTIVITY AND SEPARATION OF POWERS.

A. Power of Congress to Reorganize Inferior Courts; Judicial Independence.

The Constitution consecrates the ideal of an independent judiciary which in the words of Justice Malcolm is "one of the chief glories of the government and one of the most priceless heritages of the Filipino people." [6] The judicial structure is built, as it were, on the foundations of security of tenure,[7] fixity of compensations,[8] and immovability of judges.[9]

In *Ocampo v. Secretary of Justice*,[10] the petitioners asked the high court to declare unconstitutional section 3 of Republic Act No.

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* Recent Legislation and Documents Editor, Student Editorial Board, *Philippine Law Journal*, 1955-56.

[1] G.R. No. L-7910, Jan. 18, 1955.
[2] G.R. No. L-7708, May 30, 1955.
[3] G.R. No. L-8684, March 31, 1955.
[4] G.R. No. L-6749, July 30, 1955.
[5] G.R. No. L-8408, Feb. 17, 1955.
[6] Borromeo v. Mariano, 41 Phil. 322, 330 (1921).
[7] PHIL. CONST. Art. VIII, §9.
[8] *Ibid.*
[9] *Id.*, Art. VIII, §7.
[10] G.R. No. L-7910, Jan. 18, 1955.

1186 [11] which abolished the positions of judges-at-large and cadastral judges as provided for in section 53 of the Judiciary Act of 1948. Petitioners, four judges-at-large and six cadastral judges, found themselves without office to preside over as a result of the law. Petitioners contended that while Congress, under section 1 of the Constitution, has the power to abolish inferior courts, such power is restricted by, and may be reconciled with, section 9 in the sense that petitioners should be allowed to continue holding their offices during good behaviour, until they reach the age of seventy or become incapacitated to discharge the duties of their offices, affirming in this respect that they had not been guilty of misconduct, had not reached the age of 70, and had been physically capable of performing their duties.

On the other hand, respondents contended that the congressional power to establish courts and apportion their jurisdiction implies the power to suppress courts already established together with the positions of incumbents. Hence, they argued, there is no tenure of office to be respected under section 9 if the office is abolished.

By a very highly divided vote of 4 to 7,[12] the Supreme Court upheld the constitutionality of the law. Thru the Chief Justice, it held that the main objective of Republic Act No. 1186 was to do away with the system of "rigodon de jueces" under which judges-at-large and cadastral judges could be sent from one district to another by the Secretary of Justice contrary to the mandate of the Constitution. The Court said that the petitioners could not have been purposely ousted because the isolated opinions of a few legislators that the undesirable judges must go was not controlling. The Court added that as a matter of fact, all positions of judges-at-large and cadastral judges and not only those held by the petitioners were abolished. The petitioners were casualties of the legitimate exercise by the President of his prerogative of appointment. As the power of appointment carries with it the power of removal it is more logical to suppose that, as the judges are appointed by the President, the security of tenure contemplated by section 9 of Article VIII of the Constitution, was intended more as a restraint against Executive removal; and as a matter of fact, in implementing this objective, it has been provided in section 67 of the Judiciary Act of 1948 th no district judge, judge-at-large or cadastral judge shall be separated or removed from office by the President of the Philippines unless

[11] See reprint of this Act in 29 PHIL. L.J. 422 (1954).

[12] Paras, C. J., Padilla, Reyes, A., and Labrador, JJ. voted to uphold §-3 of Rep. Act No. 1186, while Pablo, Bengzon, Montemayor, Jugo, Bautista, Concepcion and Reyes, J. B. L., JJ. believed it is unconstitutional.

sufficient cause shall exist, in the judgment of the Supreme Court, involving serious misconduct or inefficiency, for the removal of said judge from office after the proper proceedings.

Petitioners also argued that Republic Act No. 1186 did not abolish any court of first instance, but instead increased the number of district judges, with a reminder that in the United States where the legislative power to abolish a judgeship was sustained, the corresponding court was also abolished. The Court considered this fallacious because none of the petitioners was a district judge presiding over a particular district court, all of them only occupying the positions of either judge-at-large or cadastral judge which were all abolished by the law and so it was no longer necessary to abolish any court.

Chief Justice Paras then discussed the power of Congress under section 1 of the Constitution in relation to section 9 relating to tenure of office. According to him "if the framers of the Constitution intended to leave it to the legislature to establish and abolish courts as the public necessities demanded, this was not qualified, or limited by the clause as to the judge's term of office." [13] The reason is that, as Justice Laurel opined in *Zandueta v. De La Costa*,[14] security of tenure is not a personal privilege of any particular judge.

It follows, therefore ,that "petitioners were not removed from office because a removal implies that the office exists after the ouster," citing *Manalang v. Quitoriano*,[15] in which the court turned down the plea of a civil service employee because his office was abolished.

Elaborating on this point, Chief Justice Paras said:

> "For all practical purposes and to all constitutional intents, a judge of first instance is on the same footing as an officer or employee in the civil service insofar as permanence of tenure is concerned, because whereas the judge is to serve during good behaviour, an officer or employee may not be removed or suspended except for cause as provided by law. In both cases the office is statutory and it is fundamental and elementary that a statute cannot be irrepealable. The petitioners are certainly mistaken in believing that the only way to reconcile section 1 with section 9 of Article VIII of the Constitution is to hold that any attempt to abolish the position of a judge should only be made effective after the expiration of his term; because it is no less tenable and sound to rule that a judge may hold office during good behavior only as long as his position lasts. It may be not be urged that the latter construction would render section 9 meaningless, for the reason that, in the absence of said constitutional provision, the Congress may fix the judge's term of office at, say, one year, two years, three years, or any definite period.

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[13] McCulley v. State, 102 Tenn. 509, 53 S.W. 134 (1899).
[14] 66 Phil. 615 (1938).
[15] G.R. No. L-6898, April 30, 1955.

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"There is no point in the observation that the implied power of Congress to abolish inferior courts cannot prevail over the express constitutional provision on tenure of office. The petitioner's case is also necessarily premised only upon the implied proposition that said tenure may not be shortened. If the power to abolish were intended to be qualified by the permanence of tenure, the Constitution would have, along with provision that the judges of inferior courts shall hold office during good behavior until they reach the ages of seventy years or become incapacitated, further ordained that their term shall not be shortened or affected by the abolition of any inferior courts; in the same way that although the judges 'shall receive such compensation as may be fixed by law,' the Constitution contains the express limitation such compensation 'shall not be diminished during their continuance in office.' (Section 9, Article VIII, Constitution)."

As if to allay the fear of those who saw in Republic Act No. 1186 a termite eating away the foundations of an independent judiciary, he said:

"Let it be clearly understood that we are not here concerned with a case of one or more judges of first instance being singled out for elimination nor with a case contemplated by Mr. Justice Laurel in his concurring opinion in *Zandueta v. De La Costa, supra*, when he gave the warning that where the violation of a constitutional provision regarding security of judicial tenure is palpable and plain, and the legislative power of reorganization is sought to cloak an unconstitutional and evil purpose, it will be the time to make the hammer fall and heavily."

Justice Padilla concurred:

". . . By repealing section 53 of Republic Act No. 296 and abolishing the anomalous judicial positions therein created, the Congress has but rectified a grave error—with intent, no doubt, to make the judicial system conform to the Constitution by eliminating therefrom judges that could be moved about at the pleasure of an Executive Department and to that extent exposed to extraneous influences. To permit the continuance of a system that offends against the fundamental law would be a dereliction of duty on the part of Congress. On the other hand, the Constitution is upheld and not violated where judicial positions created or established contrary to its provisions—such as those held by the herein petitioners—are abolished."

In his separate concurring opinion, Justice Labrador opened with a plea for a dispassionate consideration of the law. Like the Chief Justice, Justice Labrador upheld the law on the ground that the creation of the positions of judges-at-large and cadastral judges was subversive of judicial independence in two ways: first, because if a judge can be moved from one place to another at the will of an exe-

cutive official, he cannot have the freedom to act in the trial and decision of cases according to the dictates of his reason and conscience, and second, because through the exercise of this power the executive branch can assign friendly or willing tools to any place to try specific cases so that these may be tried and decided in a manner which the executive branch desires. In this connection, he cited the case of *Montano v. Mejia*, G. R. L-6416, in which a judge-at-large was made to abandon a heavy calendar of hearings to try a case in a nearby province presumably in the manner in which the administration desired it to be conducted or decided, to the extreme inconvenience of the residents of the province where his calendar was previously fixed. The prevailing feeling in the Constitutional Convention that judges of first instance should have designated places of residence as expressed in section 7 must be considered applicable to judges-at-large and cadastral judges who resided in Manila. They could not permanently reside in districts out of Manila because by the very nature of their office they were to be assigned from time to time to different provinces. It was this "intolerable anomaly" which Congress sought to remedy by Section 3, paragraph 2 of Republic Act No. 1186.

> "To the judicial system it is indeed painful, but the operation may be likened unto the situation covered by the following Biblical passage:
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> "And if thy hand, or thy foot scandalize thee, cut it off, and cast it from thee. It is better for thee to go into life maimed or lame, than having two hands or two feet, to be cast into everlasting fire. (St. Mathew, chap. 18, v. 8)."

He then dealt with the petitioners' contention:

> ". . . were we to hold that judicial tenure is paramount over the legislative power to reorganize, the latter would be impotent to exercise the power granted, for it cannot be denied that a judicial reorganization or a minor change in the judicial system must always affect incumbents of judicial offices. The power to reorganize the judiciary should be considered paramount over the permanence of judicial tenure the latter serving only as a limitation when the legislative power has been abused. For we cannot conceive, by the mere guaranty of tenure, that the Constitution intended to convert the judicial body into such a privileged group of untouchables that even the legitimate needs and desires of the body politic, as expressed through its lawful representative, must be subordinated thereto and abide the passing away of judges . . ."

According to him, the cases cited by the petitioners were inapplicable because in those cases either the court concerned was a constitutional court [16] or the term of office of the judge concerned was

[16] State v. Friedley, 135 Ind. 119, 34 N.E. 872 (1893).

fixed expressly by the Constitution [17] or no positions were abolished and the incumbents were sought to be deprived of their offices upon reaching a certain age.[18]

He then cited cases [19] in jurisdictions where the constitutional provision was similar to that of the Philippines which hold that the public good may justify abolition and if the judges of the abolished courts are deprived thereof, they may not complain. Towards the end of his decision there is this statement:

> ". . . it is to be presumed that when the (Constitutional) Convention adopted the permanence of tenure for judicial officers, it meant to extend it only to judges with permanent stations, not to judges holding the positions for which the law at the time of the Convention had not provided official residences which the Constitution impliedly prohibited. Failure on the part of the legislature to implement the constitutional directive, cannot be interpreted to raise the category of judges-at-large to that of judges of district courts, in so far as tenure is concerned."

Justice Bengzon vigorously dissented. He anchored his opinion on the fact that Republic Act No. 1186 did not abolish any court of first instance and yet it abolished the offices of several judges of first instance. He emphasized that there was no reduction, but an increase, in the number of judges, and in the number of courts. There was a mere change of designation from "Cadastral Judge or Judge-at-Large" to "District Judge," he contended. He believed that Congress could have, as suggested by Secretary Tuazon, directed in Republic Act No. 1186 that the petitioners should become district judges and that it would not be objectionable as an encroachment on the President's prerogative of appointment because such judges had already been appointed to the judiciary before the passage of the Act, the provision to be thus viewed in the light of mere change of official designation. Answering the respondents argument that had these petitioners been appointed district judges by the President after the passage of Republic Act No. 1186, they would not complain, Justice Bengzon said that the petitioners would still be judicial officers, at large or cadastral, except for the law. The petitioners were not pretending to be district judges, nor seeking to be promoted as district judges by appointment, according to him.

As we have said before, Chief Justice Paras upheld the law on the ground that since the office of judge-at-large or cadastral judge

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[17] Commonwealth v. Gamble, 62 Pa. 343, 1 Am. St. Rep. 422 (1869).
[18] Opinion of Justices, 171 N.E. 237 (1930).
[19] Aikman v. Edwards, 55 Kan. 751, 42 Pac. 366 (1895); State v. Campbell, 3 Tenn. Cas. 355 (1875).

was abolished there was no security of tenure to protect. To this Justice Bengzon had this answer:

> ". . . the plain fact is petitioners were judges of first instance on June 19, 1954, and because of Republic Act 1186, they ceased to be so. They lost their jobs thru the operation of a legislative enactment. They were ousted by Congressional direction, i.e., legislated out. The effect is what counts."
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> ". . . If the petitioners had a five-year lease on a building and after one year the owner destroyed it, will said owner be absolved upon the allegation that petitioners have no rights because the building is gone? Respondent, of course, will differentiate by pointing to the contract and citing the principle that an office is not a contract. And yet, does a constitutional promise of tenure entail a lesser obligation than a private contractual duty?
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> ". . .
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> "Our views on this question of abolition are not inconsistent with Manalang v. Quitoriano, 50 Off. Gaz. p. 2515, wherein the Director of the Placement Bureau lost his position it was reorganized into the National Employment Service, headed by a Commissioner. There the constitutional issue hinged upon the right of a civil officer not to be 'removed or suspended except for cause as provided by law.' Contrary to what is believed in some quarter, judges have broader and stronger guarantees of tenure than ordinary civil servants. They have *in addition* the privilege to hold office 'until he reaches 70 years of age, or becomes incapacitated.' Besides, the underlying consideration must be borne in mind that Manalang *belonged to the Executive Department*, and because the President approved the law, no question or encroachment by one branch on the other could be apprehended or alleged."

He then dealt with the argument of the majority that the law was intended to put an end to the "rigodon de jueces." In the first place, he said, the principle seemed to be undisputed that a law may not be declared unconstitutional for mere violation of the "spirit" of the Constitution. In the second place, the section refers to district judges—and not to other judges. The solution, he said, is to stop transferability of judges, not to outlaw their offices. This ground of defense, besides, may not be upheld, unless approved by two-thirds of the Supreme Court, necessitating as it does, a declaration of unconstitutionality of a law. Justices Pablo, Jugo, Concepcion, and J. B. L. Reyes concurred with Justice Bengzon, while Justices Montemayor and Bautista Angelo filed separate concurring opinions.

B. Power of Congress to Punish a Witness for Contempt.

Although the Constitution does not expressly invest either House of Congress with the power to make investigations and exact testimony so that it may exercise its legislative function wisely and effectively, such power is so far incidental to the legislative function as

to be implied. Experience has shown that mere requests for such information are often unavailing and so information that is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.[20] The scope of such power is not always susceptible of easy definition. It may be stated as a broad principle, however, that the inquiry, to be within the jurisdiction of the legislative body to make, must be material or necessary to the exercise of a power in it vested by the Constitution, like the power to legislate or to expel a member; and every question which the investigator is empowered to coerce a witness to answer must be material or pertinent to the subject of the inquiry or investigation.[21]

In the Philippines, acts which may be considered as constituting contempt may also be punishable under the Revised Penal Code.[22] Thus, article 150 imposes the penalty of *arresto mayor* or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment on any one who, having been duly summoned to attend as a witness before either House of Congress, its committees, subcommittees, or divisions or before any commission or committee chairman or member authorized to summon witnesses, refuses without legal excuse, to answer any legal inquiry when required by them to do so in exercise of their functions.

Last year, the Supreme Court had another occasion to discuss the power of the Congress to punish a witness for contempt. In the case of *Arnault v. Balagtas*,[23] petitioner-appellee was the attorney-in-fact of Ernest H. Burt in the negotiations for the purchase of the Buenavista and Tambobong Estates by the Government. The purchase was effected on October 21, 1949, and the price paid for both estates was ₱5 (M). On February 27, 1950, the Senate adopted Resolution No. 8 creating a Special Committee to determine "whether the said purchase was honest, valid, and proper, and whether the price involved in the deal was fair and just, the parties responsible therefor, and other facts the Committee may deem proper in the premises." For refusing to identify the person to whom he gave part of the purchase price or ₱440,000.00, the Committee ordered the commitment of Arnault in the new Bilibid Prisons until he should purge himself of contempt by revealing the name of the recipient of the ₱440,000. Petitioner questioned the validity of his confine-

[20] Arnault v. Nazareno, 46 O.G. 3100 (1950).
[21] *Ibid.*
[22] II TAÑADA AND FERNANDO, CONSTITUTION OF THE PHILIPPINES 740 (4th ed. 1953).
[23] G.R. No. L-6749, July 30, 1955.

ment. The Court adversely held against him in *Arnault v. Nazareno, supra.*

In December, 1951, while thus confined, petitioner-appellee executed an affidavit in which he gave the supposed circumstances under which he met one by the name of Jess D. Santos. After receiving said affidavit and hearing Arnault, the Senate Special Committee adopted Resolution No. 114 on November 8, 1952, ordering the appellant director of Prisons to continue holding Arnault in confinement. The resolution recited that Arnault "has failed and refused, and continues to fail and refuse, to reveal the person to whom he gave the amount of ₱440,000" and that the situation of the petitioner "has not materially changed since he was committed to prison."

Arnault then filed a petition for a writ of habeas corpus in the Court of First Instance of Rizal alleging: (1) that the acquisition by the Government, through the Rural Progress Administration of the estates was not illegal or irregular but beneficial to it; (2) that the decision of the Supreme Court in G. R. No. L-3820 declared that the Senate did not imprison Arnault beyond proper limitations, that is beyond the period longer than *arresto mayor* as provided by article 150 of the Revised Penal Code; (3) that appellee had purged himself of the contempt charges when he disclosed the identity of the recipient of the ₱440,000; and (5) that the legislative purpose for which the Senate ordered the confinement had already been accomplished, and therefore, there was no reason for his continued confinement.

The Court of First Instance of Rizal granted the petition, hence this appeal.

The Supreme Court said that the decisive questions were: (1) Did the Senate Special Committee believe the statement of the appellee that the person to whom he gave the ₱440,000 was one Jess D. Santos, and if it did not, may the Court review said finding? and (2) If the Senate did not believe the statement, was the continued confinement of the appellee valid?

The Court held that the Senate did not believe the statement of Arnault to the effect that he gave the ₱440,000 to one Jess D. Santos as may be gleaned from the recitals of the Resolution No. 114. May the Court review said findings? Justice Labrador said that it may not, because that would be violative of the principle of separation of powers. The only instances, according to him, when judicial intervention may lawfully be invoked are when there is a violation of a constitutional inhibition or when there is an arbitrary exercise of the legislative discretion. In the case at bar, the Court found that petitioner had been accorded due process before the adoption of Resolution No. 141.

As to the second question, namely, whether the confinement was valid, the Court held it was, although in the earlier case of *Arnault v. Nazareno, supra,* it was the holding of the Court that Congress can compel a witness to give information by its coercive, not its punitive power. It was the contention of Arnault that the legislature may not punish him, for the punishment for his refusal should be sought thru the institution of a criminal action in a court of justice. After citing *Jurney v. MacCraken* [24] which holds that American legislative bodies after which ours is patterned, have the power to punish for contempt which obstructs the exercise by the legislature of its functions, Justice Labrador held:

> "The principle that Congress or any of its bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power, or necessary to effectuate said power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, it must have intended each department's authority to be full and complete independently of the other's authority or power. And how could the authority and power become complete if for every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy, because it is impotent by itself to punish or deal therewith with the affronts committed against its authority of dignity? The process by which a contumacious witness is dealt with by the legislature in order to enable it to exercise its legislative power or authority must be distinguished from the judicial process by which offenders are brought to courts of justice for the meeting out of the punishment which the criminal law imposes upon them. The former falls exclusively within the legislative authority, the latter within the domain of the courts; because the former is a necessary concommitant of the legislative power or process, while the latter has to do with the enforcement and application of the criminal law."

Has Arnault purged himself of contempt? The Court stated that the petitioner did not truthfully testify and no person guilty of contempt may purge himself by another lie or falsehood. Certainly, said the Court, the resolution may not be claimed as an exertion of an arbitrary power.

As to the last contention that the period of imprisonment has lasted for a period which exceeded that provided by law as punishment for contempt, i.e., six months of *arresto mayor*, the Supreme Court found that the record belied such assertion. Petitioner was originally confined by Resolution No. 17 on May 15, 1950. On De-

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[24] 294 U.S. 125 (1935).

cember 13, 1951, he made his affidavit and thereafter he was called to testify again. The Senate Committee passed its Resolution No 114 on November 8, 1952 and Arnault presented the petition for habeas corpus on March 3, 1953—five months after the last resolution when the Senate found that the petitioner had committed another contempt.

C. Police Power of the Congress.

Police power is the power vested in the legislature by the Constitution to prescribe regulations to promote the health, moral education, good order or safety, or the general welfare of the people.[25] As explained in *United States v. Gomez Jesus*,[26] the police power and the right to exercise it constitute the very foundation, or at least one of the cornerstones of the State. For the State to deprive or permit itself to be deprived of the right to enact laws to promote the general prosperity and welfare of its inhabitants, and promote public health, public morals and public safety, would be to destroy the very purpose and objects of the State. No legislature can bargain away the public health, public safety, or the public morals. The people themselves cannot do it, much less their servants. The welfare of the people is the supreme law. *Salus populi suprema est lex.*

There are cases when the distinction between police power and the power of taxation is not clear. Professors Tañada and Fernando distinguish police power and the power of taxation as to effect thus: police power measures do not result in a transfer of title; in taxation the money contributed as taxes becomes part of the public funds.[27] The case of *Lutz v. J. Antonio Araneta*,[28] was to test the legality of Commonwealth Act No. 567 which provides in section 2 for an increase of the existing tax on the making of sugar, on a graduated basis, on each picul of sugar manufactured, and which, in section 3, levies on the owners or persons in control of lands devoted to sugar cane and ceded to others for a consideration on lease or otherwise—

> "A tax equivalent to the difference between the money value of the rental or consideration collected and the amount representing 12 per centum of the assessed value of such land."

Section 6 provided:

> "All collections made under this Act shall accrue to a special fund in the Philippine Treasury, to be known as the 'Sugar Adjustment and

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[25] Primicias v. Fugoso, G.R. No. L-7859, Dec. 22, 1948.
[26] 31 Phil. 218 (1915).
[27] I CONSTITUTION OF THE PHILIPPINES 122 (4th ed. 1952).
[28] G.R. No. L-7859, Dec. 22, 1955.

> Stabilization Fund,' and shall be paid out only for any or all of the following purposes or to attain any or all of the following objectives, as may be provided by law:
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> "First, to place the sugar industry in a position to maintain itself, despite the gradual loss of the preferential position of the Philippine sugar in the United States market, and ultimately to insure its continued existence notwithstanding the loss of that market and the consequent necessity of meeting competition in the free markets of the world;
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> "Second, to readjust the benefits derived from the sugar industry by all of the competent elements thereof—mill, the landowner, the planters of the sugar cane, and the laborers in the factory and in the field—so that all might continue profitably to engage therein;
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> "Third, to limit the production of sugar to areas more economically suited to the production thereof; and
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> "Fourth, to afford labor employed in the industry a living wage and to improve their living, the working conditions; . . ."

Lutz, as administrator of the estate of Antonio Jayme, brought this suit to recover the sum of ₱14,666.40 paid by the estate for 1948-1949, alleging that the tax imposed under Commonwealth Act No. 567 was unconstitutional because the same was levied for the aid and support of the sugar industry exclusively, which according to him is not a public purpose for which a tax may be constitutionally levied.

The Court held untenable the petitioner's claim because the tax provided for in Commonwealth Act No. 567 is not a pure exercise of the taxing power of the State. Analysis of the Act, according to the Court, particularly of section 6, will show that the tax is levied with a regularly purpose, namely to provide means for the rehabilitation and stabilization of the threatened sugar industry. In short, the Act is primarily a police power measure. The Court took judicial cognizance of the fact that sugar production is one of the great industries of the nation, hence Congress was competent to find that the general welfare demanded that the sugar industry should be stabilized. Justice J. B. L. Reyes, who wrote the decision, then held:

> ". . . Once it is conceded, as it must be, that the protection and promotion of the sugar industry is a matter of public concern it follows that the legislature may determine within reasonable bounds what is necessary for its protection and expedient for its promotion. Here the legislature must be allowed full play, subject only to the test of reasonableness; and it is not contended that the means provided in Section 6 of the law . . . bear no relation to the objective pursued or are oppressive in character. If objective and methods alike are constitutionally valid, no reason is seen why the state may not levy taxes to raise funds for their prosecution and its attainment. Taxation may be made the implement of the state's police power."

Even from the standpoint that the Act is a pure tax measure, it cannot be said that the devotion of tax money to experimental sta-

tions to seek increase of efficiency in sugar production, etc., without any part of such money being channelled directly to private persons, constitutes expenditures for private purpose he added.

In the case of *Co Kiam v. City of Manila*,[29] Ordinance No. 3563 of the City of Manila which prohibits the sale of meat outside the city markets was sustained as a valid police power measure to protect the health of city residents.

D. Non-Delegation of Legislative Power.

One of the limitations on the legislative power is the rule against the undue delegation of such powers. This is based on the ethical consideration that such a legislative power constitutes not only a right but also a duty to be performed by the delegate by the instrumentality of his own judgment acting immediately upon the matter of legislation and not thru the intervening mind of another.[30] An exception to this rule is when the Constitution expressly so provides as when it provides that the President may be authorized by Congress, 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 dues.[31]

In the case of *Philippine Scrappers, Inc. v. Auditor General*,[32] the law involved was Commonwealth Act No. 628. Said law makes it unlawful to export agricultural and industrial products, merchandise, articles, materials and supplies without a permit from the President and confers on the latter 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 said Act thru such department or office as he may designate." [32a] Accordingly, the President authorized by Executive Order No. 3,[33] the exportation of scrap metals provided an export license is first secured by the exporter from the Philippine Sugar Administration, and upon payment of a fee of ₱10.00 per ton of metals exported. Later, the Cabinet approved a resolution fixing a schedule of royalty rates on metal export.

Petitioners brought this action to recover the total sum of ₱448,634.85 which they had paid for license fees and royalties alleg-

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[29] G.R. No. L-6762, Feb. 28, 1955.

[30] United States v. Barrias, 11 Phil. 327 (1908).

[31] Art. VI, § 22(2); *see* People v. Vera, 65 Phil. 56 (1937). Cf. TAÑADA AND FERNANDO, *op. cit. supra* note 22, at 788.

[32] G.R. No. L-5670, Jan. 31, 1955.

[32a] § 2.

[33] Promulgated on July 10, 1946, as amended by Executive Order No. 23 (Nov. 1, 1946).

ing (1) that Commonwealth Act No. 728 does not authorize such collection; (2) that the cabinet has no authority to provide for such collection, hence its resolution of October 24, 1957 is null and void; and (3) that Commonwealth Act No. 728 is inoperative being an export law not approved by the President of the United States pursuant to the provision of the Ordinance appended to the Constitution.[34]

The Court disposed of the first two contentions on the basis of its previous ruling in *Marc Donnelly v. Agregado*,[35] which held that Commonwealth Act No. 728 is not unlawful delegation of legislative power inasmuch as it is merely legislative authorization, pursuant to the Constitution, to the President to fix tariff dues and import quotas, that the authority given to the President to regulate, curtail, and control and even prohibit the exportation of scrap metals includes the lesser power to exact royalties for permissive or lawful use of property right and that the fact that the resolution fixing the schedule of royalty rates on metal exports was approved by the cabinet and not directly decreed by the President does not render the resolution invalid since the act of the cabinet is deemed to be, and essentially is, the act of the President.[36]

The Court found no evidence to support the third contention. On the contrary it found that Commonwealth Act No. 728 was approved on July 2, 1946 and the executive orders of the President were issued after the proclamation of the Philippine Republic and presumed that the President had acted on the matter knowing that the law had been complied with. Besides, the Court added, granting *arguendo* that the foregoing claim of the petitioners is correct, said petitioners were estopped from contesting the constitutionality of the law it appearing that they had acted thereon or invoked the benefits derived therefrom when they applied for the exportation.

Likewise, there can be no objection on the ground of undue delegation of powers to a law which leaves mere matters of details to an agency provided it lays down a standard to guide that agency in the exercise of its discretion. For as noted in *Pangasinan Transportation v. Public Service Commission*,[37] with the multiplicity of the

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[34] Ordinance appended to the Constitution in § 1 provides:
"Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of sovereignty of the United States over the Philippines—
". . .
"(9) Acts affecting currency, coinage, imports and immigrants shall not become law until approved by the President of the United States."

[35] 50 O.G. 4267 (1954).

[36] Citing Villena v. Sec. of Interior, 67 Phil. 451 (1939).

[37] 40 O.G. 8th Supp. 57 (1940).

subjects of governmental regulation and the increased difficulty of administering laws, there is a tendency toward the delegations of greater powers by the legislature and the approval of the practice by the courts.

In the case of *Philippine Ass'n of Colleges and Universities v. Secretary of Education*,[38] petitioners assailed Act No. 2706 as constituting an undue delegation of powers in that it gives the Secretary of Education the power to prescribe rules fixing the minimum standards of "adequate and efficient instruction" to be observed by all such private schools as may be permitted to operate. In rejecting the petitioner's claim, the High Court held that "adequate and efficient instruction" should be considered sufficient in the same way that "public welfare," "necessary in the interest of law and order," "public interest," and "justice and equity and substantial merits of the case" have been held sufficient as legislative standards justifying authority to regulate.[39]

E. Powers of the President.

1. *General Supervision over Local Governments.*

The Constitution provides that the President shall have *control* over 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.[40] This grant of supervisory powers to the President represents a compromise between the historical view which recognizes the right of local self-government and the legal theory which sanctions the possession by the state of absolute control over local governments.[41]

What is the extent of the presidential power over local governments? For sometime the answer has not been particularly clear-cut. The Supreme Court sustained the power of the President to order the investigation of an elective councilor in *Planas v. Gil*,[42] and to suspend a municipal mayor in *Villena v. Secretary of Interior*,[43] by virtue of the "totality of the powers conferred on the Chief Executive by our Constitution," which gives to him all the executive powers of the governments, imposes on him the duty of seeing that the laws be faithfully executed and vests in him the supervision of local governments and the control of executive offices. Then came *Lacson*

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[38] G.R. No. L-5279, Oct. 31, 1955.

[39] Citing II TAÑADA AND FERNANDO, *op. cit. supra* note 22, at 793 and the cases therein.

[40] Art. VII, § 10(1).

[41] Planas v. Gil, 67 Phil. 62 (1939).

[42] *Ibid.*

[43] 67 Phil. 451 (1939).

v. Roque,[44] which, although conceding to the President the power to remove or suspend the Mayor of Manila, held that the same must be exercised "conformably to law." According to this case, there is neither statutory nor constitutional provision granting the President *sweeping* authority to remove local officials, because supervision does not contemplate control. The most liberal view that can be taken of the power of the President, according to the Court, is that it must be *for cause*. To the extent that it limits the presidential power of removal or suspension to causes provided by law, the *Lacson* case maybe said to have modified the doctrines of the *Planas* and *Villena* cases. *Jover v. Borra*[45] and *Rodriguez v. Del Rosario*[46] continued this trend of limiting the powers of the President over all officials.

Last year, the Court struck down again at the suspension of a mayor by a provincial governor at the instance of the President. Briefly, the facts of the *Mondano v. Silvosa*[47] case were:

Following a complaint for rape and concubinage filed against the petitioner, a mayor of Maninit, Surigao, with the PCAC, the Assistant Executive Secretary designated the respondent Governor of Surigao to investigate the charges. Respondent then issued an order suspending the petitioner from office invoking section 79(c) of the Revised Administrative Code which clothes the department head with "direct control, direction and supervision over all bureaus and offices under his jurisdiction . . ." and to that end "may order the investigation of any act or conduct of any person in the service of any bureau or office under his Department and in connection therewith may appoint a committee or designate an official or person who shall conduct such investigations;" and the rule in *Villena v. Secretary of Interior*,[48] which upheld the power of the Secretary of Interior to conduct at its own initiative investigation of charges against local elective municipal officials and to suspend them precentively on the proposition that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 11, Article VII of the Constitution, administrative organizations are adjuncts of the Executive Department and the heads of the various executive departments are assistants and agents of the Chief Executive. Petitioner brought this petition for prohibition with preliminary injunction to enjoin the respondents from proceeding with the investiga-

[44] 49 O.G. 95 (1953).
[45] 49 O.G. 2765 (1953).
[46] 49 O.G. 5427 (1953).
[47] G.R. No. L-7708, May 30, 1955.
[48] See note 43 *supra*.

tion and for a declaration that the order of suspension is illegal. Petitioner contended that a mayor may be suspended only for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude pending action by the Provincial Board and only if in the opinion of the Provincial Governor the charge is one affecting the official integrity of the officer in question, under section 2188 of the Revised Administrative Code. He argued that since he has not been convicted of rape and concubinage, no proceedings under said section 2188 can be had against him.

The Court, thru Justice Padilla, found merit in petitioner's contention. It held that the department head as agent of the President has direct control and supervision over all bureaus and officials under his jurisdiction as provided for in section 79(c) of the Revised Administrative Code, but does not have the same control of all local governments and that his authority to order the investigation of any act or conduct of any person in the service or any bureau or office is confined to bureaus or offices under his jurisdiction and does not extend to local governments over which the President exercises only general supervision under the Constitution. According to Justice Padilla, if "general supervision over all local governments" is to be construed the same as the power granted to the Department head in section 79(c) of the Code, then there would no longer be a distinction between the power of control and that of supervision. He said:

> "In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fails or neglets to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.. Such is the import of section 79(c) of the Revised Administrative Code and section 87 of Act 4007."

The charges of rape and concubinage do not constitute malfeasance or those enumerated in section 2188, i.e., neglect of duty, oppression, corruption or other form of maladministration in office. True, they may involve moral turpitude but before the provincial governor and board may act and proceed in accordance with the provision of the Revised Administrative Code referred to, a conviction by final judgment must precede the fiiling by the provincial governor of the charges and trial by the provincial board. The Court, therefore, declared the investigation and the suspension of the petitioner without authority of law.

The above case is faithful to the rule in *Lacson v. Roque*,[49] which has been hailed as a better view of the Presidential power over local governments.[50] However, with the promulgation of the decision in the above *Mondano* case, some started a move for a re-examination of the doctrine of the *Lacson* case.[51] Theirs is a return to the *Villena* and *Planas* doctrine which gives the President control over local governments. Basis of this newly-found theory is the double personality of municipal corporations. According to the proponents of more Presidential powers, the President's power of general supervision refers only to that aspect of a municipal corporation pertaining to *local government*. They argue that when the municipal corporation acts as an *agent of the state* it acts as a unit or an organ of the central government, and so, is subject to the control of the President.

In *Gorospe v. De Veyra and Angara*,[52] respondent Dr. Andres A. Angara received from the PHILCUSA-FOA (MSA) a training grant to study and specialize in the United States. He left in 1958 and temporarily vacated his post as City Health Officer of Baguio and petitioner Josefina A. Gorospe was designated acting City Health Officer of Baguio. Upon his return to the Philippines, Angara took over his old office from Gorospe, but the Secretary of Health issued Department Order No. 167 detailing him "until further orders" in the Division of Tuberculosis, Department of Health. Angara declined the detail and so obtained an order of preliminary injunction from the Court of First Instance of Baguio. From that order, Gorospe brought this instant petition for certiorari in the Supreme Court.

In granting the petition, the Court held that the respondent Angara was not suspended, removed or ousted from his position as City Health Officer of Baguio, but was merely detailed to serve temporarily in the Division of Tuberculosis of the Department of Health. The Court invoked the Training Grant Agreement signed by the respondent Angara when he accepted the training grant in which he promised to serve for not less than two years in the Government upon his return. Against the respondent's allegation that his detail in the Tuberculosis Division was not in line with the special training he had received under the grant, the Court quoted the "Memorandum to the Agencies of the Philippine Government for the Sending of Filipino Technician abroad under the ECA technical assistance Pro-

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[49] See note 44 *supra*.

[50] Fernando, E. M., *A Third Year of Constitutional Law: 1953*, 29 PHIL. L.J. 1 (1954).

[51] Sinco, V. G., *The Authority of the President over Local Officials*, 30 PHIL. L.J. 355 (1955); Rivera, J. F., *The Power of the President of the Philippines over Local Governments and Local Officials*, 30 PHIL. L.J. 351 (1955).

[52] G.R. No. L-8409, Feb. 17, 1955.

gramme" which contains a provision that "the government undertakes to restore the participant to the position most advantageous to the government upon the completion of his training abroad." Under this agreement, according to the Court, what position should be deemed "most advantageous to the government" is a question to be decided by the representative of the Government and not by the respondent. Justice J. B. L. Reyes, who wrote the opinion of the Court, added that if the government undertaking was a duty on its part, then the respondent had no right to prevent the discharge of such duty. Besides, according to him, under section 951 of the Revised Administrative Code, the Director of Health, and, hence, the Secretary of Health also, may require the services without additional compensation of any medical officer in the Government service, and there was in this case no showing of bad motives.

In *Rodriguez v. Del Rosario,*[53] it was held that a public officer designated temporarily to act as technical assistant has the right to renounce such designation and return to his official post. According to the Court such ruling does not apply to the instant case because here Angara, by his agreement, waived the right to renounce the designation.

Justice Montemayor dissented, holding that the promise made by the Government to restore the respondent to a position most advantageous to it is not a right but an obligation which is up to the respondent to enforce or not.

In the cases of *Lanzar v. Brandares,*[54] *Santos v. Leaño,*[55] and *Go Pace, Sr. v. Sacedon,*[56] the Supreme Court held that officials of a new municipality created by the President under section 68 of the Revised Administrative Code are entitled to hold their office unless removed for cause or until the people shall have chosen their officials at the next general elections, and, therefore, such officials may not be replaced by making new appointment.[57]

2. *Power of Appointment.*

Under Article VII, section 10(8) of the Constitution,

> "The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments, and bureaus, officers of the Army from the rank of colonel, of the

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[53] See note 46 *supra.*
[54] G.R. No. L-8305, March 18, 1955.
[55] G.R. No. L-7642, March 28, 1955.
[56] G.R. No. L-8304, March 29, 1955.
[57] Cometa v. Andanar, 50 O.G. 3494 (1954); Ocupe v. Martinez, G.R. No. L-7591, Aug. 1, 1954.

> Navy and air forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts or in heads of departments."

Section 21(b) of the Revised Election Code reads:

> "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 case of a mayor, which shall be filled by the vice-mayor."

In the case of *Ramos v. Alvarez*,[58] the question arose as to whether an appointment by the President under section 21(b) of the Revised Election Code should be made with the consent of the Commission on Appointments. In that case, Juan Aritao, a Liberal Party member, was elected third member of the Provincial Board of Negros Occidental in the elections of 1951, resigned before the expiration of his office in order to run for Congress. To fill the vacancy thus created, President Quirino acting under section 21(b) of the Revised Election Code appointed the petitioner, an LP, and Ramos assumed office. Ramos' *interim* appointment was submitted to the Commission on Appointments, but before it could be confirmed, President Magsaysay nominated respondent Alvarez, also an LP, for the same office whose nomination was confirmed by the Commission on May 5, 1954 after rejecting that of the petitioner. Hence this petition for quo warranto, petitioner contending that he was entitled to the office because his appointment was not subject to the consent or disapproval of the Commission of Appointments.

The Court held that under Article VII, section 10(3) of the Constitution there are four groups of officers that the President shall appoint: (1) the heads of executive departments and bureaus, officers of the Army from the rank of colonel of the Navy and air forces from the rank of captain or commander; (2) all other officers of the government whose appointments are not otherwise provided for in the Constitution; (3) those whom the President may be authorized by law to appoint; and (4) inferior officers whose appointments the Congress has by law vested in the President alone.

The Court assumed that the third member of a provincial board is an inferior officer whose appointment the Congress may by law provide, and held:

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[58] G.R. No. L-7870, Oct. 31, 1955.

". . . Examining section 21(b) of the Revised Election Code, we find that while it says that the President shall make the appointment, it does not say that the appointment is not subject to the consent of the Commission on Appointments, that is, that it is to be made by the President alone. Such being the case the President's appointment must be deemed subject to the general requirement that the same is to be with the consent of the Commission on Appointments. In other words, a person appointed by the President under section 21(b) would fall under the third group of officers mentioned in par. 3 of section 10, Article 7 of the Constitution, namely, 'those whom he (President) may be authoriezd by law to appoint,' and, therefore, subject to the requirement that the appointment shall be with the consent of the Commission on Appointments. Thus in the United States, under a similar constitutional provision, the general rule is that when a statute does not specify how an officer is to be appointed, it must be by the President with the consent of the Senate. (Civil Service Com.—Chief Examiner 1886, 18 Op. Atty. Gen. (U.S.) 409. See also Civil Service Bill, 1888, 17 Op. Atty. Gen. (U.S.) 504; Appointment of Assistant Sec. of State, 1853, 6 Op. Atty. Gen. 1 (U.S.C.A., Constitution, Art. 1 to 7, 867)."

Why this is so was explained by the Court thus:

". . . To hold that statutory provision authorizing the President to appoint certain officers therein specified may be construed as having dispensed with the consent of the Commission on Appointments even when the provision does not expressly say that the appointment is vested *in the President alone* would practically nullify or write off the constitutional requirement that the President shall, with the consent of the Commission on Appointments appoint 'those whom he may be authorized by law to appoint'."

On this basis, it denied the petition for quo warranto.

F. Power of Judicial Review.

Under the Constitution, the Supreme Court has exclusive appellate jurisdiction over "all cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question." [59] This is a recognition of the power of judicial review.[60] According to Cooley such power is "one which the judge, conscious of the fallibility of the human judgment will shrink from exercising in any case, where he can conscientiously and with due regard to duty and official oaths decline the responsibility." [61] For the power of judicial review to come into play, the following requisites must concur: (1) existence of a bona fide suit; (2) an interest personal and substantial by the party raising the constitutional question; (3) the raising of the question at the earliest opportunity;

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[59] PHIL. CONST. Art. VIII, § 2(1); § 17, Judiciary Act of 1948.

[60] Angara v. Electoral Commission, 63 Phil. 139 (1936).

[61] I CONSTITUTIONAL LIMITATIONS 332 (8th ed.), quoted in P.A.C.U. v. Sec. of Education, et al., G.R. No. L-7871, Oct. 29, 1955.

(4) that it be necessary that the constitutional question be passed upon in order to decide the case.[61a]

Where the petitioners suffered no wrong under the terms of the law, the Supreme Court will not pass upon the constitutionality of a law. Neither will it inquire into the wisdom of the laws for as long as laws do not violate any constitutional provision, the courts merely interpret and apply them regardless of whether or not they are wise or salutary.[62]

G. An Independent Commission on Elections and the Tenure of the Commissioners.

The Constitution provides for an independent Commission on Elections. Under article X, section 1 of the Constitution, it was the intention to have one position vacant every three years, so that no President can appoint more than one Commissioner thereby preserving the independence of the Commission.

Republic v. Imperial and Perez,[63] is a quo warranto proceeding to test the legality of the continuance in office of the respondents, as Chairman and Member, respectively, of the Commission on Elections. According to the Solicitor-General, the first Commissioners on Elections were appointed and qualified on July 12, 1945 as follows: Hon. Jose Lopez Vito, Chairman (9 years expiring on July 12, 1954); Hon. Francisco Enage, Member (6 years expiring on July 12, 1951); and Hon. Vicente Vera, Member (3 years expiring on July 12, 1948). That on the death of Chairman Jose Lopez Vito in May, 1947, Member Vera was promoted Chairman by appointment dated May 27, 1947; that in accordance with the ruling in *Nacionalista Party v. Angelo Bautista*[64] and *Nacionalista Party v. Vera*,[65] the term of office of Chairman Vito would have expired; that Chairman Vera died in August, 1951, before the expiration of the maximum term of nine years (on July 12, 1954) of the first Chairman of the Commission; that on August 11, 1951, the respondent Hon. Imperial was appointed Chairman to succeed Hon. Vera; that while the appointment of the respondent Hon. Imperial provided that he was to serve for a term expiring July 12, 1960, the term for which he could legally serve as chairman expired on July 12, 1954, that is, the end of the nine-year term for which the first Chairman, Hon. Vito, was appointed; that the respondent Hon. Perez was appointed Member of the Commission on December 8, 1949, for a term of nine years ex-

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[61a] People v. Vera, 65 Phil. 56 (1937).
[62] Quintos v. Lacson, G.R. No. L-8062, July 18, 1955.
[63] G.R. No. L-8684, March 31, 1955.
[64] 47 O.G. 2356 (1951).
[65] 47 O.G. 2375 (1951).

piring on November 24, 1958, vice Hon. Enage, who was retired in November, 1949; that the term of office of respondent Perez expired on July 12, 1951, the expiration of the term of six years for which Commissioner Enage, his predecessor, was appointed. Hence, the Solicitor General concluded that the respondents had ceased to have a valid title to the positions of Chairman and Member, respectively, of the Commission on Elections.

Respondent Imperial asserted that Hon. Vito was first appointed Chairman of the Commission on May 12, 1941 for a term of nine years expiring on May 12, 1950; that when Commissioner Vito was reappointed Chairman on July 12, 1945, his nine-year term of office under this second appointment should not be counted from the date thereof, that is, July 12, 1945, but from the date of his first appointment on May 12, 1950; that the respondent Imperial having been appointed after the expiration of Chairman Vito's full term of nine years in 1950, he (Imperial) should serve office for a full term of nine years ending on August 10, 1960. The other respondent, Perez, alleged that the term of office of all commissioners should be counted from May 13, 1941; that the term of office of Member Enage (his predecessor) should, therefore, be considered as having started on May 13, 1941, and since Enage was appointed for six years, his term of office ended on May 12, 1947; and that since he was appointed on December 8, 1949—after Commissioner Enage's six-year term had already expired—he should serve for a full term of nine years from May 12, 1947; hence, according to him, his term would expire only on May 12, 1956.

In deciding the case, the Court observed that the provision regarding the term of office of the first three commissioners when read together with the prescribed term of nine years without reappointment, evidences a deliberate plan to have regular rotation in the membership of the Commission by having subsequent members appointed only once every three years. This is intended to safeguard the independence of the Commission *as a body* for the impartiality of each Commissioner's tenure is safeguarded by other provisions in the same Article X of the fundamental charter (removability by impeachment and stability of compensation in section 1; disability to practice any profession and prohibition against having financial interest in section 3).

> "Now, the operation of the rotational plan requires two conditions, . . .: (1) that the term of the first three Commissioner *should start on a common date*; (2) that any vacancy due to death, resignation or disability before the expiration of the term should only be filled *for the unexpired balance of the term*. Without satisfying these conditions, the regularity of the intervals, between appointments would be destroyed and

the evident purpose of the rotation (to prevent that a four-year administration should appoint more than one permanent and regular commissioner) would be frustrated.

"While the general rule is that a public officer's death or other permanent disability creates a vacancy in the office, so that the successor is entitled to hold for a full term, such rule is recognized to suffer exception in those cases where the clear intention is to have vacancies at regular intervals. (43 Amer. Jurisprudence, sec. 159, p. 18, State ex rel. Rylands v. Pinkerman, 63 Conn.)

". . . The mere fact that such appointments would make the appointees serve for less than nine (9) years does not argue against reading such limitation into the Constitution because the nine-year term cannot be lifted out of context and independently of the provision limiting the terms of the first commissioners to nine, six and three years; and because in any event, the unexpired portion is still part and parcel of the preceding term, so that in filling the vacancy, only the tenure of the successor is shortened but not the term of office."

It is immaterial, according to Justice J. B. L. Reyes, who penned the decision, whether the terms of the first Commissioners appointed should be held to start from the approval of the Constitutional amendment (December 2, 1940), or the reorganization of the Commission under Commonwealth Act No. 657 on June 21, 1941, or from the appointment of first Chairman, Hon. Vito, on May 13, 1941. The point to be stressed is that the terms of all three began at the same instant and that in case of a belated appointment (like that of Commissioner Enage), the interval between the start of the term and the actual qualification of the appointee must be counted against the latter. No other rule could satisfy the Constitutional plan. The Court then chose June 21, 1941, the date of the organization of the Commission on Elections under Commonwealth Act No. 647 since said Act implemented and completed the organization of the Commission that under the Constitution "shall be established." Applying this rule to the case at bar, Justice J. B. L. Reyes held—

"Hon. Jose Lopez Vito, Chairman, nine (9) years term from June 21, 1941 to June 20, 1950.

"Hon. Francisco Enage, Member, six (6) years term from June 21, 1944 to June 20, 1947. The first three (3) years from June 21, 1941 to June 21, 1944 was not filled.

"Thereafter, since the first three (3) year-term had already expired the appointment (made on July 12, 1945) of the Honorable Vicente de Vera must be deemed for the full term of nine (9) years from June 21, 1944 to June 20, 1953.

"The first vacancy occurred by the expiration of the initial six-year term of Commissioner Enage on June 21, 1945. . . . His successor, respondent Rodrigo Perez, was named for a full nine-year term. However, on the principles theretofore laid, the nine-year term of Commissioner Perez (vice Enage) should be held to have started on June 21, 1947, to expire on June 20, 1956. The second vacancy happened upon the death of Chair-

> man Jose Lopez Vito, . . . on May 7, 1947, more than two years before the expiration of his full term. To succeed him as Chairman, Commissioner Vicente de Vera was appointed. Such appointment, if at all valid, could legally be only for the unexpired period of the Lopez Vito's term up to June 20, 1950.
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> ". . .
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> "Commissioner Vera's tenure as Chairman (vice Lopez Vito) expired, as we have stated, on June 20, 1950, the end of Lopez Vito's original term. A vacancy, therefore, occurred on the date that Vera could no longer fill, since his reappointment was expressly prohibited by the Constitution. The next Chairman was respondent Commissioner Domingo Imperial, whose term of nine (9) years must be deemed to have begun on June 21, 1950, to expire on June 20, 1959."

Concluding, the Court deplored the fact that appointments have heretofore been made with little regard for the Constitutional plan.

II. CONSTITUTIONAL RIGHTS.

A. Political Rights: Citizenship by Naturalization.

Article IV, section 1(5) provides that "those who are naturalized in accordance with law" are citizens of the Philippines. The law on naturalization is Commonwealth Act No. 473.

1. *Application of Rule 38 to Naturalization Cases.*

Rule 38 providing for relief from judgments or orders on the ground of fraud, accident, or excusable neglect applies to naturalization cases. As far back as 1918, the Supreme Court ruled that the provision for relief under the then sec. 113 of Act No. 190 (reproduced in sec. 2, Rule 38) applied to non-contentious proceedings.

> "The use of the word 'judgment, order or other proceeding' in this section indicates an intention on the part of the Legislature to give a wide latitude to the remedy here provided, and in our opinion its operation is not to be restricted to judgments or orders entered in ordinary contentious litigation where a plaintiff impleads a defendant and brings him into court by personal service of process. In other words, the utility of the provision is not limited to actions proper, but extends to all sorts of judicial proceedings. (In re Estate of Johnson, 39 Phil. 156, 164)."[46]

Declaratory relief under section 1 of Rule 66 of the Rules of Court is not the proper remedy where there is no showing that the petitioners would suffer imminent or inevitable litigation unless their claim of Philippine citizenship is tested, as when their only purpose is "to avoid any doubt cast upon their Philippine citizenship." As Justice Brandeis aptly said, "the fact that the plaintiff's

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[46] Ty Ma Sin v. Republic, G.R. No. L-7797, Sept. 15, 1955.

desires are thwarted by its own doubt or by the fears of others does not confer cause of action." [66a] Petitioners' remedy is to file a petition for naturalization with an alternative prayer for a declaration of their status as Filipino citizens.[67]

2. *Residence Requirement.*

The ten-year period of continuous residence in the Philippines which is required by Commonwealth Act No. 473 [68] is reduced to five years if the petitioner is married to a Filipino woman.[69] Shortening of the ordinary period of residence being an exception to the general rule, the burden is upon the petitioner to show that he comes within the exception.[70]

3. *Good Moral Character.*

The applicant must be of good moral character and believe in the principles underlying the Philippine Constitution and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as in the community in which he is living.[71] It is error to hold that the applicant would not be a desirable citizen of the Philippines simply because he is running a cabaret. Cabaret business is not illegal and is licensed by the government. The private opinion of a judge regarding this business cannot control or govern the qualifications of the applicant. Many Filipinos of good standing are operating cabarets without violating any law. There is no law requiring the applicant to file his application before a certain age or after a maximum period of residence in the Philippines. On the contrary, the fact that he has resided for so many years in this country is in his favor as he may even be exempted from the requisite one year before his application. His long residence would show that he is more familiar with Filipino customs and principles of Philippine Government than a person of shorter residence.[72]

3. *Language Requirement.*

It is required also that the applicant for naturalization must be able to speak and write English or Spanish and any one of the principal Philippine languages.[73] It is incumbent upon the appli-

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[66a] Willing v. Chicago Auditorium, 277 U.S. 274, 289 (1928).
[67] Pablo Y. Sen v. Republic, G.R. No. L-6868, April 30, 1955.
[68] § 2.
[69] §3, Com. Act No. 473.
[70] Ng Sin v. Republic, G.R. No. L-7590, Sept. 20, 1955.
[71] § 2.
[72] Sy Chiuco v. Republic, G.R. No. L-7545, Oct. 25, 1955.
[73] § 2, Com. Act No. 473.

cant to show by competent proof that he possesses all the qualifications and none of the disqualifications provided by law. One of these qualifications is the language requirement.[74]

4. *Education of Minor Children.*

The applicant must have enrolled his minor children of school age in any of the public schools 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.[75] Thus, where the applicant's daughter has been in China since she was six and at the time of the filing of the application she has not yet returned, the Supreme Court denied petitioner's application for naturalization. The purpose of the above requirement is to prepare the children of the applicant for the duties of citizenship. People with different culture and education cannot work in unison with citizens and may be insensible to the Filipino sentiments and feeling.[76]

In *Ng Sin v. Republic*,[77] the Court rejected the petitioner's contention that the requirement referred to applies only to minor children who are of school age at the time of the application or grant of naturalization, the purpose of the law being to ensure that such children who will acquire the new citizenship of their parent should learn the customs, traditions and ideals of the Filipinos. According to the Court, the provision of law clearly and expressly requires of the applicant that "*during the entire* period of residence required of him" (ten years in this case) he should enroll his minor children of school age in recognized schools.

> "The law demands the enrollment of applicant's children in our schools not only to ensure that they are training in our own way of life, but also as evidence of the petitioner's honest and enduring intention to assume the duties and obligations of Filipino citizenship. If the applicant for naturalization is really inspired by an abiding love for this country and its institutions (and no other reason is admissible), he must prove it by acts of strict compliance with the legal requirements. It may mean hardship and sacrifices; but citizenship in this Republic, be it ever so small and weak, is always a privilege; and no alien, be he a subject of the most powerful nation of the world can take such citizenship for granted or assume it as a matter of right."

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[74] Te Chao v. Republic, G.R. No. L-6346, Nov. 25, 1955.
[75] § 2, Com. Act No. 473.
[76] De Y. Kin contra Republica, G.R. No. L-6894, April 27, 1955.
[77] See note 70 *supra*.

5. *Disqualifications.*

Persons suffering from mental alienation or incurable contagious diseases cannot be naturalized as Filipino citizens.[78] But a little hardness of hearing is not a disqualification. It is a common defect of old people.[79] Likewise, citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof are disqualified to become citizens of the Philippines by naturalization.[80] In the case of *Karam Singh v. Republic*, [81] the Supreme Court dismissed an application for naturalization because petitioner failed to prove that his country grants to Filipinos the right to become naturalized as citizens or subjects thereof. In *Carbales Cu v. Republic* [82] the Court dismissed another application because petitioner failed to show that he was a resident of Nationalist, and not of Communist, China. According to the Court, although it has been declared before as a fact that Filipinos may acquire citizenship in the Republic of China, and so it is no longer necessary to prove that fact in subsequent cases, since then China has split into two governments—one the Nationalist and the other, Communist. The petitioner's assertion that he does not believe in Communism does not necessarily prove that he is a citizen of Nationalist China, the Court declared.

6. *Declaration of Intention.*

The Naturalization Law also requires a declaration of intention to be filed one year prior to the filing of the petition for admission to citizenship.[83] Persons born in the Philippines who have received their primary and secondary education in public schools or those recognized by the government and not limited to any race or nationality, and those who have resided continuously in the Philippines for a period of thirty years or more before filing their application, are exempted from the requirement of a declaration of intention. In either case, however, the applicant must prove that he has given primary and secondary education to all his children in the public schools or in private schools recognized by the government and not limited to any race or nationality.[84]

In *Pidelo v. Republic*,[85] the petitioner claimed that he was born in the City of Cebu on September 3, 1918, and for this reason,

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[78] § 4, Com. Act No. 473.
[79] See note 72 *supra*.
[80] § 4, Com. Act No. 473.
[81] G.R. No. L-7567, Sept. 29, 1955.
[82] G.R. No. L-7836, Oct. 25, 1955.
[83] § 5, Com. Act No. 473.
[84] § 6, *id.*
[85] G.R. No. L-7796, Sept. 29, 1955.

among others, he did not file the declaration of intention. *Held:* Birth in the Philippines does not suffice to dispense with the filing of said declaration, unless the applicant has "received the primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality." He also invoked exemption from the duty to file said declaration of intention on the ground that, since his alleged birth in the Philippines, on September 3, 1918, he had continuously resided in the Philippines. *Held*: Assuming that this alleged birth in the Philippines were true, it has not been proven satisfactorily that the petitioner "resided" in the Philippines over 30 years. Considering that his residence, from birth, followed that of his father, a Chinese, who—in the absence of proof to the contrary must be presumed to be domiciled in China—petitioner's alleged birth in the Philippines does not imply necessarily that he resided therein since 1918.

It is not enough that applicant presents the certificates of schools allegedly attended by his children to prove that he has complied with the requirement of the law. Petitioner must present as witnesses the signers of such certificates.[86]

7. Contents of the Petition.

The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that the petitioner is a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in anyway disqualified by law. The petition shall also set forth the names and post office addresses of such witnesses as the petitioner may desire to introduce at the hearing of the case.[87] Inasmuch as the same must be strictly construed, and noncompliance with the provisions thereof relative to the contents of, and the annexes to, the petition for naturalization, renders the same void, the court did not entertain the petitioner's application in the *Pidelo* case.[88]

In a case, the application of the petitioner was accompanied by the affidavits of two witnesses only one of whom took the witness stand and who testified that he came to know petitioner in 1947, or only five years prior to the filing of petitioner's application on December 4, 1952, it was held that the same is fatally defective because

[86] Ng Peng Sia v. Republic, G.R. No. L-7780, Sept. 27, 1955.
[87] § 7, Com. Act No. 473.
[88] See note 84 *supra*.

for the *validity* of an application, it is essential that the same be supported by the affidavit of two citizens of the Philippines *who know him to be a resident thereof for at least ten years.*[89] In order that an imposition may not be made on the court, it is necessary that the Government be informed in advance of the witnesses by whom or by whose testimonies a petitioner for naturalization seeks to prove that he has the qualifications and none of the disqualifications enumerated in the law. A hearing without such preparation on the part of the Government would not be a fair hearing. This demands that the petitioner must present the very witnesses who have signed the joint affidavit supporting his petition; if no valid excuse for not presenting any of the affiants is given, the petitioner may not change or substitute other persons for said affiants otherwise the proceedings should be declared void.[90] In one case, however, the Court held that there was substantial compliance with the law where the petitioner presented a witness in place of one of the two witnesses because the affidavit of the substitute bore the same date as the affidavit of the two witnesses. According to the Court, the new witness is a vouching witness and his affidavit is contained in the record, and altho said affidavit was not attached immediately after the petition, it recites that it is a part of the petition.[91]

8. *When Decision Executory.*

Section 1 of the Republic Act No. 530 provides that the decision granting an application for naturalization shall not 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 not left the Philippines, has dedicated himself continuously to a lawful calling or profession, has not been convicted of any offense or violation of Government-promulgated rules, or committed any act prejudicial to the interest of the nation or contrary to any Government-announced policies.

In a case where the petitioner left the Philippines for the United States for medical check-up and for business purposes, the Court held that such absence is prohibited because the purpose is that during the period of probation, the Government and the community wherein an applicant lives must be given an opportunity to observe his conduct and behavior and see whether or not he has complied with other requirements. Besides, if he is absent from this jurisdiction how could he comply with the second requirement to the effect that he has dedicated himself continuously to a lawful calling

[89] Nahib Awad v. Republic, G.R. No. L-7685, Sept. 27, 1955.
[90] Karam Singh v. Republic, G.R. No. L-7567, Sept. 29, 1955.
[91] Leon Pe v. Republic, G.R. No. L-7871, Oct. 29, 1955.

or profession? There are exceptions, however, as when for instance, the petitioner leaves the Philippines for an intelligence mission at the instance of the Philippines Government; or when the petitioner is kidnapped or forcibly removed from the Philippines for a short period of time, or when he is obliged to go and stay abroad for sometime not too long, to undergo an operation to save his life. The failure of petitioner to comply with any of the requirements of section 1 of Republic Act No. 530 works a forfeiture of the right to citizenship as granted by the decision.[92]

It is not tenable to say that the departure which is prohibited is that which is intended to change domicile or a stay abroad for longer than one year. Referring to the conditions essential to naturalization, Commonwealth Act No. 473, invariably requires "residence" in the Philippines (Sections 2, 3, 4, 6, 7, 15 and 18), whereas Republic Act No. 530, connoting *material* absence, when contrasted with "residence," which depends, to a substantial degree, on intent, leaves no room for doubt that physical presence in the Philippines during said period, is a condition without which said decision cannot become executory. If departure from the Philippines, for purpose of vacation, were permissible under said Republic Act No. 530, so would absence for business or educational purposes which generally are more meritorious and often imperative, apart from entailing, in case of education, a comparatively longer sojourn.[93]

In *Tiu San v. Republic*,[94] the Court held that a municipal ordinance is a government-promulgated rule because in enacting said ordinance, the municipal government acts as an agent of the national government. The law is clear in providing that the petitioner must not have been *convicted* of any offense or violation of Government-promulgated rule during the prescribed two years. It is immaterial that the offense was *committed* before the enactment of Republic Act No. 530 or outside the two years following the promulgation of the decision. And the expression "convicted of any offense" as used in the law clearly indicates that both *malum in se* and *malum prohibitum* are intended. Hence, it is pointless to argue that the law contemplates only the first kind.

B. Civil Rights.

1. *Due Process and Equal Protection.*

The constitutional guaranty against the deprivation of life, liberty and property without due process of law and against the denial

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[92] Uy v. Republic, G.R. No. L-7054, April 29, 1955; Te Tek Lay v. Republic, G.R. No. L-7412, Sept. 27, 1955.

[93] Te Tek Lay v. Republic, *supra* note 92.

[94] G.R. No. L-7301, April 20, 1955.

of equal protection of the laws [95] was invoked in the cases of *PACU v. Secretary of Education, et al*,[96] *People v. Tiu Ua*,[97] and *Tibon v. Auditor General*.[98] In all three cases the claim was found to be without merit.

In the *Philippine Ass'n of Colleges and Universities* case, one of the claims of the petitioners was that Act No. 2706 as amended by Act No. 3075 and Commonwealth Act No. 180 deprives the owners of schools as well as teachers and parents of the liberty and property without due process of law, in that under section 3, before a private school can be opened, it must first obtain a permit from the Secretary of Education. As noted earlier in this review, the high court held that there was no justiciable controversy because the petitioners did not suffer any wrong under the law. Just the same the Court decided "to look into the matter lest we be charged of having refused to act even in the face of a clear violation of fundamental personal rights of liberty and property." According to Justice Bengzon, who wrote the opinion, Act No. 2706 was passed to correct a great evil pursuant to the recommendation of the Munroe Commission which made a study of the educational system of the Philippines. Besides, according to him, recourse may now be had to Article XIV, section 5 of the Constitution which gives to the State the supervision and regulation of all educational institutions. Does supervision and regulation include control of schools? Yes, according to him, pointing out that local educators construe the Constitution that way. The Court sidestepped the petitioners' claim that section 11-A of the Act which authorizes the Secretary of Education to levy an assessment equal to 1% of the tuition fees received by each private school holding that is a tax on the exercise of a constitutional right. It held that if it is a mere fee for the supervision and regulation of private schools, the exaction may be upheld, but this point involves an investigation of pertinent data which could best be carried out in the lower courts. If on the other hand it is a tax, then the issue, according to the Court, would still be within the original jurisdiction of the Court of First Instance. As regards the contention that Republic Act No. 139 amounts to censorship in its "baldest form", because under it, the Board of Textbooks can prohibit the use of any book which it may find to be against the law or the general policies of the government, or which it may deem pedagogically unsuitable, the Court observed that if the power of supervision and regulation includes the power of control, then it is valid. Said the Court: ". . .

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[95] Art. III, § 1(1).
[96] See note 38 *supra*.
[97] G.R. No. L-6776, May 21, 1955.
[98] G.R. No. L-7065, April 13, 1955.

we do not share the belief that section 5, Art. XIV has added no *new power* to what the state inherently possesses by virtue of the police power. An express power is necessarily more extensive than a mere implied power."

In this connection it is pertinent to consider *Banzon v. Alviar* [99] in which the Court granted a petition for habeas corpus and ordered the respondent to return a child to his mother in view of Article 811 of the new Civil Code which provides that the father and mother jointly exercise parental authority over their legitimate children who are not emancipated and Article 316 of the same which imposes on the parents the duty to support their unemancipated children and to have them in their company, educate and instruct them in keeping with their means.

In the *Tiu Ua* case, the defendant, who was fined for selling a can of "Klim" milk above the ceiling price, impugned the constitutionality of Republic Act No. 509, alleging that it imposes penalties wholly disproportionate to the offenses sought to be punished and violates the due process and equal protection clause and the prohibition against cruel and unusual punishments in the Constitution. The Supreme Court was equally unimpressed and held that Congress thought necessary to repress profiteering with a heavy fine so that dealers would not take advantage of the critical condition of the country to make unusual profits. It is true, the Court said, that in specific cases, the profit made is small but when it is remembered that these individual transactions are numerous and make a great total and affect poor people in general, it can be easily seem that the raise in the price above that authorized by law causes a great hardship to the country. The Courts cannot interfere with the discretion of the legislature in enforcing a public policy unless there is a clear violation of the Constitution. However, the Court reduced the fine from ₱5,000 to ₱2,000.

Where there is reason for so doing, persons or their property may be classified without offending against the equal protection clause of the Constitution. However, to be reasonable, classification must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only, and must apply equally to each member of the class.[100] This is illustrated in the *Tibon* case. Republic Act No. 784 is entitled "An act to provide for compensation of members of municipal police forces and fire department who die or are disabled in line of duty." Plaintiff claimed that the provisions of

[99] G.R. No. L-7926, May 21, 1955.
[100] People v. Vera, 65 Phil. 56 (1937).

the law are applicable to members of the police force of chartered cities as well as to those of municipalities and that to deny the benefits of said Act to police forces of cities would make the law discriminatory. The Court found this without merit. It held:

> ". . . The law used the word 'municipality' in its title, in sec. 1 and in sec. 8. In no provision of the law is there mention of cities or chartered cities. The reason for extending the beneficent provisions of the Act to municipalities alone is found in the poor financial condition of municipalities which is not true of chartered cities. As a rule, municipalities that have been given charters were given so because of their increased population and resources. These enable them to raise the necessary funds for the improvement of the city, opportunities which are not afforded municipalities. . . . There are fundamental differences between municipalities and chartered cities, both with respect to their resources and to the scope of their powers."

2. *Freedom of Religion.*

In *Register of Deeds of Rizal v. Ung Siu Temple,*[101] a Filipino citizen donated a parcel of land to the Ung Siu Temple, an unregistered religious organization, operating thru three trustees, all of Chinese nationality. The Register of Deeds of Rizal refused to register the land in view of sections 1 and 5 of Art. XIII of the Constitution limiting the acquisition of land in the Philippines to its citizens or to corporations sixty per centum of the capital stock of which is owned by such citizens adopted after the enactment of Act No. 271 and the decision of *Krivenko v. Register of Deeds of* Manila.[102] The donee appealed to the Supreme Court claiming among other things that such refusal is a violation of the freedom of religion clause of the Constitution.[103] Thru Justice J. B. L. Reyes, the Court dismissed this pretense, thus: ". . . we are by no means convinced that land tenure is indispensable to the free exercise and enjoyment of religious profession or worship; or that one may not worship the Deity according to the dictates of his own conscience unless upon land held in fee simple."

3. *Double Jeopardy.*

The rule in this jurisdiction has since been that the State cannot appeal in a criminal case because that would put the accused in double jeopardy. In the recent case of *People v. Pomeroy, et al.,*[104] the prosecution asked the Supreme Court to reexamine the doctrine of double jeopardy. The issue there raised was whether the prosecu-

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[101] G.R. No. L-6776, May 21, 1955.
[102] 44 O.G. 471 (1948).
[103] Art. III, § 1(7).
[104] G.R. No. L-8229, Nov. 28, 1955.

tion may appeal from a decision on the ground that the accused should have been sentenced to a more severe penalty. The Court refused to disturb the doctrine holding that the reasons advanced by the Solicitor General were not sufficiently weighty to warrant a reversal of its stand.

C. Social and Economic Rights.

Article XIII, Section 4, of the Constitution provides: "The Congress of the Philippines may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."

The case of *Guido v. Rural Progress Administration* [105] held that the above provision has reference only to large estates, trusts in perpetuity, and lands that embrace a whole town or a large portion of a town or city. Expropriation, therefore, is improper 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." In 1953, however, the Court in *Rural Progress Administration v. Reyes,*[106] by a vote of 6-4, held that expropriation is allowable provided the land sought to be expropriated formerly formed part of a landed estate regardless of its present area.

Once again the vexed question of what is the correct interpretation of Article XIII, section 4, came up before the Court in January of last year in *Republic v. Baylosis.*[107] In this case, the land sought to be expropriated formerly formed part of the Lian Estate which Nelson V. Sinclair bought. Later, Nelson sold 67 hectares of this land to Baylosis who in turn sold the same to twenty-one other persons so that the land in question at the time of this action was already owned in separate parts with areas ranging from thirteen hectares to a little more than a hectare by twenty-three different owners. In 1946, some 68 persons, claiming to be tenants of the parcels originally owned by Sinclair, asked the then Rural Progress Administration to buy the land and sell it to them. In 1951, the Government filed a complaint for expropriation against the defendant. From an adverse decision, the defendant appealed to the Supreme Court. The Court held the expropriation illegal and held that expropriation does not alone justify expropriation, for otherwise, all that a tenant has to do in order to be able to buy the land of his landlord is for him to violate the tenancy laws or even deny the title of said landlord and thereby create a tenancy problem. Thru Justice Montemayor, the Court adverted to the *Guido* rule and held that the lands

[105] 47 O.G. 1884 (1951).
[106] G.R. No. L-4703, Oct. 8, 1953.
[107] G.R. No. L-6191, Jan. 31, 1955.

with a total area of 67 hectares sought to be expropriated, even if considered as one parcel which they were not, could not be regarded as a "landed estate." Justice Montemayor ruled that the main purpose of the Constitutional provision contained in section 4, Article XIII is to break up landed estates into reasonably small portions. Once said landed estate is broken up, according to him, the purpose of the law is achieved. Otherwise, if the rule in the *Reyes* case were followed there would be no end to expropriation. The Court, therefore, abandoned the ruling in the *Reyes* case.

The Chief Justice and Justice J. B. L. Reyes dissented. According to Chief Justice Paras, the area of the land is not the prime factor in determining the propriety of expropriation, in view of the Constitutional provision on social justice, citing the decision in the *Reyes* case. Justice Reyes observed that not only does the constitutional provision speak of *land* instead of *landed estate* but that there is no reason why the Government in its quest for social justice, should exclusively devote its attention to conflicts of large proportions, involving considerable number of individuals and avoid small controversies until they grow into a major problem. He believed that the rule in *Reyes* case should be followed.

1. *Sale and Donation of Lands to Alien.*

The Constitution prohibits the transfer of any private agricultural land to individuals, corporations not qualified to acquire or hold lands of the public domain in the Philippines save in cases of hereditary succession.[108] In *Vasquez v. Li Seng Giap, et al.*,[109] the Court ruled that in a sale of real estate to an alien disqualified to hold title thereto the vendor divests himself of the title to such real estate and has no action against the vendee despite the latter's disability on account of alienage to hold title to such real estate and the vendee may hold it against the whole world except as against the State. It is only the State, according to the Court, that is entitled by proceedings in the nature of *office found* to have forfeiture or escheat declared against the vendee in such case. But if the State does not commence such proceedings and in the meantime, the alien becomes a naturalized citizen, the State is deemed to have waived its right to escheat the real property and the title of the alien thereto becomes lawful and valid as of the date of its conveyance to him. This is so because if the purpose of the ban is to preserve the nation's lands for future generations of Filipinos, that aim or purpose

[108] G.R. No. L-3676, Jan. 31, 1955.
[109] G.R. No. L-5670, Jan. 31, 1955.

would not be thwarted but achieved by making lawful the acquisition by aliens who become Filipino citizens by naturalization.

In Register of Deeds v. Ung Siu Temple,[110] the donee claimed that the acquisition of land for religious purposes is permitted by Act No. 271. Section 1 of said Act provides—

> "It shall be lawful for all religious associations, of whatever sort or denomination, whether incorporated in the Philippine Islands or in the name of other country, or not incorporated at all, to hold land in the Philippine Islands upon which to build churches, parsonages, or educational or charitable institutions."

The Supreme Court held that the Act in question has been repealed by the Constitution. In providing 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 or hold lands of the public domain in the Philippines," the Constitution makes no exception in favor of religious associations. Neither is there any such saving clause found in sections 1 and 2 of Article XIII. The fact that a religious organization has no capital stock does not suffice to escape the prohibition. The purpose of the sixty per centum requirement is obviously to ensure that a corporation allowed to acquire agricultural lands or to exploit natural resources shall be controlled by Filipinos; and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino citizens.

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[110] See note 101 *supra.*