CONSTITUTIONAL LAW *

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The 1957 decisions of the Supreme Court are surveyed under four main headings: *Exercise of Governmental Powers and Separation of Powers, Individual Rights, Decisions on Nationalization, and Citizenship and Naturalization.* Under the first are included cases involving suits against the state, the relation of the judiciary with the other departments and organs of the government, and those on civil service. The second covers questions touching upon the fundamental guarantees of the due process and equal protection of the laws clauses, freedom of expression, and religious freedom. Two cases of significance are reviewed under the third heading and finally the most numerous cases as usual arising from petitions for naturalization are included in the last topic.

I. EXERCISE OF GOVERNMENTAL POWERS AND SEPARATION OF POWERS

A. Suits Against The State

It is a well-settled principle in this jurisdiction that the state in its sovereign capacity is immune from suit before its own courts of justice. But this immunity may be waived either expressly when by a special or general law the state gives its consent to be sued or impliedly when the state undertake some industrial or commercial activity and so descends to the level of the parties with whom it associates or when the state itself initiates an action before the courts. The privilege of state immunity from suits can be invoked by the government or its officials acting as agents of the state in the performance of functions authorized by the constitution or statutes. In two cases last year the question of whether suits brought against a government agency and government officials constituted suits against the state was raised.

The *Angat River Irrigation System v. Angat River Irrigation System Workers' Union*[1] was a petition for prohibition with preliminary injunction to restrain the Court of Industrial Relations from proceeding with a complaint for unfair labor practice and a petition for certification election filed against the petitioners by the Angat River Irrigation System Workers' Union. The court's jurisdiction over the Angat River Irrigation System and its supervising engineer against whom the union had brought the suits was challenged because of the fact that the Angat River Irrigation System is a section of the Division of Irrigation of the Bureau of Public Works engaged in the maintenance and operation of irrigation systems in several provinces, is supported through appropriations by Congress and is subject to the direct supervision of the President of the Philippines through the Department of Public Works. The Supreme Court citing the case of *Metropolitan Transportation Service (METRAN) v. Paredes*[2] held that the petitioner is an agency of the govern-

* Budgetary and spatial limitations compel us to print the articles which follow in finer types. — Editor's note.

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1 G.R. Nos. L-10943 & 10944, Dec. 28, 1957

2 79 Phl. 819. The Metran rule was however, relaxed in the cases of National Airports Corporation v. Teodoro (G.R. No. L-5122, April 30, 1952), and Santos v. Santos (G.R. No. L-4699, November 11, 1952), where an office or agency of the Republic of the Philippines, unincorporated and without a separate juridical personality was made subject to suit. The test applied for determining immunity was "the object for which the entity was organized—whether its functions are of a private or non-governmental character or of a governmental or political character."

ment with no personality to sue or be sued, and the suit against it amounted to a suit against the state which had not given its consent. Hence, the Court of Industrial Relations acquired no jurisdiction over the suits brought by the union. The case which primarily involved the rights of the union under the Industrial Peace Act called for a determination of the nature of the functions of the Angat River Irrigation System. The Supreme Court found that the agency exercises governmental functions not only because it falls under the direct supervision of the President of the Philippines but also because the nature of the duties of the agency does not reveal that it was intended to bring the government any special benefit or pecuniary profit and under the law irrigation systems are not established for the private advantage of the government but chiefly for considerations connected with the general welfare.

In a well-reasoned dissent Mr. Justice Concepcion cited numerous authorities to support the view that the Angat River Irrigation System is engaged in the performance of proprietary functions. He said that even if the system were a division of the Bureau of Public Works, it would not follow that its functions are governmental because the government discharges functions of a dual character. Some functions involve the exercise of sovereignty, others are merely proprietary. Sometimes these latter functions are assigned to organs or bodies separate and distinct from the government as a political organization, but sometimes they are entrusted to a section or division of a department, bureau, or office of the government. Such fact does not affect the character of the functions concerned, which depends upon its nature, not upon the officer or body which exercises it.

In *Ruiz v. Cabahug*[3] an action was brought by the minority stockholders of a corporation which had furnished the architectural and engineering services in the construction of the Veterans' Hospital, against the Secretary of National Defense and other officials of the government who had retained part of the contract price of the services rendered upon representations of one of the parties with interest in the contract. The lower court dismissed the action on the ground that it was a suit against the government without its consent. On appeal the Supreme Court reversed the decision because it was shown that the whole sum for the services rendered had been set aside and was authorized to be paid. The government no longer had any interest in the amount which the defendant officials had retained. The action was not against the government to require it to pay, it was properly directed against the officials to compel them to act in accordance with the rights to be established by the contending parties.

When the Secretary of an executive department and the director of a bureau are sued in their official capacity, they cannot lawfully be required to post a bond to prevent the issuance of an injunction restraining the enforcement of an Executive Order, since the action against them is a suit against the state the government of which is undoubtedly solvent.[4]

B. Judicial Review Over Legislative Acts

The operation of the principle of separation of powers was demonstrated in a number of cases where the Supreme Court was called upon to exercise its power of judicial review over acts of Congress, of the Senate, and of the President and to determine whether judicial independence had been threatened by executive interference.

3 G.R. No. L-9990, Sept. 30, 1957

4 Araneta v. Gatmaitan, G.R. No. L-8395 and Soriano v. Araneta, G.R. No. L-9191, April 30, 1957

One of the most significant decisions of the year involved the constitutionality of a statute nationalizing the retail trade business. The statute was upheld as a valid exercise of police power, the highest court pointing out that the legislature is the repository of this power and in its exercise must determine in the first instance the necessity, adequacy, or reasonableness and wisdom of the laws promulgated. The courts as guardians of individual liberty will not interfere unless there is a clear abuse of legislative powers, neither will they override legitimate policy nor question the wisdom of the legislation.[5]

In *Tañada v. Cuenco*[6] the Supreme Court had to determine whether the organization of the Senate Electoral Tribunal conformed with the provision of the Constitution which reads:

> "Sec. 11. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman."[7]

After the 1955 elections there were in the Senate 23 members belonging to the Nacionalista Party and 1 member who belonged to the Citizens' Party. A dispute arose as to the organization of the Senate Electoral Tribunal and among the questions raised in the debates in the Senate were: (1) Is the nomination by the party having the second largest number of votes for membership in the Electoral Tribunal a matter of right or of privilege? (2) Does the party have discretion to nominate three members or less than three? (3) May the party making the nomination nominate a senator not its member? (The court did not find it necessary to answer this question.) (4) If the party having the second largest number of votes nominates less than three senators, may a committee of the Senate nominate the others to complete the membership? What happened in the February 1956 session of the Senate was that the Nacionalista Party which had the highest number of votes in the body nominated three senators for membership in the Senate Electoral Tribunal and the only other senator who represented the party having the second largest number of votes therein nominated himself refusing to nominate anyone else. To complete the membership two other senators were nominated by the Committee on Rules of the Senate and the body elected the six senators to make up the Tribunal. This action was instituted contesting the validity of the election of the senators nominated by the Committee on Rules. Two main issues were raised in the case.

The first issue involved the jurisdiction of the Supreme Court to entertain the petition. It was alleged that the power to choose the six senators as members of the Senate Electoral Tribunal being expressly vested in the Senate, the case presents a political question the only solution to it being with the bar of public opinion. The Supreme Court held that it had jurisdiction. *First*, because the action is not against the Senate and does not seek to compel it directly or indirectly to allow the petitioners to perform their duties as members of the Senate. Although the Constitution provides that the Senate shall choose

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5 Ichong v. Hernandez, G.R. No. L-7995, May 31, 1957. In Pacific Commercial Company v. Aquino the Supreme Court reiterated (G.R. No. L-10274, Feb. 27, 1957) the rule laid down in earlier cases that the moratorium orders and laws prior to the decision in Rutter v. Esteban (49 O.G., 1807) on May 18, 1953 had the effect of tolling the limitation period for institution of court actions. The Rutter case did not have the effect of declaring the moratorium law unconstitutional ab initio but recognized that laws suspending for a reasonable period the enforcement of obligations lay within the police power of the state.

6 G.R. No. L-10520, Feb. 28, 1957

7 Section 11, Article VI

6 senators to be members of the Electoral Tribunal the latter is neither part of the Congress nor of the Senate. *Second*, althought the Senate has the exclusive power to choose the senators who shall form the Senate Electoral Tribunal, the fundamental law prescribes *the manner* in which the authority shall be exercised. The Court said that courts are called upon to say on the one hand, *by whom* certain powers shall be exercised, and on the other hand, to determine whether the powers thus conferred have been validly exercised. This does not involve an encroachment on a coordinate branch because a determination of the validity of an act is not the same thing as the performance of the act and the vesting of the legislative power in Congress does not detract from the power of the courts to pass upon the constitutionality of the acts of Congress or of one house.

Citing authorities the Court said that the term *political question* connotes a question of policy or one "which under the constitution are decided by the people in their sovereign capacity, or in regard to which *full discretionary* authority had been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the wisdom, not legality of a particular measure." In this case the Senate is not clothed with full discretionary authority in the choice of members of the Electoral Tribunal. The exercise of its powers is subject to constitutional limitations which are claimed to be mandatory in nature, hence, the validity of its proceedings in connection therewith is within the province of judicial inquiry.

The second issue involved the validity of the election of the two senators upon nomination by the Committee on Rules. The main argument of the respondents to support the validity of their election is that the constitutional provision establishing the number of members in the Senate Electoral Tribunal is mandatory. They refer to the word "shall" as used in the provision and cite an opinion by the Secretary of Justice in 1939 on the original constitutional provision relating to the Electoral Commission when the question arose whether there should be 9 members in the Commission considering the fact that there was only one political party represented in the National Assembly. The Secretary opined that "fluctuations in the total membership in the Commission were not and could not have been intended; that it could not be said that the Commission should have nine members during one legislative term and six members during the next" and that constitutional provisions must always have a consistent application. This was rejected by the Supreme Court saying that the term "shall" is used twice in the same section and there is no reason why it should be considered mandatory as to the number of members and directory as to the procedure for their selection.

The Court said that the spirit and the history of the provision indicate the contrary. Going over the statements made by the delegates of the convention, the court found that the main objective of the framers of the Constitution in providing for the Electoral Commission later the Electoral Tribunal was to "insure the exercise of judicial impartiality in the disposition of election contests affecting members of the lawmaking body. To achieve this purpose, two devices were resorted to, namely: (a) the party having the *largest* number of votes, and the party having the *second* largest number of votes, in the National Assembly or in each House of Congress, were given the same number of Representatives in the Electoral Commission or Tribunal, so that they may realize that partisan considerations could not control the adjudication of said cases, and thus be induced to act with greater impartiality; and (b) the Supreme Court was given in said body the same number of representatives as each one of said political parties, so that the influence of the former may be decisive and endow said Commission or Tribunal with judicial temper.

Applying well-established rules of interpretation, the court found that clearly the intention of the framers was "to prevent the majority party from controlling the Electoral Tribunal, and that the structure thereof is founded upon the equilibrium between the majority and the minority parties therein, with the Justices of the Supreme Court who are members of said Tribunals, holding the resulting balance of power. The procedure prescribed in said provision for the selection of members of the Electoral Tribunal is vital to the role they are called upon to play. It constitutes *the essence* of said Tribunals. Hence, *compliance with said procedure is mandatory,* and acts performed in violation threeof are null and void." As a result, the number constituting the Electoral Tribunals may fluctuate.

Chief Justice Paras dissented. He said that under the original provision of the Constitution creating the Electoral Commission doubt arose as to the number of the members to constitute the Electoral Commission since the provision read: "There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein." Following the opinion of the Secretary of Justice the first Electoral Commission was organized with nine members notwithstanding the absence of any party having the second highest number of votes. When the Constitution was amended, the Chief Justice said, any doubt on the matter was resolved when the framers with full knowledge of the one party composition of the National Assembly and the opinion of the Secretary of Justice positively and expressly ordained "Each Electoral Tribunal shall be composed of nine members." The intent is clear and mandatory—there shall be nine members regardless of whether or not two parties make up each house.

He also points out that while the party having the second largest number of votes is allowed to nominate three members of the Senate or of the House of Representatives it is not required that the nominees should belong to the same party. Considering further that the six members are chosen by each house, and not by the party or parties,the conclusion is inescapable that party affiliation is neither controlling nor necessary.

Absurd results can follow from the majority decision, the Chief Justice said. Even if there are enough members belonging to the party having the second largest number of votes, it may refuse to nominate three, and the Chief Justice may similarly designate less than three justices. This would frustrate the purpose of the ideal number established in the Constitution.

C. The Judiciary And The Executive

The Presidency in relation to the judiciary was the subject of other controversies. In one case it was urged that the President's action in cases arising from the administrative investigation of public officials should be final and not reviewable by the courts because judicial review would be derogatory to the high office of the President. In rejecting this contention the Supreme Court held:

> "The objection to a judicial review of a Presidential act arises from a failure to recognize the most important principle in our system of government, i.e., the separation of powers into three co-equal departments, the executive, the legislative and the judicial, each supreme within its own assignd powers and duties. When a presidential act is challenged before the courts of justice, it is not to be implied therefrom that the Executive is being made subject and subordinate to the courts. The legality of his acts are under judicial review, not because the Executive is inferior to the courts, but because the law is above the Chief Executive himself, and the courts seek only to interpret, apply or implement

it (the law). A judicial review of the President's decision on a case of an employee decided by the Civil Service Board of Appeals should be viewed in this light and the bringing of the case to the courts should be governed by the same principles as govern the judicial review of all administrative acts of administrative officers"8

The Supreme Court was also asked to decide whether the President had authority to issue Executive Orders banning the use of trawls in a certain portion of Philippine waters, and whether legislative powers had been unlawfully delegated to him.[9] The trial court decided that the power to close definite areas of Philippine waters belongs to Congress and that the President had no power to issue the Executive Orders challenged. Upholding the validity of the Executive Orders the Supreme Court said that the Fisheries Law (Act No. 4003) declares unlawful and fixes a penalty for the taking, destroying, or killing any fish fry or fish eggs and authorizes the Secretary of Agriculture to promulgate rules regulating the use of any fish net or fishing device for the protection of fry or fish eggs as well as for the establishment of fishery reservation and sanctuaries. Under this law the Secretary of Agriculture has authority to regulate or ban fishing by trawl. But the Constitution gives the President control of all executive departments, bureaus, and offices and the Revised Administrative Code provides that executive orders, regulations, decrees, and proclamations relative to matters under the supervision or jurisdiction of a department, the promulgation whereof is expressly assigned by law to the President of the Philippines, shall as a general rule, be issued upon proposition and recommendation of the respective departments.[10] Because of these provisions the Court stated that the promulgation of the questioned executive orders by the President was undoubtedly made upon the proposition and recommendation of the Secretary of Agriculture. Since the Fisheries Act when it left the legislature was complete in itself in that it declared the taking of fish eggs and fry unlawful, leaving to the department secretary only the power to issue rules and regulations to carry out the legislative intent, there was no undue delegation of legislative powers.

The Supreme Court also inquired into the question of whether the independence of the judiciary was threatened when a party to a pending suit complained by letter sent to the Presidential Complaints and Action Committee (PCAC) of the delays in the determination of his case instead of sending the letter to the Secretary of Justice which is vested with the power of supervision over inferior courts. It was held that there was no threat to the administration of justice the Supreme Court saying among other things that since the President has control of all executive departments of the government among them the Department of Justice, and the PCAC is part of the Office of the President, it can be said that the letter sent through the PCAC was intended for the Department of Justice where it belonged.[11]

D. The Judiciary And The Commission On Elections

As shown in the cases under review the court as the interpreter of the Constitution must determine where powers are located and whether they are performed according to the mandates of the supreme law. One of the constitutional organs of the government is the Commission on Elections which is vested with specified functions and prerogatives. In *Luison v. Garcia*,[12] quo-warranto proceedings were instituted by the petitioner against the respondent who had been proclaimed mayor-elect on the ground that the respondent was not a registered candidate because the Commission on Elections had by a re-

8 Montes v. The Civil Service Board of Appeals, G.R. No. L-10759, May 20, 1957.
9 Araneta v. Gatmaitan, supra, note 4.
10 Sec. 79-A, Revised Administrative Code
11 Cabansag v. Fernandez, G.R. No. L-8974, Oct. 18, 1957.
12 G.R. No. L-10916, May 20, 1957.

solution declared that the certificate of candidacy of the respondent was null and void since it had not been properly signed and filed. The lower court dismissed the petition for quo warranto holding among other things that the certificate of candidacy was merely defective. The Supreme Court in setting aside the order of dismissal declared that the resolution of the Commission on Elections declaring Garcia's certificate of candidacy to be null and void is conclusive on the court below until the resolution is reversed by competent authority. In ruling that said certificate was merely defective, and not null and void, the Court of First Instance arrogated unto itself the power to review the administrative decisions of the Commission on Elections in violation of the Constitution that has lodged in the Supreme Court the exclusive power to review the ruling of that body.[18]

E. Civil Service

The security of tenure of officers and employees in the civil service is guaranteed by the Constitution which provides that "No officer or employee in the Civil Service shall be removed or suspended except for cause as may be provided by law".[14] In *Alba v. Evangelista*[15] the principal issue was whether under a city charter which provides that the Vice-mayor appointed by the President with the consent of the Commission on Appointments "shall hold office at the pleasure of the President", the President can legally replace an incumbent vice-mayor with or without cause. In an earlier decision,[16] the Supreme Court held that the provision of the charter of the city of Baguio giving the President power to remove certain city officials at pleasure was incompatible with the foregoing constitutional provision. In the present case the court distinguished *removal at pleasure* from *holding office at the pleasure of the President* and upheld the Solicitor General's contention that "the replacement of Alajar is not removal, but an expiration of its tenure, which is one of the ordinary mode of terminating official relations." It was pointed out that Congress had created an office and made its tenure expressly dependent upon the pleasure of the President, so when the President replaced the vice-mayor he was only exercising a power expressly vested in him by law.

As to what may be legal grounds for removal, the Supreme Court in *Cammayo v. Vina*[17] held valid an administrative order of the President removing an assistant city fiscal who after formal hearing conducted by the Department of Justice was found to have written letters asking a prisoner serving sentence for parricide to give money and a rooster in order that the fiscal could work for the prisoner's pardon. This was declared to constitute dishonesty and conduct prejudicial to the service which under civil service rules are sufficient grounds for removal.

Where a law provides that decisions of the Civil Service Board of Appeals shall be final unless revised or modified by the President of the Philippines, an official aggrieved by a decision of the Civil Service Board of Appeals cannot bring an action in court without first exhausting administrative remedies by appealing his case to the President of the Philippines.[18]

The *Angat River Irrigation System v. Angat River Irrigation System* Workers' Union (supra) also presented the issue of whether government employees may validly organize themselves into a union and if so, whether the

13 Art. X, Sec. 2. "The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court."
14 Sec. 4, Art. XII.
15 G.R. No. L-10360, January 17, 1957.
16 De los Santos v. Mallare, 48 O.G., 1781.
17 G.R. No. L-11196, Aug. 30, 1957.
18 Montes v. The Civil Service Board of Appeals, G.R. No. L-10759, May 20, 1957.

union may demand that the government enter into collective bargaining agreement with it. Involved in the dispute is section 11 of the Industrial Peace Act (Rep. Act No. 875) which provides:

> "Section 11. Prohibition Against Strike in the Government. — The terms and conditions of employment in the government, including any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purpose of securing changes or modification in their terms and conditions of employment. Such employees may belong to any labor organization which does not impose the obligation to strike or to join in strike: **Provided, however,** That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government, including but not limited to government corporations."

The Supreme Court having determined that the Angat River Irrigation System was engaged in governmental functions held that the workers' union therein cannot demand that the government should negotiate and enter into collective bargaining agreement with them. The sentence reading "the terms and conditions of employment in the government, including any political subdivision or instrumentality thereof, are governed by law" was interpreted to mean that the government is likewise exempt from collective bargaining because employment in the government can no longer be subject to agreement or contract between the employer and the employed. These are fixed by Congress and appointments and promotions are determined by merit and fitness subject to regulations issued and adopted by the civil service.[19]

II. INDIVIDUAL RIGHTS

The Constitution guarantees to individuals certain fundamental rights which are normally protected against interference by government action. These rights are, however, not absolute and the problem of resolving the conflicts which arise between the individual and the government occupies a prominent position in constitutional law. In the last year a number of decisions touching on personal liberties were decided by the Supreme Court.

A. Due Process, Equal Protection Of The Laws And Police Power

In the *Ichong v. Hernandez*[20] case the due process and the equal protection of the law clauses were weighed against the exercise of police power. The action began as a petition for declaratory relief to obtain a judicial declaration on the constitutionality of Republic Act No. 1180, entitled "An Act to Regulate the Retail Business". The main provisions of the law are: (1) a prohibition against persons not citizens of the Philippines, and against associations, the capital of which are not wholly owned by citizens of the Philippines from engaging directly or indirectly in the retail trade; (2) an exception from the above prohibition in favor of aliens actually engaged in said business on May 15, 1954, who are allowed to continue to engage therein until their death or voluntary retirement in case of natural persons, and for ten years after the approval of the Act or until the expiration of their term in case of juridical persons; (3) an exception made in favor of citizens and juridical entities of the United States; (4) a provision for the forfeiture of licenses (to engage in the retail business) for violation of the law on nationalization, economic control, weights and measures, and labor and other laws relating to trade, commerce and industry; (5) a prohibition against the establishment or opening, by aliens actually engaged in the retail business of additional stores or branches of retail business; (6) a provision requiring aliens actually en-

19 This decision reduces the unions which those employed in the governmental functions are impliedly permitted to join to a state of ineffectuality, since not being able to strike, they cannot demand collective bargaining either.

20 G.R. No. L-7995, May 31, 1957.

gaged in the retail business to present for registration with the proper authorities a verified statement concerning their business, giving, among other matters, the nature of the business, their assets and liabilities and their principal offices and (7) a provision allowing the heirs of aliens now engaged in the retail business who die, to continue such business for a period of six months for purposes of liquidation.

The constitutionality of the act was attacked on the following points: (1) that it denies to alien residents the equal protection of the laws and deprives them of their liberty and property without due process of law; (2) that the subject of the act is not expressed or comprehended in the title thereof; (3) the Act violates international and treaty obligations of the Republic of the Philippines; and (4) the provisions of the Act against the transmission by aliens of their business through hereditary succession, and those requiring 100% Filipino capitalization for a corporation or entity to entitle it to engage in the retail business, violate the spirit of Section 1 and 5, Article XIII and Section 8 of Article XIV of the Constitution.

Mr. Justice Labrador speaking for nine members of the Supreme Court wrote the majority opinion. One Justice reserved his vote and another concurred in part and dissented in part. The preliminary question considered was whether the Act which was passed in the exercise of police power violated the constitutional requirements of due process and equal protection of the laws. The Court reiterated the now well accepted principles regarding the exercise of police power, saying:

> "It has been said that police power is so far-reaching in scope, that it has become almost impossible to limit its sweep. As it derives its existence from the very existence of the State itself, it does not need to be expressed or defined in its scope; it is said to be co-extensive with self-protection and survival, and as such it is the most positive and active of all governmental processes, the most essential, insistent and illimitable. Especially is it so under a democratic framework where the demands of society and of nations have multiplied to almost unimaginable proportions; the field and scope of police power has become almost boundless, just as the fields of public interest and public welfare have become almost all-embracing and have transcended human foresight. Otherwise stated, as we cannot foresee the needs and demands of public interest and welfare in this constantly changing and progressive world, so we cannot delimit beforehand the extent or scope of police power by which and through which the State seeks to attain or achieve public interest or welfare. So it is that Constitutions do not define the scope or extent of the police power of the State; what they do is set forth the limitations thereof. The most important of these are the due process clause and the equal protection clause."
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> "The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to co-exist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society. There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty or property, provided there is due process of law; and persons may be classified into classes and groups, provided everyone is given equal protection of the law. The test or standard, as always, is reason. The police power legislation must be firmly grounded on public interest and welfare, and a reasonable relation must exist between purposes and means. And if distinction and classification has been made, there must be a reasonable basis for said distinction."

The Court went then to consider the nature of the economic problem involved, the importance of the retailer in the life of the community, the controlling and dominant position of the alien retailer in the nation's economy and the dangers to the national interest arising from this situation. Referring to some pernicious practices of aliens in the retail trade the Court said that they have cornered the market of essential commodities, like corn and rice, creating artificial scarcities to justify and enhance profits to unreasonable proportions, that they have hoarded essential foods to the inconvenience and prejudice of the consuming public, so much so that the government has had to establish the National Rice and Corn Corporation to save the public from their continuous hoarding practices and tendencies; that they have vio-

lated price control laws, especially on foods and essential commodities, such that the legislature had to enact a law authorizing their immediate and automatic deportation for price control convictions; that they have secret combinations among themselves to control prices, cheating the operation of the law of supply and demand; that they have connived to boycott honest merchants and traders who would not cater or yield to their demands in unlawful restraint of freedom of trade and enterprise.

Having in mind all the facts and circumstances surrounding the enactment of the law, the Court said that the statute is not the product of racial hostility, prejudice, or discrimination, but the expression of the legitimate desire to free the nation from the economic situation which was working to its disadvantage. Clearly this is in the interest of the public, of the national security itself, and indisputably falls within the scope of police power.

The law does not deprive the aliens of equal protection since there are differences between the aliens and citizens in the retail business which constitute valid reason for preferring the national over the aliens. The Court pointed out that among other things that the alien resident owes allegiance to the country of his birth or his adopted country and his stay here is for personal convenience; that he is naturally lacking in that spirit of loyalty and enthusiasm for this country where he temporarily stays and makes his living, or of that spirit of regard, sympathy and consideration for his Filipino customers as would prevent him from taking advantage of their weakness and exploiting them; that he never really makes a genuine contribution to national income and wealth because while he contributes to general distribution his profits are not invested in industries that will increase national wealth, and that the practices resorted to by aliens to gain control of distribution show the actual, real and positive differences between the aliens and nationals in the retail trade.

As to the due process of law limitation on the exercise of police power, the Court citing different authorities said that reasonability is the test of the limitation. Where the law itself is not unreasonable, arbitrary or capricious, and the means selected have a real substantial relation to the object sought to be attained, the legislative determination should be respected.

The main argument against the constitutionality of the law is that the retail trade is a common, ordinary occupation and one of those privileges long ago recognized as essential to the orderly pursuit of happiness by free men, and that it is a gainful and honest occupation and therefore beyond the power of the legislature to prohibit or penalize. To answer this the Court said that the privilege has been shown to be so grossly abused by the alien, through the illegitimate use of pernicious designs and practices, that he now enjoys a monopolistic control of the occupation and threatens a stranglehold on the nation's economy so as to endanger national security in times of crisis and emergency.

The real question, the Court said, was whether the exclusion in the future of aliens from the retail trade is unreasonable and arbitrary. Taking into account the illigitimate and pernicious practices connected with alien participation in retail trade, the Court found that it is neither and that it is only in furtherance of the nationalistic protective policy of the Constitution. Futhermore, it is prospective in operation and recognizes the right of aliens already engaged in the retail business and provides reasonable time for liquidation of their business.

The objection regarding the defect in the title was also rejected. The term "regulate" according to the Court is a broader term than either prohibition or nationalization, and these have always been included in regulation.

Mr. Justice Padilla dissented with the majority as to the validity of the law insofar as it compels associations and partnerships to wind up their retail business within ten years from the approval of the Act even before the expiry of the term of their existence as agreed upon by the associates and partners, and insofar as it compels the alien heirs of a deceased alien engaged in the retail business in his lifetime, his executors or administrators, to liquidate the business. He believes these provisions invalid becaue their effect is to compel the aliens affected to sell or dispose of their business at a forced sale where the price obtainable would be inadequate to reimburse and compensate for the capital invested and the goodwill built in the course of the business.

B. Freedom Of Expression

In *Cabansag v. Fernandez*[21] the Supreme Court was called upon to determine where the freedom of expression ends and the right of the judiciary to protect its independence begins. In this case contempt proceedings were instituted against a party with a case pending in court for writing a letter to the Presidential Complaints and Action Committee (PCAC) copies of which were furnished the Secretary of Justice, the Executive Secretary and the Court of First Instance of Pangasinan. The letter reads in part:

> "We, poor people of the Philippines are very grateful for the creation of your Office. Unlike, in old days, poor people are not heard, but now the PCAC is the sword of Damocles ready to smite bureaucratic aristocracy. Poor people can now rely on the PCAC to help them.
>
> "Undaunted, the undersigned begs to request the help of the PCAC in the interest of public service, as President Magsaysay has in mind to create the said PCAC, to have his old case stated above be terminated once and for all. The undersigned has long since been deprived of his land thru the careful maneuvers of a tactical lawyer. The said case which had long been pending could not be decided due to the fact that the transcript of the records has not, as yet, been transcribed by the stenographers who took the stenographic notes. The new Judges could not proceed to hear the case before the transcription of the said notes. The stenographers who took the notes are now assigned in other courts. It seems that the undersigned will be deprived indefinitely of his right of possession over the land he owns. He has no other recourse than to ask the help of the ever willing PCAC to help him solve his predicament at an early date.
>
> "Now, then, Mr. Chief, the undersigned relies on you to do your utmost best to bring justice to its final destination. My confidence reposes in you."

Cabansag and his lawyers were cited for contempt and found guilty by the Pangasinan Court, hence this appeal. The Supreme Court found that this case raised the problem of how to balance and reconcile the exercise of two fundamental rights underlying our democratic institutions — the independence of the judiciary and the right to petition the government for redress of grievances

The "clear and present danger" rule and the "dangerous tendency" rule, two theoretical formulas devised to draw the proper constitutional boundary between freedom of expression and independence of the judiciary, were discussed by the court. On the "clear and present danger" rule, its origin and application in various American cases the *Bridges v. California*[22] is cited where among other things it is stated that:

> "Clear and present danger of substantive evils as a result of indiscriminate publications regarding judicial proceedings justifies an impairment of the constitutional right of freedom of speech and press only if the evils are extremely serious and the degree of imminence extremely high. x x x A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a

21 G.R. No. L-8974, Oct. 18, 1957.
22 314 U.S. 252, syllabi.

judicial proceeding still pending in the courts, upon the theory that in such a case it must necessarily tend to obstruct the orderly and fair administration of justice x x x The possibility of endangering disrespect for the judiciary as result of the published criticism of a judge is not such a substantive evil as will justify impairment of the constitutional right of freedom of speech and press."

The Court then discussed the "dangerous tendency" rule saying that this has been adopted in cases where extreme difficulty is met in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt.

Referring to *Gitlow v. New York*[23] the Supreme Court said, "If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent."

Writers on constitutional law have long regarded these as two distinct rules. While the United States follows the "clear and present danger" rule which has been given varying application, the Philippines has adhered to the "dangerous tendency" rule, only now and then incidentally mentioning in some court decisions the "clear and present danger" rule without adopting or accepting it outright.[24]

In this case it appears that the Court combines and uses the two rules as shown by the following statements from the case:

"The question then to be determined is: Has the letter of Cabansag created a sufficient danger to a fair administration of justice? Did its remittance to the PCAC create a danger sufficiently imminent to come under the two rules mentioned above?

"Even if we make a careful analysis of the letter sent by appellant Cabansag to the PCAC which has given rise to the present contempt proceedings, we would at once see that it was far from his mind to put the court in ridicule and much less so belittle or degrade it in the eyes of those to whom the letter was addressed for, undoubtedly, he was compelled to act the way he did simply because he saw no other way of obtaining the early termination of his case. Analysing said utterances, one would see that if they ever criticize, the criticism refers, not to the court, but to opposing counsel whose 'tactical maneuvers' has allegedly caused the undue delay of the case. The grievance or complaint, if any, is addressed to the stenographers for their apparent indifference in transcribing their notes.

"The only disturbing effect of the letter which perhaps has been the motivating factor of the lodging of the contempt charge by the trial judge is the fact that the letter was sent to the Office of the President asking for help because of the precarious predicament of Cabansag. While the course of action he had taken may not be a wise one it would have been proper had he addressed his letter to the Secretary of Justice or to the Supreme Court, such must cause a **serious imminent threat** to the administration of justice. Nor can we infer that such act has a **'dangerous tendency'** to belittle the court or undermine the administration of justice for the writer merely exercised his constitutional right to petition the government for redress of a legitimate grievance."

In *De Leon v. National Labor Union*[25] the Court reiterated the rule that peaceful picketing is guaranteed by the constitutional right of free speech; this is so even in the absence of employee-employer relationship.

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23 268 U.S. 652.
24 Primicias v. Fugoso, 80 Phil., 71 and American Bible Society v. City of Manila, a 1957 decision reviewed here.
25 G. R. No. L-7586, Jan. 30, 1957.

C. Religious Freedom

The Constitution provides: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. x x x"[26] In *American Bible Society v. City of Manila*[27] attack on the constitutionality and applicability of two ordinances of the City of Manila to a foreign, non-stock, non-profit, religious corporation duly registered in the Philippines was predicated on the above provision. The plaintiff who had been translating, distributing and selling bibles, pamphlets and other religious literature in the Philippines was required by the city treasurer to secure a permit and pay the fees imposed by certain city ordinances. Section 1 of Ordinance No. 3000 reads:

> "SEC. 1. PERMITS NECESSARY. — It shall be unlawful for any person or entity to conduct or engage in any of the businesses, trades, or occupations enumerated in Section 3 of this Ordinance or other businesses, trades or occupations for which a permit is required for the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security, and welfare of the public and the health of the employees engaged in the business specified in said Section 3 hereof, WITHOUT FIRST HAVING OBTAINED A PERMIT THEREFOR FROM THE MAYOR AND THE NECESSARY LICENSE FROM THE CITY TREASURER."

The business, trade or occupation of the plaintiff is not particularly mentioned in Section 3 of the ordinance and it was not shown that it was required under any existing law or ordinance to secure any permit for the proper supervision and enforcement of their provisions regarding sanitation, security, or health. However, Section 3 of the ordinance contains item 79 which states: "79. — All other businesses, trades, or occupations not mentioned in the ordinance, except those upon which the City is not empowered to license or to tax...₱5.00". Under this item the permit is necessary if the City has power to license or tax the business, trade or occupation. The other ordinances involved[28] prescribe the fees to be imposed based on the gross quarterly sales of businesses and the city treasurer was applying the provision on retail dealers in general merchandise and on retail dealers exclusively engaged in the sale of books, including stationery.

The Supreme Court first considered the applicability of the ordinances imposing the fees on gross quarterly sales of businesses on the sale and distribution of bibles and other religious literature by the plaintiff. Citing decided cases and writers on the subject, the Court held that the ordinances cannot be applied to the plaintiff because it would impair its free exercise and enjoyment of religious freedom and worship which carries with it the right to disseminate religious information, restraint of which can only be justified like other restraints of freedom of expression when there is a clear and present danger of any substantive evil which the State has the right to prevent. The Court also said that even if the books were sold at a little bit higher than actual cost it cannot reduce the activity of the plaintiff to a business or occupation of selling "merchandise" for profit.

As to Ordinance No. 3000 the Court held that the requirement of a mayor's permit before any person may engage in any business occupation, trade or occupation does not impose any charge upon the enjoyment of a right granted by the Constitution and cannot be considered unconstitutional even if applied to the plaintiff, but it was found by its own terms to be inapplicable since the power to require the permit was made to depend on the power of the city to tax the occupation or business.

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26 Par. 7, Sec. 1, Art. III.
27 G. R. No. L-9637, April 30, 1957.
28 Ord. No. 2529 as amended by Ord. Nos. 2779, 2821 & 3028.

III. DECISIONS ON NATIONALIZATION

The preoccupation to achieve economic security and preserve the patrimony of the nation is shown in two decisions of far-reaching effects. *In Ichong v. Hernandez*[29] the Supreme Court upheld the validity of an act of Congress nationalizing the retail trade business in the Philippines on a finding that the law was within the scope of police power and that the means provided to achieve its purpose were reasonable. The statute was said to be in furtherance of the nationalistic protective policy of the Constitution. It did not violate any international agreement entered into by the Philippines since the United Nations Charter imposes no legal obligations regarding the rights and freedoms of their subjects and the Declaration of Human Rights contains no more than a mere recommendation for a common standard of achievement for all peoples. Treaty agreement with China only guarantees equality of treatment to all Chinese nationals "upon the same terms as nationals of any other country." Under the law all foreigners are treated alike.[30]

The nationalization policy of the Constitution as expressed in Article XIII entitled, Conservation and Utilization of Natural Resources was interpreted and applied to a religious corporation sole existing under Philippine laws. In a petition for mandamus[31] the Roman Catholic Apostolic Administrator of Davao, Inc. sought a reversal of the resolution of the Land Registration Commission holding that in view of Sections 1 and 5 of Article XIII of the Constitution, the petitioner is not qualified to acquired private lands in the Philippines in the absence of proof that at least 60% of the capital, property, or assets of the petitioner was actually owned or controlled by Filipino citizens. The Roman Catholic Apostolic Administrator of Davao, Inc. is a corporation sole organized and existing in accordance with Philippine laws with a Canadian citizen as actual incumbent. The main issue in the case involves the effect of the Constitution on the right of this corporation sole to acquire, possess and register real estates in its name. The land which is the object of the application for registration was bought from a Filipino citizen in 1954. Sections 1 and 5 of Article XIII of the Constitution read:

> "SECTION 1. — All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.
>
> "SECTION 5. — 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."

After considering the foregoing provisions of the Constitution and those of the Corporation Law governing the establishment and operation of corporations sole, the Supreme Court declared that the petitioner is entitled to register the land in its name for the reason that the bishops or archbishops as corporations sole are merely *administrators* of the church properties that come to their possession, and which they hold in trust for the church; church properties acquired by the incumbent of a corporation sole, pass, by operation of law, upon

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29 Supra, footnote 20.

30 An exception is made of citizens and juridical entities of the United States.

31 The Roman Catholic Apostolic Administrator of Davao, Inc., v. The Land Registration Commission, G. R. No. L-8451, December 20, 1957.

his death not to his personal heirs, but to his successor in office. The majority opinion pointed out that the ownership of these temporalities logically fall and devolve upon the church, diocese or congregation acquiring them. On the status of this religious society the Court had this to say:

> "We must, therefore, declare that although a branch of the Universal Catholic Apostolic Church, every Roman Catholic Church in different countries, if it exercises its mission and is lawfully incorporated in accordance with the laws of the country where it is located, is considered an entity or person with all the rights and privileges granted to such artificial being under the laws of that country, separate and distinct from the personality of the Roman Pontiff or the Holy See, without prejudice to its religious relations with the latter which are governed by the Canon Law or their rules and regulations."

Mr. Justice Felix speaking for the majority said that the constitutional provisions which provides that only those corporations at least 60% of the capital of which belongs to Filipinos are qualified to acquire lands in the Philippines has no application to corporations sole because of the following peculiarities of such corporations: (1) The corporation sole, unlike ordinary corporations which are formed by no less than 5 incorporators, is composed of only one person, usually the head or bishop of the diocese, a unit which is not subject to expansion for the purpose of determining any percentage whatsoever (2) the corporation sole is only the administrator and not the owner of the temporalities located in the territory comprised by said corporation sole; (3) such temporalities are administered for and on behalf of the faithful residing in the diocese or territory of the corporation sole; and (4) the latter, as such, has no nationality and the citizenship of the incumbent Ordinary has nothing to do with the operation, management or administration of the corporation sole, nor affects the citizenship of the faithful connected with their respective diocese of corporation sole.

The writer of the majority opinion elaborated his own theory regarding the "vested right saving clause" of section 1, Article XIII of the Constitution on which the other members of the Court either did not agree or were not ready to take a definite stand. Although stating that the existence or not of a vested right at the time of the inauguration of the Government established under the Constitution was not necessary for the decision of this case, Mr. Justice Felix said:

> "But let us assume that the questioned proviso is material, yet we might say that a reading of said Section 1 will show that it does not refer to any actual acquisition of land but to the right, qualification or power to acquire and hold private real property. The population of the Philippines, Catholic to a high percentage, is ever increasing. In the practice of religion of their faithful the corporation sole maye be in need of more temples where to pray, more schools where the children of the congregation could be taught in the principles of their religion, more hospitals where their sick could be treated, more hallow or consecrated grounds or cemeteries where Catholics could be buried, many more than those actually existing at the time of the enactment of the Constitution. This being the case, could it be logically maintained that because the corporation sole which, by express provision of law has power to hold and acquire real estate and personal property for its churches, charitable, benevolent, or educational purposes (Sec. 159, Corporation Law) it has to stop its growth and restrain its necessities just because the corporation sole is a non-stock corporation composed of only one person who in his unity does not admit of any percentage, especially when that person is not the corporation sole? . . . "

The case of the *Register of Deeds of Rizal v. Ung Siu Si Temple*[32] was distinguished from the present case. In the former registration of land was denied to an unregistered religious organization operating through three trustees, all foreigners, whose members were likewise of foreign nationality. The Ung Siu Si Temple was not a corporation sole but a corporation aggregate. The present case involves a duly registered corporation sole of no nationality and registered mainly to administer the temporalities of the faithful of the said church residing in Davao. The uncontroverted evidence presented shows that

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32 G.R. No. L-6776, May 21, 1955

the clergy and lay members of the religion fully cover the percentage of Filipino citizens required.

The last part of the majority opinion answer the points raised by the dissenting justice. Among these points was the fear expressed that "once the capacity of a corporation sole to acquire private agricultural lands is admitted there will be no limit to the areas that it may hold and that this will pave the way for the revival or revitalization of religious landholdings that proved so troublesome in our past." Mr. Justice Felix said in answer that corporations sole do not have an unlimited right to acquire private lands but the corporation law limits this right to deal with real property when it is pursuant to or in consonance with the purposes for which the corporation was formed and when the transaction of the lawful business of the corporation reasonably and necessarily require such dealing and as to corporations sole, it may purchase and hold real estate and personal property for its "church, charitable, benevolent or educational purposes". Then it is also pointed out that in approving Article XIII the constitutional convention could not have in mind the corporations sole since they must have known of their peculiar characteristics given above.

As to the identity of those who can overrule or alter the acts of the Ordinary as administrator which the dissent also inquired into, the majority opinion states "The corporation sole by reason of their peculiar constitution and form of operation have no designed owner of its temporalities although by the terms of the law it can be safely implied that the Ordinary holds them *in trust* for the benefit of the Roman Catholic faithful of their respective locality or diocese..." and that the courts may step in at the instance of the faithful for whom the temporalities are held in trust, to check undue exercise by the corporation sole of its powers as administrator.

A concurring opinion was written by Mr. Justice Labrador. To him the issue depended on who is the owner of the land or property sought to be registered. Examining the canon law and the opinions of writers on the subject he concludes that the property in question appears to belong to the parish or the diocese of Davao. Since the Roman Catholics of Davao are not organized as a juridical person, registration of the property in their name is impossible. The Corporation Law authorizes a corporation sole to acquire and hold real property with the bishop as legal (technical) owner or trustee and the parish or diocese as beneficial owner. For the purpose of applying the constitutional provision limiting ownership of lands to Filipinos, the concurring opinion states that the nationality of the constituents of the parish who are the beneficial owners must be considered instead of that of the priest clothed with the corporate fiction and denominated as the corporation sole. Furthermore, he states that the constitutional prohibition is limited in its terms to ownership and should not, as the dissenting opinion would have it, extend to control. If the corporation sole were to abuse his powers, his acts may be questioned as *ultra vires*.

Mr. J.B.L. Reyes dissented. He said that in requiring a corporation or association to have 60% of their capital owned by Filipino citizens the Constitution disregarded the corporate identity and looked to the natural persons that compose it. To him the important thing was to determine who exercised the power of control in the corporation and if the bishop was only the administrator to find out who could overrule his acts. To possess constitutional capacity to acquire agricultural land, the body making the final decision for the corporation must at least have 60% Filipino membership. Applying this test, he arrives at the conclusion that the body of members professing the Catholic

faith in the diocese of Davao does not constitute the controlling membership for under the rules of the church only the hierarchical superior of the Ordinary can control his acts. Besides, he thinks that the body of the faithful in the Davao diocese cannot be taken as the church represented by the Ordinary since it is part and parcel of the universal Catholic Church. So that even from the point of view of beneficial ownership, the diocese of Davao according to him cannot be viewed as a group legally isolated from the Catholic Church as a whole.

Since no distinction is made in the Constitution bewteen lands devoted to purely religious purposes and lands held in ordinary ownership, he warns that once the capacity to acquire land is granted, the way is paved for the revitalization of religious landholdings that proved so troublesome in the past.

On the vested right saving clause theory of Mr. Justice Felix the dissent makes this pointed criticism:

> "Furthermore, a capacity to acquire in **futuro**, is not in itself a vested or existing property right that the Constitution protects from impairment. For a property right to be vested (or acquired) there must be a transition from the **potential** or contigent, to the **actual**, and the proprietary interest must have attached to a thing; it must have become "fixed or established' (Balbon v. Farrales, 51 Phil. 498). If mere potentialities cannot be impaired, then the law would become unchangeable, for every variation in it will reduce someone's legal ability to do or not to do. Already in Benguet Consolidated v. Pineda, 52 Off. Gaz. 1961, we have ruled that no one has a vested right in statutory privileges or exemptions. And in his concurring opinion in Gold Creek Mining Corp. v. Rodriguez, 66 Phil. 259 (cited by Justice Felix), Mr. Justice Laurel squarely declared that 'contingency or expectation is neither property nor property right.'"

Finally he asserts in answer to the statement that a religious corporation sole has no citizenship and is not an alien "it is not enough that the acquirer of the agricultural land be not an alien; he must be a Filipino or controlled by Filipinos."

IV. CITIZENSHIP AND NATURALIZATION

As in previous years the decisions on naturalization were numerous. A question of first impression was whether or not an alien woman becomes *ipso facto* a citizen of the Philippines by her marriage to a Filipino. Sec. 15 of the Naturalization Law[33] provides that "Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines." In two cases the Supreme Court held that the fact of marriage to a Filipino citizen does not vest citizenship on the alien woman. The law requires that she herself may be lawfully naturalized and by an opinion of the Secretary of Justice proof is required to show that she is not among those disqualified under the Naturalization Law. In both cases the Supreme Court required the introduction of evidence to show that the woman could herself be naturalized.[34]

To become naturalized an alien is required to prove that he has all the qualifications and none of the disqualifications enumerated in the Naturalization Law and must besides comply with all the formal requisites provided therein.

In one application for naturalization[35] the lower court after allowing the petitioner to show that he had long before his application possessed the status of a Filipino citizen in that he was born in the Philippines in 1904 of Chinese

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33 Com. Act No. 473.
34 Ly Giok Ha v. Galang, L-10760, May 17, 1957 and Cua v. Board of Immigration, L-9997, May 22, 1957
35 Teotimo Rodriguez Tio Tian v. Rep., G. R. No. L-9602, April 25, 1957.

parents, voted in elections, took oath of allegiance as citizen, never registered in the Bureau of Immigration, declared him a citizen without need of complying with Republic Act No. 530. On appeal the Supreme Court held that the principle of *jus soli* cannot be the basis of citizenship in view of *Tan Chong v. Sec. of Labor* case[36]. The petitioner though granted citizenship was subject to the provisions of Republic Act No. 530.

The Naturalization Law requires that an applicant for naturalization should possess certain qualifications respecting age, residence, character and behavior, property or occupation, language, and children's education. In one case it was held that where transfer of property is made to the petitioner without consideration some months before his application and the petitioner is a student supported by his parents, the petitioner does not qualify for naturalization because he does not satisfy the property requirement nor have a lucrative trade or profession.[37] The language qualification is not strictly enforced. It is enough that the applicant can make himself understood in the community where he lives and can understand those with whom he deals.[38] Nor does the law expect an applicant to be able to enumerate the basic principles of the Constitution. The court held that by testifying that he follows the requirements of the government and lives according to law, an applicant shows his conscientious responsibility to the government and an awareness that all citizens of the country should have.[39] In *Tan v. Republic*[40] the Supreme Court said that it is "unrealistic to expect applicants to swear they desire to become citizens purely out of love of this country exclusive of privileges publicly known to be accorded to Philippine nationality". In this case the petitioner who had always considered himself to be a Filipino was born of a Filipino mother, associated with Filipinos, went to public schools and underwent compulsory military training, but learned that he was not a citizen when he applied for admission to take the board examination for mechanical engineers. In the course of his testimony he said that he wanted to be a Filipino because he wanted to practice his profession. The government argued that this was a selfish desire to gain material advantage, but the Supreme Court held that this was no valid objection to naturalization.

Applicants for naturalization must prove that they are of good moral character[41] and that they have during the entire period of residence conducted themselves in a proper and irreproachable manner. Naturalization was denied an applicant who cohabited with a woman with whom he had thirteen children and whom he did not marry until just six months before applying for naturalization. The Court, however, said that the judgment was "without prejudice to a renewal of the application provided that the applicant has observed irreproachable conduct after his marriage for the five year period required of aliens who are married to Filipino women, and no other disqualifications appear."[42] But there is no lack of the requisite good moral character and sincere desire to adopt Filipino ways of life where an applicant married his wife because she was his mother's choice and left her to take care of his mother and did not bring her to the Philippines[43] or because an applicant married before a Chinese consul according to the customs of his country instead of before Philippine authority where upon learning that his marriage before the con-

36 79 Phil. 249.
37 Alfonso Teh Lopez v. Republic, L-9155, April 23, 1957.
38 Chang Kim v. Republic, L-9656, May 23, 1957; Ong Ho Ping v. Republic, L-9712, April 27, 1957.
39 Tomas v. Republic, G. R. No. L-7989, May 31, 1957.
40 G. R. No. L-9976, April 29, 1957.
41 In Go Chiao v. Republic, G. R. No. L-9001, March 29, 1957, the government tried to prove fraud to indicate the lack of good moral character of the applicant, but failed.
42 Sy Kiam v. Republic, L-10008, Dec. 18, 1957.
43 Lay Kock v. Republic, L-9646, Dec. 21, 1957.

sul was not valid, he immediately took steps to have a civil ceremony performed according to Philippine laws.[44] An applicant who has all the qualifications and none of the disqualifications will not be denied naturalization because of failure to register his wife and child with the Immigration office as aliens[45] or because of a previous conviction of a municipal ordinance prohibiting the storing of more than 2 cans of petroleum because, the crime does not involve moral turpitude.[46]

In previous years the most serious stumbling block to naturalization was the requirement respecting the education of children. This year the problem was less often encountered. In *Yu Kay v. Republic*[47] it was held that the proviso regarding the education of children as one of the conditions for exemption for the filing of a declaration of intention means that children should be given the opportunity of getting primary or secondary education by their opportune enrollment in the schools mentioned but not that they must have completed in said schools both primary and secondary education. This applies only to children of school age, hence cannot be made to apply to children who are too young or who have already completed their education when the applicant came to the Philippines. The failure to enroll in the required school one child born in the Philippines in 1939 and sent to China where the child remained, was an additional objection to naturalization.[48] However, it is not a reason for objection that a petitioner mentioned in his application only 11 children and then testified that he had 13, 2 of whom died making no mention that before their death the children had been enrolled in the authorized schools where it can be seen from the record that the two children were too young to go to school.[49]

Among the procedural requirements that must be observed is the filing of a declaration of intention one year[50] before the petition for naturalization. There are exceptions, however. For example, an alien who has continuously resided in the Philippines for the last thirty years is exempt from the requirement, provided he has given primary and secondary education to his children in the schools prescribed by the statute.[51] An absence of six months does not interrupt the continuity of the residence.[52] The petition for naturalization must be filed in the province where the applicant resides, otherwise it will be rejected,[53] and where the publication required by law has not been made the petition is also denied. Thus in *Ong Son Cui v. Republic*[54] notice of hearing which the law requires to be published "once a week for three consecutive weeks in the Official Gazette and in one newspaper of general circulation" was published only once in the Official Gazette and for three consecutive weeks in a newspaper of general circulation. It was held that the publication was not sufficient. The notice must be published in three consecutive issues on the Official Gazette although this is not now published weekly since the in-

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44 Santos O. Chua v. Republic, G. R. No. L-9983, April 22, 1957.
45 Chay Guan Tan v. Republic, L-9682, April 23, 1957.
46 Bueno contra La Republica, L-9080, 18 de Mayo de 1957. Another objection raised in the case was that the applicant did not indicate that he was a citizen of Nationalist China. The Court said considering that the applicant was born in the Philippines, was 42 years of age and had stayed continuously in the Philippines except for a short visit to China in 1946, the omission to allege Nationalist Chinese citizenship was unimportant.
47 G. R. No. L-10084, Dec. 19, 1957.
48 Lim v. Republic, L-9999, Dec. 24, 1957. See also Quezon Ong Tan v. Republic, G. R. No. L-9683, May 30, 1957.
49 Sy Kiam v. Republic, G. R. No. L-10008, Dec. 18, 1957.
50 In Lay Kock v. Republic, supra, the petitioner did not specify the date he forwarded the declaration of intention but the Court said that a shortage of four days was not fatal.
51 See Yu Kay v. Republic, and Quezon Ong Tan v. Republic, supra.
52 Ramon Ting v. Republic, G. R. No. L-9225, Aug. 21, 1957.
53 Lim v. Republic, G. R. No. L-9999, December 24, 1957.
54 G. R. No. L-9858, May 29, 1957.

tent is to have it appear in the official organ of the government which caters to officials and employees of the government and lawyers who are in a better position to know of aliens running afoul of the law.

The petitioner must also present as witnesses two Filipino citizens who know him personally to testify as to his residence for the required period, his character and other qualifications, and that he is not in any way disqualified to become a citizen. The competence of a witness to testify on these points is of utmost importance because on his testimony depends the success or failure of the petition and because it is the only evidence on which the court can rely to determine the fitness of the applicant. In two cases[55] the Supreme Court found the witnesses not competent to vouch for the good moral character and irreproachable conduct of the applicants because although the witnesses knew the applicants, their association was not close and had been interrupted by the war or by their having moved from one place to another. The witnesses were found not to have the opportunity to observe the applicant's conduct. However, the Supreme Court said that it is not only those who have actually and continuously seen a person who can testify as to his good conduct and behavior. In a community the conduct and behavior of a person becomes known more from his reputation than from actual observation.[56] The period of time during which a witness must have known the petitioner must be either 10 years under section 2 or five years under section 3 of the Naturalization Law and as to the competence of the witnesses to testify on the conduct of the applicant the Court said "one does not need to know another from the moment of the latter's birth or age of reason, to qualify as witness to his proper and law-abiding behavior. Existing records, common reputation and mutual friends and acquaintances are available sources of information.[57]

In cases where an applicant's birth in the Philippines is averred, it is not always necessary that record in the registry should be produced because as the court pointed out not all births are recorded in the registry of births and "this must especially be true of births occurring before the establishment of the Civil Registry by Act 3753, which took effect on February 26, 1931."[58]

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55 Chan Pong v. Republic, G. R. No. L-9153, May 17, 1957 and Dy Suat Hong v. Republic, G. R. No. L-9224, May 29, 1957.
56 Manuel Tong Su v. Republic, G. R. No. L-9848, April 23, 1957.
57 Lay Kock v. Republic, G. R. No. L-9646, December 21, 1957.
58 Pablo Chang Briones Lorenzo v. Republic, G. R. No. L-9601, April 22, 1957.