STATUTORY CONSTRUCTION—1958

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For the year 1958, the salutary rules of statutory construction are easily the most pronounced of those "canons of experience" which highlighted the frank and able decisions of our over-zealous Tribunal. The confused multiplicity of statutes "destined to be wielded or challenged in the courts"[1] of justice, and the emergence, to a considerable extent, of those facts of life which have escaped "the most gifted legislative imagination"[2] — all combined to dramatize the noteworthy role which these axioms of interpretation virtually played in the making of justice. As long perhaps as "no human wisdom can prepare a law in such form, and in such simplicity of language as that it shall meet every possible complex case that may thereafter arise,"[3] these rules and axioms will incessantly preserve their unique utility in the fascinating matrix of judicial interpretation.

It must be frankly admitted that our Supreme Court had adhered to well-worn rules in statutory construction. A significant outlook, however, had pervaded in the manner by which the Court interpreted or derived intent from recent legislations. There are, at least, three dissenting opinions of noted Justices to which we are practically in agreement. Even as the oft-cited aphorism goes that a dissent is but an intrepid voice in the wilderness, we cannot resist the impulse of mentioning these dissenting opinions here if only because we appreciate the beauty of their merits and the soundness of their justice.

I. INTERPRETATION IS A JUDICIAL FUNCTION.

The power to interpret statutes is primarily a judicial function.[4] In the case of *Pagdanganan vs. C.A.R.*,[5] the Supreme Court had occasion to interpret Section 20 of Republic Act No. 1400, otherwise known as the Land Reform Act of 1955, which provides:

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1 13 RUTGERS L. REV. 8 (1958).

2 Justice Frankfurter aptly stated: "The intrinsic difficulties of language and the emergence after enactment of situations not anticipated by the most gifted legislative imagination, reveal doubts and ambiguities in statutes that compel judicial construction." 47 COL. L. REV. 528-540 (1947).

3 Dwarris, quoted with approval in GONZAGA, STATUTES AND THEIR CONSTRUCTION 706 (1958).

4 Marbury v. Madison, 1 Cranch 137. In the recent case of College of Oral and Dental Surgery v. C.T.A., (G.R. L-10440, January 28, 1958), the Court stated: "To the Courts belong the prerogative and power of construction and interpretation."

5 G.R. No. L-12385, November 29, 1958.

> "Prohibition against alienation. — Upon the filing of the petition referred to in sections 12 and 16, the landowner cannot alienate any portion of the land covered by such petition except in pursuance of the provisions of this Act, or enter into any form of contract to defeat the purpose of this Act, and no ejection proceedings against any tenant or occupant of the land covered by the petition shall be instituted or prosecuted until it becomes certain that the land shall not be acquired by the Administration."

It appeared that the Court of Agrarian Relations ordered the ejectment of Baligad and eight other tenants of Pagdanganan. The court, however, quashed its decree of execution on April 15, 1957, when the majority of the tenants in the hacienda in which the landholdings of Pagdanganan are located filed a petition with the Land Tenure Administration for the acquisition by the Government of the hacienda under Republic Act No. 1400.

The Supreme Court, in holding that it was improper to cancel the order of execution, said: "Construing the statute, some of us believe, as directing suspension of the execution of a final judgment might render it unconstitutional,[6] inasmuch as the tenancy contracts had been entered in 1953 and 1954, *before the passage* of Republic Act No. 1400 (1955). Others . . . hold in the light of the purpose of the law and its phraseology, that the section could not be interpreted to cover the situation, because neither Pagdanganan nor the court was 'instituting or prosecuting' ejectment proceedings, but 'executing' a final judgment. The section directs that no ejectment proceeding 'shall be instituted or prosecuted', *i. e., prosecuted to judgment;* yet it does not direct that no judgment *shall be executed or carried out.* There is reason for the distinction if one cares to analyse. The law obviously intended to favor *bona fide* tenants or occupants, those fully in possession.[7] Now, since the adverse judgment in the ejectment proceedings became final, the tenants automatically fall beyond the scope of the benevolent provisions of Republic Act No. 1400, since they lost standing as *bona fide* occupants."

II. PRESUMPTION OF CONSTITUTIONALITY OF STATUTES.

Lawmakers are bound to obey and support the Constitution, and it is understood that they have considered the constitutionality of their enactments. Hence, the presumption is always in favor of the constitutionality of a statute, and every doubt should be resolved by the courts in favor of such constitutionality.[8] Inquiry into the constitutionality of a statute may be justified only if the question of constitutionality be pressing and unavoidable. If the case may be validly decided in some other way, the courts should avoid passing upon the constitutionality of the law.[9]

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6 Statutes suspending execution on judgments for a limited time are generally considered unconstitutional as applied to prior judgments or contracts even though conditions are annexed to the suspension. 16 A. C.J.S. 89.

7 Enrique v. Panlilio, 50 O.G. 3036: Purchase by the government is for resale to bona fide tenants.

8 GONZAGA, CASES AND MATERIALS IN STATUTES AND THEIR CONSTRUCTION 176 (1956).

9 Chicago & T.R. Co. v. Willman, 143 U.S. 309.

Thus, in the case of *Manalang et al. v. Richards*,[10] it appeared that one Manalang, in an action for ejection against him on the ground that he refused to pay a corresponding increase of the rental on a lot leased to him, questioned the constitutionality of Section 5 of Republic Act No. 1162.[11] The Supreme Court quoted with approval the ruling of the municipal court that "as to the unconstitutionality of Section 5 of Republic Act in question, the presumption is that the same is valid and constitutional until it is declared otherwise by the competent tribunal, for which reason we deem it our bounden duty to enforce the avowed policy of the Republic of the Philippines, as expressed in said Act."

Of similar import is the ruling in the case of *People v. Ong Tin*.[12] Appellant, a subject of the Republic of China, contends that he cannot be convicted of a violation of Republic Act No. 1180 entitled "An Act to Regulate the Retail Business", since he had secured a license to engage in retail trade before said law was enacted. The Supreme Court found no merit in this contention because the acts constituting the crime for which the appellant has been convicted were all executed *after* the effectivity of Republic Act 1180, and by no means can appellant's conviction be considered as a result of an *ex post facto* law. In overruling the contention of appellant that Republic Act 1180 was unconstitutional, the Court pointed out that the question had already been decided in the noted case of *Ichong v. Hernandez*.[13] To the claim that the *Ichong* case failed to pass upon the constitutionality of Republic Act 1180, the Court answered that "Laws passed by Congress are presumed to be constitutional until they are otherwise declared by final decision of this Court."

An identical ruling was pronounced by the Court in the case of *People v. Yu Bao*,[14] wherein it said that Republic Act 1180 does not penalize this alien for having engaged in the retail trade business prior to its approval; what the law penalizes is his having done so thereafter. Manifestly, the accused chose to defy the order of closure by the authorities, speculating on the possibility that Republic Act No. 1180 would be declared unconstitutional, for the action to that effect was still pending when the appellant's case was tried. For that reason, the Court firmly said, he must now abide by the result of his gamble and suffer the corresponding penalty.

III. LITERAL AND GRAMMATICAL CONSTRUCTION.

When the language of the statute is plain and free from ambiguity, it must be interpreted literally and given effect, as that

10 G.R. No. L-11986, July 31, 1958.

11 Republic Act No. 1162, section 5 provides: "From the approval of this Act, and until the expropriation herein provided, no ejectment proceedings shall be instituted or prosecuted against any tenant or occupant of any landed estate or hacienda herein authorized to be expropriated if he pays his current rentals: Provided, however, that if any tenant or occupant is in arrears in the payment of rentals or any amounts due in favor of the owners of the said landed estate, the amount legally due shall be liquidated and shall be payable in eighteen equal monthly installments . . . . "

12 G.R. No. L-10067, April 28, 1958, 54 O.G. No. 32, 7576 (1958).

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

14 G.R. No. L-11824, March 29, 1958.

meaning is conclusively presumed to be the meaning which the legislature intended to convey. This rule is succinctly expressed in the maxim, *A verba legis non est recedendum* — from the words of the statute there should be no departure.[15]

A. *Ubi Lex Non Distinguit Nec Nos Distinguere Debemos.*

Where the law does not distinguish, we should not distinguish. This well-known maxim in statutory construction was utilized by the Supreme Court in the case of *Jose Robles vs. Zambales Chromite Mining Co.*[16] The ZCMC filed a complaint for unlawful detainer against Robles alleging that they entered into a contract whereby the Company delivered the possession of certain mining properties to Robles who was to extract, mine, and sell ores from said properties upon pyament of certain royalties; that Robles violated the terms of the contract; that the Company served notice upon Robles to vacate the premises; and that Robles failed to comply. Robles contended that the Justice of the Peace Court did not have jurisdiction in actions for unlawful detainer involving mineral lands. On appeal to the CFI, the court ruled that the provisions of Section 1, Rule 27, of the Rules of Court were sufficiently broad to cover any kind of land including mineral lands.[17] The Court held that any land spoken of in this section obviously includes all kinds of land, whether agricultural, industrial, or mineral; and that it is a well known maxim in statutory construction that where the law does not distinguish, we should not distinguish.

B. Absolute and Unconditional Provisions.

Courts cannot read into a statute something that is not within the manifest intention of the legislature as gathered from the statute itself, for to depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret.[18] Thus, where the provision of the statute is absolute and unconditional, the courts are bound by it and can interpose no saving clause in favor of those who are not aware of its meaning. This was the rule enunciated in the case of *Soriano vs. Ong Hoo.*[19] Appellant in this case contends that the principle of *pari-delicto* is not applicable to the vendors for the reason that the provision of law supposed to have been violated is not a very clear provision but is a doubtful one, and its interpretation could have been the subject of mistake on the part of any of the parties. The Court, however, emphasized that the constitutional provision against the acquisition of agricultural lands by aliens[20] is absolute and unconditional; it contains no saving clause in favor of those who were not aware of its meaning or implications. The

15 GONZAGA, op. cit. supra note 3 at 87.

16 G.R. No. L-12560, September 30, 1958.

17 Section 1, Rule 27, Rules of Court provides: "The filing of pleadings, appearances, motions, notices, orders and other papers with the Court as required by these rules shall be made by filing them with the clerk of court. The date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the P.O. registry receipt shall be considered as the date of their filing, payment or deposit in this court."

18 U.S. v. Trans-Missouri Freight Ass'n., 166 U.S. 290.

19 G.R. No. L-10931, May 28, 1958.

20 PHIL. CONST. Article XIII, Secs. 5 and 1.

argument of the appellant, said the Court, is also contrary to the general rule of law that knowledge thereof is to be presumed.[20a] The claim that the principle of *pari delicto* does not apply to plaintiffs was, therefore, without merit.

C. Strict Interpretation of Statutes

Strict construction of a statute is that method of construction which refuses to expand the law by implication, inference or construction, but confines its operation to cases which are clearly within its letter, as well as within its spirit or reason. Whether a statute is to be construed strictly seems generally to depend upon the type or nature of the statute involved.[21]

(1) *Naturalization laws strictly construed.* Laws on naturalization should be strictly construed in favor of the government and against the applicant. This principle was applied in *Reyes v. Republic.*[22] This issue in this case was whether the CFI erred by granting the petition of Reyes for naturalization despite the undisputed fact that the said petition was published in the Official Gazette only once instead of three times as required by Section 9 of Commonwealth Act No. 473.[23] The Supreme Court observed that Section 9, Commonwealth Act No. 473, demanded compliance with the following requirements, viz: (1) the publication must be weekly; (2) it must be made three times; (3) and these must be "consecutive". Compliance with (1) was, admittedly, impossible, inansmuch as, until recently, the O.G. was not published weekly; but petitioner could have, and hence, he should have complied, however, with (2) and (3). Hence, the publication once in the O.G. is not a substantial compliance with Section 4. The Supreme Court emphasized that "in order that a court could validly try and decide any case, 'it must have jurisdiction both over the subject matter and over the persons of the parties'. It being impossible to serve summons personally upon every human being in this world, the summons must be published as provided by law. Otherwise, the Court would have no jurisdiction over all parties concerned and, as a consequence, any decision rendered in the case would be a nullity. For this reason, it is well settled that the procedure prescribed by law for the naturalization of an alien 'should be strictly followed'.[24] In the language of the C.J.S., naturalization laws should be rigidly and strictly construed

20a Ignorance of the law excuses no one from compliance therewith. NEW CIVIL CODE, Art. 8.

21 BLACK, op. cit., 444-447.

22 G.R. No. L-10761, November 29, 1958.

23 Commonwealth Act No. 473, Sec. 9 provides: "Immediately upon the filing of a petition it shall be the duty of the clerk of court to publish the same at petitioner's expense, once a week for three consecutive weeks, in the Official Gazette, and in one of the newpapers of general circulation in the province where the petitioner resides, and to have copies of said notice posted in a public and conspicuous place in his office or in the building where said office is located . . . "

24 2 C.J. 1120 citing In re Hallo, 206 F. 852; In re Liberman, 195 F. 801; State v. King County Sup. Ct., 134, P. 976. See also, 3 C.J.S. 844.

in favor of the government and against the applicant for it."[25] Mr. Chief Justice Ricardo Paras took the opposite stand.[26]

(2) *Statutes in Derogation of Common or General Right.* It is well settled that statutes which are in derogation of common or general right, and which confer special privileges or impose special burdens or restrictions upon certain individuals or upon one class of the community, not shared by others, should receive a strict construction; and the courts will require that cases coming before them shall be brought clearly within the terms of such statutes before they will be held applicable thereto.[27] In *Pagdanganan v. C.A.R.*,[28] it appeared that the Court of Agrarian Relations ordered the ejectment of E. Baligad with 8 other tenants of Pagdanganan. The Court of Agrarian Relations, however, quashed its writ of execution when the said tenants asked for its stay alleging that a majority of the tenants in Hacienda Ilagan, in which the landholdings of Pagdanganan are located, filed a petition with the Land Tenure Administration for the acquisition by the government of the hacienda under Republic Act 1400. Pagdanganan questioned the Court of Agrarian Relations' action in quashing its writ of execution. The Supreme Court held: "We notice that C.A.R. acted upon a certification that the hacienda is 'subject to a petition filed by the supposed tenants or occupants'. Sections 12 and 16 of Republic Act 1400 refer to 'petition filed by a majority of the tenants or occupants.' The certificate does not state that the petition was signed by 'a majority of the tenants'. It says only, 'petition by the supposed tenants.' The difference is obvious and significant. Those who would invoke a special privilege granted by a statute must comply strictly with its provisions."

(3) *Laws on Removal or Suspension of Public Officers.* It has been generally held that laws governing the suspension or removal of public officers, especially those chosen by the direct vote of the people, must be strictly construed in their favor. The case of *Hebron v. Reyes*[29] presents a clear illustration of this rule. The Supreme Court, in construing strictly the provisions of Sections 2188-2191 of the Revised Administrative Code, said: ". . . . strict construction of law relating to suspension and removal, is the universal rule. The reason for the rule is said to be that remedy by

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25 3 C.J.S. 833.

26 Chief Justice Paras' dissenting opinion follows in part:

"The significant fact of which we may take judicial notice . . . is that at the time of the passage of Commonwealth Act 473, the O.G. was being regularly published three times a week . . . so that the legislature, could have intended that the publication of petition for naturalization be simply made in three consecutive issues of the O.G. The Legislature clearly meant what the law provides—publication in the O.G., once a week for three consecutive weeks.

"Where an act is free from ambiguity, the letter of it is not to be disregarded under the pretext of preserving the spirit. Courts may not look beyond the letter of unambiguous statute in pretended attempt to ascertain reasons prompting enactment . . . .

"When the government no longer published the O.G. three times but monthly, such that one of the conditions imposed by the statute becomes impossible of compliance without the fault of the appellee, I am of the opinion that such a condition ceases to be mandatory or obligatory, and should be dispensed with. 'A statute should be interpreted in a way that will make it practically workable without doing violence to other rules of construction' (Nevada v. Slemmons 244 Io. 1008, 59 N.W. 2d. 793)."

27 BLACK, op. cit. supra at 476-477.

28 G.R. No. L-12335, November 29, 1958.

29 G.R. No. L-9124, July 28, 1958.

removal is a drastic one, (43 Am. Jur. 39) and, according to some courts, including ours, penal in nature. When dealing with elective posts, the necessity for restricted construction is greater. Manifesting jealous regard for the integrity of positions filled by popular elections, some courts have refused to bring officers holding elective offices within the constitutional provision which gives the state governors power to remove at pleasure. Not even in the face of such provision may elective officers be dismissed except for cause. (62 C.J.S. 947)."

(4) *Mandatory Provisions.* The mandatory provisions of a statute should be construed strictly by the court. While the legislative intent should control in determining whether a statute or any of its provisions is mandatory, there are, nevertheless, certain types and forms of statutes which are generally considered mandatory. Unless the context otherwise indicates, the word "shall" (except in its future tense) indicates a mandatory intent.[30]

These principles were followed by our Supreme Court in the case of *Abcede v. Imperial, et al.*[31] The issue presented before the Court was whether the Commission on Elections was given a measure of discretion in giving due course to a certificate of candidacy for the Office of President of the Philippines under Section 36 of the Revised Election Code which provides, thus:

> "Certificates of candidacy for President x x x shall be filed with the Commission on Elections which shall order the preparation and distribution of copies for the same to all the election precincts of the Philippines x x x
>
> "x x x The Commission on Elections x x x shall immediately send copies thereof to the secretary of the Provincial Board of each province where the elections will be held, and the latter shall in turn immediately forward copies to all the polling places. The Commission on Elections shall communicate the names of said candidates to the secretary of the Provincial Board by telegraph. If the certificate of candidacy is sent by mail, it shall be by registered mail x x x"

And pursuant to Section 37 of said Code,

> "The Commission on Elections, the secretary of the Provincial Board, and the municipal secretary, in their respective cases, shall have the ministerial duty to receive the certificates of candidacy referred to in the preceding sections x x x"

The foregoing provisions, the Court tersely emphasized, give the Commission no discretion to give or not to give due course to petitioner's certificate of candidacy. On the contrary, the Commission has, admittedly, the 'ministerial' duty to give due course to said certificate of candidacy. Of what use would it be to receive it, if

30 SUTHERLAND & HORACK, STATUTES AND STATUTORY CONSTRUCTION 216-217 (1943).

31 G.R. No. L-13001, March 19, 1958.

the certificate were not to be given due course? We must not assume, the Court continued, that Congress intended to require a useless Act — that it would have imposed a mandatory duty to do something vain, futile and empty. Moreover, in the words of Sec. 37, the Commission "shall immediately send copies" of said certificates to the secretaries of the provincial boards. The compulsory nature of this requirement evinced by the imperative character generally attached to the term "shall", is sressed by the peremptory connotation of the adverb "immediately". When the Code imposes upon the Commission the ministerial duty to receive those certificates and provides that it "shall immediately" prepare and distribute copies thereof to the offices mentioned in Sec. 36, it necessarily implies that compliance with the latter provision is, likewise, ministerial. Apart from the absence of specific statutory grant of such general, broad powers as the Commission claims to have, it is dubious whether if so granted, the legislative enactment would not amount to undue delegation of legislative power. The *Abcede* case was reiterated in the more recent case of *Alvear v. The Commission on Elections.*[32]

In *College of Oral & Dental Surgery v. C.T.A.*,[33] it appeared that on November 14, 1952, the petitioner protested against the collection of income taxes for 1950-51 and claimed exemption under Section 27 par. (f) of the National Internal Revenue Code. The petition having been denied, a motion for reconsideration was presented but the Collector deferred action on the same until April 20, 1955 when it was again denied. On April 29, 1955, petitioners filed a petition for review with the Court of Tax Appeals but said petition was dismissed on the ground of prescription, it appearing that the case was filed two years *after* the taxes sought to be refunded had been paid. This ruling was based on Section 306 of the Internal Revenue Code which provides that "in any case no suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty." The Supreme Court affirmed the decision of the Tax Court. But the petitioner argued that the above statutory period was abrogated by Republic Act No. 1125 Section 11 which reads in part:

> "Sec. 11. Who may Appeal; Effect of Appeal. — Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue xxx may file an appeal in the Court of Tax Appeals within 30 days after the receipt of such decision or ruling."

In rejecting petitioner's argument, the Court, speaking through Justice Felix, explained: "We must bear in mind that Republic Act No. 1125 creating the Court of Tax Appeals took effect only on *June 16, 1954.* Considering that the taxes involved therein were paid on May 15, 1951, September 15, 1951 and May 15, 1952, said legislative enactment cannot be invoked, as the action for recovery of the taxes paid in this case must be governed by the pertinent law

32 G.R. No. L-13066, April 30, 1958.

enforced. And pursuant to the existing law on the matter which is Section 306 of the Tax Code and the jurisprudence obtaining in connection therewith, . . . his right to recover taxes claimed to have been erroneously paid had expired even before the enactment of Republic Act 1125 and there is no reason to construe Republic Act 1125 as reviving actions that have already prescribed on the date of its enactment."[34]

The Court did not disregard the existence of a visible inconsistency between the provisions of Section 306 of the Internal Revenue Code, *supra*, and Section 11 of Republic Act 1125, *supra*. However, it postponed the proper dissertation on the same issue considering that, in the language of the Court, "*firstly*, both mandatory provisions must be construed strictly and, *secondly*, that for purposes of the case at bar, no further discussion would be necessary . . . We feel free, however to state that although to the Courts belong the prerogative and power of construction and interpretation, the legislative branch of the government should take notice of such apparent conflicts in our statute books and start the elimination of the same by corresponding legislation."

(5) *The Power to Tax of Municipal Corporations.* — To the legislature belongs the inherent sovereign power of taxation. Municipal corporations being mere creatures of the legislature, cannot exercise such inherent powers unless expressly granted, or necessarily implied from, or necessarily incident to the power expressly granted. Consequently, where there is a fair and reasonable doubt as to the existence of a taxing power in such corporation, the courts will not uphold or enforce its execution.[35]

These cardinal rules of construction were demonstrated in at least two cases decided by our Supreme Court in the year 1958. In the case of *Santos Lumber Co. v. City of Cebu*,[36] the main issue involved the power of the City of Cebu to tax the sale of lumber. The pertinent portion on which the power of the City is predicated is Section 17 (a) of Commonwealth Act No. 58, which provides:

> "Sec. 17. General powers and duties of the Board. — Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following legislative powers:
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> "(m) To tax, fix the license fee for, regulate the business, and fix the location of match factories, blacksmith shops, foundries, steam boilers, lumber yards, . . . or any of the products thereof, and of all other establishments likely to endanger the public safety or give rise to conflagrations or explosions . . . . "

It was contended that the power to tax the business of lumber yards necessarily includes that of taxing the sale of lumber

33 G.R. No. L-10446, January 28, 1958, 54 O.G. No. 29, 7055 (1958).

34 Compare the Dental Surgery case with Muller & Phipps v. Collector, G.R. No. L-10094, March 20, 1958, where petitioners were allowed to recover.

35 BLACK, op. cit. supra at 501-502; SUTHERLAND & HORACK, op. cit., supra note 30 at 111 et seq.

36 G.R. No. L-10106, January 22, 1958, 54 O.G. No 10, 5327 (1958).

stocked therein, for, as the lower court said, "it is evident x x x that the intention was to include the sale of lumber, inasmuch as it cannot be denied that the ultimate business of maintaining a lumber yard is the accumulation of lumber and building materials and their subsequent sale for profit." The Court however ruled that the reasoning of the lower court is untenable considering that the Charter of the City of Cebu has expressly withheld the power to tax the sale of lumber. Moreover, the Court pointed out, a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. Its charter must plainly show an intent to confer that power or the corporation cannot assume it. And the power when granted is to be construed *strictissimi juris*. Any doubt or ambiguity arising out of the term used must be resolved against the corporation.

Again, in another case, our Supreme Court reiterated the rule enunciated in the *Santos Lumber* case, *supra*. In declaring a city ordinance void, the Court in the case of *Saldaña v. City of Iloilo*[37] said: "Nowhere in the charter of the City is it authorized to regulate and collect fees or taxes for, the taking out of the city, of animals and articles listed in the ordinance. On the other hand, a municipal corporation like the defendant has no inherent power of taxation. To enact a valid ordinance, the City must find in its charter the power to do so, for said power cannot be assumed." After citing the ruling in the *Santos Lumber v. City of Cebu*[38] case, the Court concluded: "Aside from this lack of inherent power of taxation by a municipal corporation, section 2287 of the Revised Administrative Code provides that municipal revenue obtainable by taxation shall be derived from such sources only as are expressly authorized by law... This section is reproduced in Section 2629 of the same Revised Administrative code, entitled, 'General Rules for Municipal Taxation and Licenses.'"

(6) *Grant of Jurisdiction to Courts.* The recent case of *Dimagiba v. Geraldez*[39] is authority for the rule that grants of jurisdiction to courts cannot be implied. The information filed in this case charges misappropriation of the sum of ₱200, the penalty for which is arresto mayor in its medium and maximum periods. Petitioner claims that the C.F.I. had concurrent jurisdiction to try the offense charged under the authority of the Revised Charter of Manila particularly that part of Section 41 which provides:

> "It (The Municipal Court) shall also have concurrent jurisdiction with the Courts of First Instance over all criminal cases arising under the laws relating to gambling and management of lotteries, to assaults where the intent to kill is not charged or evident upon trial, to larceny, embezzlement and estafa, where the amount of money or property stolen, embezzled or otherwise involved does not exceed the sum or value of ₱200."

37 G.R. No. L-10470, June 20, 1958.
38 Supra note 30.
39 G.R. No. L-11305, January 31, 1958, 54 O.G. No. 11, 35021.

In holding against the claim of the petitioner, the Court noted that Section 41 is found in "Article IX — The Municipal Court" of the Charter of Manila, and defines the jurisdiction of the Municipal Court of the City, both original and concurrent. Hence, no implication may be made therefrom of a grant of concurrent jurisdiction to the Court of First Instance. The Court emphatically declared that grants of jurisdiction cannot be implied. The provision from which the grant is sought to be implied defines the jurisdiction of the Municipal Court only, and cannot possibly refer to another court, whose jurisdiction is defined in another law.[40] That the Municipal Court should have concurrent jurisdiction over certain specific crimes triable by a C.F.I. is no basis for the claim that the C.F.I., conversely, has also concurrent jurisdiction over cases triable by the Municipal Court. In conclusion, the Supreme Court noted that the C.F.I. is a court of general jurisdiction and it is unreasonable to assume that the legslature intended to grant to it concurrent jurisdiction over minor offenses such as estafa involving less than ₱200.

(7) *Effect of acts made against mandatory provisions.* Article 5 of the New Civil Code provides that "acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." This rule was applied by our Supreme Court in the case of *Geonanga v. Hodges.*[41] The respondent-appellant insists that the exemption under section 26 of Commonwealth Act No. 459, has been established for the exclusive benefit of the Agricultural and Industrial Bank; that said provision may no longer be availed of, the mortgage in favor of the Bank having been cancelled on or about June 22, 1955; and that "an attachment can only be discharged or dissolved by the Judge who granted the order." The Court, however, observed, that pursuant to said legal provision, properties mortgaged to the Agricultural and Industrial Banks, now the R.F.C. are "not subject to attachment" unless "all debts and obligations in favor thereof have been *previously* paid." In the case at bar, the credit of the Bank was settled *after* the entry in question. Apart from this, said entry, if valid would retroact to the date thereof, or August 11, 1954, thus violating the spirit and purpose of the aforementioned section 26. Moreover, the Court said, having been made against a "mandatory or prohibitory" provision of the law, aforementioned entry was, and is, "void" and not merely voidable.

D. When The Rule of Strict Construction Does Not Apply.

The strict interpretation of statutes, especially penal ones, does not apply where the statute is clear and unambiguous. "If the meaning and intention of the legislature are plainly expressed, or indubitably discoverable, they must prevail, without any regard to the character of the statute or the view of which the interpreter may

40 Republic Act No. 296.
41 G.R. No. L-11323, April 21, 1958.

take of it. In that event, there is no room for construction."[42] Thus, the rule will not be adhered to when to do so will defeat the purpose or object of the statute, or when absurd results will occur.[43]

In the case of *People v. Gatchalian*,[44] defendant was charged for violation of Section 3, Republic Act No. 602 because as manager of a drug store, he paid to one Fernandez, a salesman, a monthly salary of ₱60 to ₱90 from August 4, 1951 up to and including December 31, 1953. Gatchalian contended that inasmuch as the provisions of the law (R.A. 602) under which he was prosecuted are ambiguous and there is doubt as to their interpretation, that doubt should be resolved in his favor because a penal statute should be strictly construed against the state. The Supreme Court ruled that Section 15 (a) of Republic Act No. 602 is clear and unambiguous[45] and if such is the case, then there is no room for the application of the principle invoked. "The main objective of the law (R.A. 602) is to provide for a rock-bottom wage to be observed and followed by all employees of agricultural or industrial establishments. This object would be defeated were we to adopt a restrictive interpretation of the above penal clause (section 15 [a]), for an employer who knows that he cannot be amenable to a criminal action would be prone to subvert the law because if he is detected it would be easy for him to pay the underpayment and the corresponding interest as would be the case were he to assume a civil liability. This would be a mockery and a derision of the law not contemplated by our lawmakers and would certainly render it nugatory and abortive. We are not prepared to adopt an interpretation which would give such adverse result to a legislation conceived in the lofty purpose of protecting labor and giving it a living wage."

As used by Plouden, the principal expounder of the equity of statute, equitable construction was used principally to determine the intent of the legislature. Where the purposes of the statute can be achieved only by extending the operation of the language of the statute, it will be extended.[46] The reason for the rule is two-fold: (1) It is used to supply the deficiency of statutes by a recurrence to the natural principles of justice,[47] since all cases cannot be foreseen or expressed by it, and (2) it is proper for the courts to be concerned with the basic and underlying purpose of all legislations, which is to promote justice,[48] and therefore all laws should be construed with reference to this purpose.

That the rule on strict interpretation of laws must yield to special circumstances on moral and equitable grounds is clearly demonstrated in the case of *Panay Electric Co. v. C.I.R.*[49] Under a strict inter-

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42 BLACK, op. cit. supra at 447.

43 GONZAGA, op. cit. supra note 3 at 256.

44 G.R. No. L-12011-14, September 30, 1958.

45 The Court opined that section 15 (a) was intended not only to punish those expressly declared unlawful but even those not so declared but are already enjoined to be observed to carry out the fundamental purpose of the law and as such covers section 5.

46 SUTHERLAND & HORACK, op. cit. supra note 30 at 134, 140.

47 Dwarris (Potter) on STATUTES, 239.

48 CRAWFORD, THE CONSTRUCTION OF STATUTE 170, .90 (1940).

49 G.R. No. L-10574, May 28, 1958.

pretation and application of the law, petitioner was entitled to refund of overpayment or illegal collection for a period of *only* 2 years prior to date of suit before the Board of Tax Appeals (on August 20, 1952), that is to say, all payments and illegal collections from August 20, 1950 which amount to ₱50,516.95 as found and adjudged by the Court of Tax Appeals. Legally speaking, the decision of the Court of Tax Appeals is therefore correct, being in accordance with law. The Court emphasized, however, that "one's conscience does and cannot rest easy on this strict application of the law, considering the special circumstances that surround this case." Because of his erroneous interpretation of the law on franchise taxes, the Collector, from the year 1947, had illegally collected from petitioner the respectable sum of ₱135,872.65. From the moral standpoint, the Court averred, the government would be enriching itself of this amount at the expense of the taxpayer. The Court admitted that the petitioner is to blame in part for supposedly sleeping on its rights and in not filing the claim for refund and the suit to enforce said refund earlier. It should be borne in mind, however, that before the promulgation of the decision in the case of *Phil. Railway v. C.I.R.*,[50] there had been no court ruling or doctrine on the relation between a franchise tax stipulated in the legislative franchise and the ordinary or regular internal revenue tax fixed in the Tax Code, on the gross earnings of a corporation. "We do not advocate the refund of the entire overpayment of ₱135,872.67 but on moral and equitable grounds, petitioner is entitled to a refund of ₱64,607.07... Considering the peculiar circumstances in this case, we would be tempering the rigors of law with fairness and equity" by ordering the refund above stated.

E. Liberal Interpretation of Statutes.

Along with remedial statutes and statutes enacted to avoid fraud, the policy of the courts in the past years has been to give general welfare legislation a liberal construction with a view toward the accomplishment of its highly beneficent objectives.[51]

This principle is illustrated in the case of *Maralag v. G.S.I.S.*[52] Maralag brought an action against the Government Service Insurance System to collect the balance of the proceeds of insurance policy on the life of her decedent husband. The G.S.I.S. contended that the Manila Railroad Co., employer of the husband, had not paid to the G.S.I.S. its share of the premiums of its employees; that pursuant to section 9, Republic Act 728, its Board of Trustees was authorized to make readjustment of the insurance benefits whenever the employer fails to pay its share of the premiums of its employees; and that pursuant to section 9, Republic Act 728, the trustees approved Resolution 335 readjusting the insurance benefit to one-half. The Supreme Court, in sustaining the decision of the C.F.I. ordering the G.S.I.S. to pay the balance, said: ". . . R. A. 728 and the

50 G.R. No. L-3859, March 25, 1952.
51 CRAWFORD, op. cit. supra note 48 at 393, 396.
52 G.R. No. L-10791, August 18, 1958.

laws amended (C.A. 186 and R.A. 660) were intended as social legislation to promote the efficiency, security and well-being of the government personnel, and it is but right that they be construed in such manner as to favor said government employees for whom they were intended in the way of their security and welfare."

IV. INTERPRETATION OF WORDS AND PHRASES

A. *Ejusdem Generis.*

The *ejusdem generis* rule, a variation of the rule of *noscitur a sociis*, provides that "where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated."[51] The rule is applicable only when the following conditions exist: (1) the statute contains an enumeration by specific words; (2) the members of the enumeration constitute a class; (3) the class is not exhausted by the enumeration; (4) a general term follows the enumeration; and (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.[54] An exception to this rule was advanced in the case of *Gooch v. U.S.*,[55] thus: "The rule of *ejusdem generis*, while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty . . . But it may not be used to defeat the obvious purpose of legislation."

The application of and the exception to the rule is illustrated in the case of *Genato Commercial Corp. v. C.T.A.*[56] The Genato Commercial imported merchandise from abroad and paid the advance sales taxes due thereon as provided in Section 183 (b) of the Internal Revenue Code. On said importation, the Collector assessed ₱4,519.53 as deficiency advance sales tax on the difference of ₱0.15 between the bank's rate of exchange paid by Genato and the legal rate of exchange for every U.S. dollar, contending that the same comes within the phrase "all similar" found in the said section.[57] The issue was whether the difference of ₱0.15 paid by Genato to a local bank in the purchase of foreign exchange for its importation comes within the phrase, "all similar charges "mentioned in section 183 (b).[57] Genato invoked the *ejusdem generis* rule, contending that the difference of ₱0.15 cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law. In denying Genato's claim, the Court stated that it cannot be denied that the intention of the law is to include all charges that may be paid by the importer to bring the importation into the country. The doctrine of *ejusdem generis*, the Court said, is but a rule of construc-

53 25 R.C.L. 996; Jefferson County Fiscal Ct. v. Jefferson County, 128, S.W. (2d) 230; Steinfeld v. Jefferson County Ct., 224 S.W. (2d.) 310.

54 SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION Sec. 4910 at 400 (1891).

55 207 U.S. 124.

56 G.R. No. L-11727, September 29, 1958.

tion adopted as an aid to ascertain and give effect to the legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law.[58] In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress.[59]

B. *Expressio Unius Est Exclusio Alterius.*

It is a cardinal rule of statutory construction that "the express mention of one person or consequence implies the exclusion of all others." This rule, however, is a canon of restrictive interpretation. It is particularly applicable in the construction of statutes creating new rights and remedies, those in derogation of common or general rights, and those imposing penalties and forfeitures.[60] The Supreme Court utilized this rule in several cases decided by it in 1958.

In *Bernardo Hebron v. Eulalio Reyes*,[61] the issue was whether a municipal mayor not charged with disloyalty to the Republic of the Philippines may be removed or suspended directly by the President regardless of the procedure set forth in Sections 2188 to 2191 of the Revised Administrative Code.[62] Hebron, elected mayor of Carmona, Cavite in 1951, was suspended in 1954 by the President for alleged oppression, grave abuse of authority, and serious misconduct in office, the suspension "to last until the final termination of the administrative proceedings against you . . . ." The President directed Reyes to assume the office of acting mayor during the period of suspension in accordance with section 2195, R.A.C.[63] Hebron instituted quo warranto proceedings in the Supreme Court. The Court said that the "causes and fashion and the procedure" prescribed by law for the suspension of elective municipal officials are Sections 2188 to 2191, of the Revised Administrative Code. It quoted Justice Tuason's opinion in *Villena v. Roque:* "By all canons of statutory construction . . . the preceding sections (Secs. 2188-2191, R.A.C.) should control in the field of investigations of charges against, and suspension of, municipal officials. The minuteness and care, in three long paragraphs, with which the procedure in such investigations and suspensions is outlined, clearly manifests a purpose to exclude other modes of proceeding by other authorities under general statutes, and not to make the operation of said provisions depend upon the mercy and sufferance of higher authorities . . . " Quoted further the Court: "The rule is expressed in different forms which convey the same idea: removal is to be confined within the limits prescribed for it; the causes, manner and condition fixed must be

57 NATIONAL INTERNAL REVENUE CODE, sec. 183 (b).
58 50 AM. JUR. 247.
59 State v. Prather, 21 L.R.A. 28, 25.
60 GONZAGA, op. cit. supra, note 3 at 122.
61 G.R. No. L-9124, July 28, 1958.
62 This issue became moot because Hebron's terms as mayor expired on December 31, 1955 while the case before the Court was yet undisposed. It was disposed of, nevertheless, by the high court because "the question of law . . . concerns a vital feature of the relations between the national and local governments . . . "
63 See further, section 2195. REVISED ADMINISTRATIVE CODE.
64 G.R. No. L-6512, June 19, 1953.

pursued with strictness; where the cause for removal is specified, the specification amounts to a prohibition to remove for a different cause; (Mechem, Law of Offices and Officers, 286; McQuillen's Mun. Corps. Rev., section 575; 43 Am. Jur. 39)." The last statement is a paraphrase of the well known maxim, *expressio unius est exclusio alterius.* Manifestly, petitioner's continued, indefinite suspension cannot be reconciled with the letter and spirit of the sections of the Revised Administrative Code.

The same rule was again applied in the case of *Ching Leng v. Galang.*[65] It appears that Leng obtained a judgment dated May 2, 1950 which granted his petition for naturalization. On September 12, 1950, the CFI declared the five minors herein in question, the adopted children of Leng and his wife. Leng took his oath of allegiance on September 29, 1955. Later, he requested Commissioner Galang to cancel the alien certificates of registration of the minors on the ground that they became Filipino citizens by virtue of his naturalization. Galang denied the request, citing Opinion No. 269, dated October 9, 1954 of the Secretary of Justice which opined that adoption does not effect a change in nationality of the adopted. Leng contended that adoption gives "to the adopted person the same rights and duties as if he were a legitimate child of the adopter" as provided in Art. 341 of the Civil Code.[66] The Supreme Court held: "The 'rights' of legitimate children are enumerated in Article 264 of the New Civil Code.[67] The acquisition by legitimate children of the nationality of their legitimate father is not one of the 'rights' specifid in Article 264, and, hence, it is not one of those alluded in Article 341 . . . Moreover, the 'rights' of a 'legitimate child' given to an adopted person, as stated in Article 341 of the New Civil Code, do not include the acquisition of the citizenship of the adopted because, among others, such acquisition of citizenship partakes of the character of 'naturalization' which is regulated, not by the New Civil Code, but by 'special laws' (Art. 49, N.C.C.)[68] or by the Naturalization law.[69] Not being one of the means specified in the latter for the acquisition of Philippine citizenship, adoption must be deemed necessarily excluded from the operation of such law. *Expressio unius est exclusio alterius.*"

In resolving the *Batangas Trans. v. Reyes* case,[70] the Supreme Court again made use of the rule of *expresio unius est exclusio alterius.* In this case, the Court observed that the preponderance of evidence submitted by the Batangas Trans. demonstrated the lack of necessity of additional buses in the lines applied for by Reyes. The Court thought it advisable also to state the reasons why it had

65 G.R. No. L-11931, October 27, 1958.

66 NEW CIVIL CODE, Art. 341 provides: "The adoption shall (1) Give to the adopted person the same rights and duties as if he were a legitimate child of the adopter . . . "

67 NEW CIVIL CODE, Art. 264 provides: "Legitimate children shall have the right (1) to bear the surnames of the father and of the mother (2) To receive support from them, and, in a proper case, from their brothers and sisters, in conformity with article 291; (3) to the legitime and other successional rights which this Code recognizes in their favor."

68 NEW CIVIL CODE, Art. 49 provides: "Naturalization and loss and reacquisition of citizenship of the Philippines are governed by special laws."

69 See the Naturalization Law, (Com. Act No. 473, June 17, 1939): Rep. Act No. 530, June 16, 1950.

70 G.R. No. L-10629, October 31, 1958.

reviewed the evidence after taking into account the Rules of Court and other legal provisions defining the jurisdiction of the high court in appeals from decisions of the Public Service Commission. After citing Section 2, Rule 43, of the Rules of Court and Section 35, C.A. No. 146,[71] the Court said: "It will be seen that our rule does not prohibit us from reviewing questions of fact. The review of questions of fact is denied only in cases of appeals from decisions of the Securities and Exchange Commission, and under the rule of *inclusio unius est exclusio alterius*, the privilege or right to review the evidence cannot be considered denied to us in cases appealed from the P.S.C."

In *Canlas v. The Republic of the Phils.*[72] the grantee of a franchise (which is embraced within the meaning of the word "concession" appearing in the Treaty and was declared exempted from the payment of contractor's tax) also claimed exemption from payment of income tax on earnings derived from such undertakings, invoking Article XVIII of the Bases Agreement, which reads in part:

> "1. It is mutually agreed that the United States shall have the right to establish on bases, free of all license fees, sales, excise or other taxes or imposts; Government agencies, including concessions such as sales commissaries and post exchanges, messes and social clubs, for the exclusive use of the U.S. Military forces and authorized civilian personnel and their families. The merchandise or services sold or dispensed by such agencies shall be free of all taxes, duties and inspection by the Philippine authorities . . . "

The Supreme Court held that while it may be argued that a tax on income derived from the operation of a concession falls under the term "other taxes" included in the enumeration of the imposts which the government agency or private concessioner is exempted, yet a careful perusal of the same would reveal that what is being exempted from the payment of such exactions is the establishment of the agency or concession designed for the exclusive use of the U.S. military forces and authorized civil personnel and their families. Considering that the concession itself and the income accruing therefrom are subject to different taxes, and taking into account the sentence following the enumeration which specifies the "merchandise or services sold or dispensed by such agencies" to be free from taxes or duties, it becomes all too obvious that the privilege is intended merely to be confined to the latter and no other. *Inclusio unius exclusio est alterius.* Moreover, exemption from income taxes is treated separately under a different provision of the treaty. (Art. XII, Secs. 1 & 2).

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71 Commonwealth Act No. 140, Section 35 provides: "The Supreme Court is hereby given jurisdiction to review any order, ruling or decision of the Commission and to modify or set aside such order or ruling, when it clearly appears that there was no evidence before the Commission to support reasonably such order, ruling or decision, or that the same is contrary to law, or that it was without the jurisdiction of the Commission. The evidence presented to the Commission together with the record of the proceedings . . . shall be certified by the secretary of the Commission to the Supreme Court . . . "

72 G.R. No. L-11805, May 21, 1958.

A similar provision quoted above was the subject of another construction by the Court in the case of *Nagulat v. Araneta.*[73] Nagulat claimed a refund of the tax paid by him on income derived from the operation of a taxi service within the Clark Air Force Base for 1950-51 and 52, invoking Art. XVIII, Sec. 1 of the Bases Agreement. His contention is that although the foregoing stipulation does not expressly mention income tax, exemption therefrom is necessarily included in or implied from either the term "excise" or the terms "other taxes or imposts"; and authorities have been cited holding that income tax is an excise tax. The Court held that the provision in question plainly contemplates limiting the exemption from the licenses, fees, and taxes enumerated therein to the right to establish Government agencies, including concessions, and to the merchandise or services sold or dispensed by such agencies. The income tax, which is certainly not on the right to establish agencies or on the merchandise or services sold or dispensed thereby, but on the owner or operator of such agencies, is logically excluded thereby.

In *Santos Lumber v. City of Cebu,*[74] the main issue involved the power of the City of Cebu to tax the sale of lumber under Section 17 (a) of Commonwealth Act No. 58 which provides:

> "Sec. 17. Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following legislative powers:
>
> "(m) To tax, fix the license fee for, regulate the business, and fix the location of match factories, blacksmith shops, foundries, steam boilers, lumber yards, shipyards, the storage and sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, . . . and all other establishments likely to endanger the public safety or give rise to conflagrations or explosion . . . "

Under the provision above-quoted, it would appear that the City of Cebu is given power (1) to tax the business of, among other things, lumber yards, and (2) to tax the sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, etc. The Court, speaking through Justice Bautista Angelo, called attention to the fact that lumber is not therein enumerated. Considering therefore, the well-known principle of *inclusio unius est exclusio alterius,* the conclusion is inevitable that the power to tax the sale of lumber has been withdrawn.

In the case of *Lao Oh Kim v. Reyes,*[75] the Court was called upon to interpret the following provisions of Section 50, par. (g) of Republic Act No. 1199:

> "Any of the following shall be a sufficient cause for the dispossession of a tenant from his holdings:

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73 G.R. No. L-11504, December 22, 1958.
74 G.R. No. L-10196, January 22, 1958.
75 G.R. No. L-11301, May 14, 1958.

> "(g) Conviction by a competent court of a tenant or any member of his immediate family or farm household of a crime against the landholder or a member of his immediate family."

Respondents were convicted of the crime of light threat for having threatened to harm petitioner's farm manager, and, of the crime of malicious mischief for having caused damage to plaintiff's estate. In this appeal from the Court of Agrarian Relations which dismissed the action for ejectment of the tenants, petitioner insists that under Republic Act 1199, the term "immediate family" of the landlord should be interpreted to mean his "farm family" which includes his farm manager and other persons "who usually help him operate the farm enterprise", in the same way that under the same par. (g) of Sec. 50, *supra,* the crime constituting a ground for tenant's ejectment may not only be committed by him or any member of his immediate family, but by any member of his "farm household" as well.

To the mind of the Court, the argument is without merit, for if the law had intended that crimes committed against members of the landlord's farm household are justifiable grounds for ejectment, it would have so provided, in the same way that a crime committed by a member of the tenant's farm household is a ground for the tenant's ejectment. *Expressio unius est exclusio alterius,* the Court concluded.

C. The Rule of *Casus Omissus.*

The rule is established that a case omitted is to be held as intentionally omitted. *Casus omissus pro omisso habendus est.* Thus, if a particular case is omitted from the terms of a statute, even though such a case is within the obvious purpose of the statute and the omission appears to have been due to accident or inadvertence, the Court cannot include the omitted case by supplying the omission. This rule is founded upon the principle that if the court attempts to supply that which is omitted by the legislature, there is considerable danger that it may invade the legislative field.[76]

In the *Lao Oh Kim v. Reyes* case, *supra,* the Court also utilized this rule, aside from the *expressio unius est exclusio alterius* rule already discussed. Said the Court: "In fact, the intention to exclude crimes committed against the landlord's representative, such as farm manager, as grounds for the tenant's ejectment, appears even more clear if we refer to Section 19 of the Old Tenancy Act (Act No. 4054) which includes as cause for dismissing the tenant "commission of a crime against the person of the landlord or his representative." The elimination of crimes against the landlord's representative as grounds for ejectment under the New Tenancy Law (R.A. 1199) is clear proof that such crimes, while sufficient ground for ejectment under the old law, are no longer available for dismissal of the tenant under the new law."

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76 CRAWFORD, op. cit. supra notes 51 & 48, at 269-270.

D. Interpretation of Disjunction "or".

As a general rule, the term "or" when used, is presumed to be used in the disjunctive sense, unless the legislative intent to the contrary is clear.[77]

Thus, in the case of *C.I.R. v. Norton*,[78] one of the issues presented involved the interpretation of the Tax Code, particularly section 122 (b) which provides as follows:

> "x x x And provided, further, That no tax shall be collected under this title in respect of intangible personal property x x x (b) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country."

The petitioner invokes "the grammatical interpretation of the conjunction 'or' " in arguing that for reciprocity to exist, the exemption in the laws concerned must be on both inheritance and estate taxes. This is erroneous, according to the Court, because Section 122 (b) plainly uses "or" in its ordinary meaning, to convey alternative relations.

V. EXTRINSIC AIDS IN CONSTRUCTION.

Mr. Justice Frankfurter advances the lofty view that the meaning of a statute cannot be gained by confining inquiry within its four corners. "Only the historic process of which such legislation is an incomplete fragment — that to which it gave rise as well as that which gave rise to it — can yield its true meaning."[79] Hence, Courts often resort to those extraneous facts and circumstances outside the printed page in order to explain the meaning of, and resolve an ambiguity in, the statute.[80]

A. Contemporaneous Circumstances and Legislative History.

When it becomes necessary for the court to resort to extraneous matters in order to ascertain the meaning of a statute, it may properly consider all the relevant facts and circumstances prevailing at the time of, and leading up to its enactment. Such contemporaneous circumstances include the history of the times existing when the law was enacted, the evils intended to be corrected, the activities and habits of the people, the contemporary customs, and the social and economic conditions of the country.[81]

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77 SUTHERLAND & HORACK, STATUTES & STATUTORY CONSTRUCTION 269-270 (1943).
78 G.R. No. L-10432, May 28, 1958.
79 U.S. v. Monia, 317 U.S. 424, 431. (Dissenting) See also, CRAWFORD, op. cit. supra at 365.
80 GONZAGA, op. cit. supra note 3 at 147.
81 CRAWFORD, op. cit. supra at 365; 82 C.J.S. 353, 745; Holt v. Howard, 175 S.W. (2d) 384; State v. Kelly, 81 P. 450.

Thus, in passing upon the scope of the Industrial Peace Act,[82] the Supreme Court, in the case of *Boy Scouts v. Araos*,[83] took notice of the underlying social and economic reasons which influenced its enactment. The Court pointed out that "there is every reason to believe that our labor legislation from Commonwealth Act No. 103, creating the Court of Industrial Relations, down through the Eight-Hour Labor Law, to the Industrial Peace Act, was intended by the Legislature to apply only to industrial employment and to govern relations between employees engaged in industry and occupations for purposes of profit and gain, but not to organizations and entities which are organized, operated and maintained for elevated and lofty purposes, such as charity, social service, education, the encouragement and promotion of character, patriotism and kindred virtues in the youth of the nation." In a nutshell these socio-economic considerations run thus: that the intention of business and industry organized for purposes of gain is to make as much profits as possible, oftentimes at the expense of helpless employees or laborers; that, recognizing this evil and the disadvantageous position of unorganized labor, the state, through labor relations acts, allowed and even encouraged the organization of labor unions through which the laborers may collectively bargain to force the capitalists to share the profits with them; but that in the case of entities organized not for profit but for humanitarian and benevolent purposes, like the Boy Scouts of the Philippines, the reason for the promulgation of these Acts is absent, since there are no profits in which labor may demand a share in the form of higher wages.

The principle that the background of the law may be considered in order to shed light to its meaning was made use of in the case of *Hebron v. Reyes*.[84] On the imposition of restrictions upon the investigations and suspensions of municipal officials, the Supreme Court stated: "Further, the background of present legislation will disclose that there were reasons for imposing restrictions upon investigations and suspensions . . . 'Municipal officers were, as they are now, subject to investigations and suspensions by the provincial governors or the Provincial Board. These powers were abused, and this circumstances led to the enactment of the laws that were to become sections 2180-90 of the Revised Administrative Code.' As stated in *Lacson v. Roque*,[85] these provisions were 'designed to protect elective municipal officials against abuses . . . of which past experience and observation had presented abundant example.' "

In the case of *Yek Tong Lim Fire and Marine Ins. Co. v. American Pres. Lines*,[86] the defense of the defendant in an action by the insurer is that said action was not brought within one year as provided by the Carriage of Goods by Sea Act (C.A. No. 65). The gist of the plaintiff's action, however, is that it should be decided

82 Republic Act No. 875 (June 17, 1953) as amended by Republic Act No. 1093 (November 30, 1957).

83 G.R. No. L-10091, January 29, 1958.

84 G.R. No. L-0124, July 28, 1958.

85 49 O.G. 93.

86 G.R. No. L-11081, April 30, 1958.

under the provisions of the Code of Civil Proecdure on prescription. The Court held: "In a case governed by the Carriage of Goods by Sea Act, the general provisions of the Code of Civil Procedure should not be made to apply. Similarly . . . the general provisions of the new Civil Code (Art. 1155) cannot be made to apply as such application would have the effect of extending the one-year period of prescription fixed in the law. It is desirable that matters affecting transportation of goods by sea be decided in as short a time as possible; the application of the provisions of Article 1155 of the new Civil Code would unnecessarily extend the period and permit delays . . . contrary to the clear intent and purpose of the law."

In *C.I.R. v. Industrial Textiles Co.*,[87] the question was whether the 50,000 bags of cement upon which the tax had been levied and collected and which were used exclusively by respondent in the construction its factory and office buildings, which were in turn "exclusively used" in the manufacture of jute bags, come within the purview of Section 1 of Republic Act No. 35 which provides as follows:

> "Any person, partnership, company or corporation, who or which shall engage in a new and necessary industry shall, for period of 4 years from the date of the organization of such industry, be entitled to exemption from the payment of all internal revenue taxes directly payable by such person, partnership, company or corporation in respect to said industry."

It is admitted that respondent is engaged in the manufacture of jute bags from jute which is considered a new and necessary industry. Petitioner however maintains that the cement in question are "not germane to and have not been exclusively used in the *manufacture* of jute bags." In upholding the contention of respondent, the Court held that "it is obvious that the main purpose of this legislation is to encourage the *establishment* and *operation* of new and necessary industries . . . The same generally requires buildings and structures to house the machinery, equipments, tools and materials necessary to manufacture the articles, goods or merchandise, the production of which constitutes a new and necessary industry. Hence, the exemption from internal revenue taxes on the materials used exclusively *in the construction* of said buildings and structures, provided that these are exclusively used for the manufacture of said articles . . . is clearly within the purview of R.A. 35. Otherwise, its goal could not possibly be achieved."

In *Lao Oh Kim v. Reyes*,[88] the Supreme Court, in holding that the provisions of section 50 paragraph (g), of Republic Act No. 1199 intended to exclude crimes committed against the "landlord's manager" as a ground for ejectment of tenants, said: "Indeed, the purpose of the new law in limiting the grounds for the tenant's dispossession is to give a tenant security of tenure and prevent

87 G.R. No. L-10930, April 25, 1958.
88 G.R. No. L-11301, May 14, 1958.

abuse on the part of the landlord in the dismissal of his tenants; and to read into the provisions of the new law grounds for ejectment not specified therein would defeat this purpose. Furthermore, it would violate the legislative policy, declared in Section 56 of the Act, that in the interpretation of its provisions, the Courts 'shall solve all grave doubts in favor of the tenant.' "

Again, in the case of *Garcia v. Manzano*,[89] our Supreme Court took cognizance of the policy of discouraging a regime of separation, in ruling against plaintiff's action for the separation of conjugal property on the ground of mismanagement of the same by his wife. Speaking through Mr. Justice J.B.L. Reyes, the Court declared: "Consistent with its policy of discouraging a regime of separation as not in harmony with the unity of the family and the mutual affection and help expected of spouses, the Civil Code (both old and new) require that separation of property shall not prevail unless expressly stipulated in the marriage settlements before the union is solemnized or by formal judicial decree[90] . . . and in the latter case, it may only be ordered by the Court for causes specified in Article 191 of the new Civil Code." Appellant contends that the provisions of second par. of Article 191, like those of Articles 167 and 178, should be interpreted as applicable, *mutatis mutandis*, to the husband, even if the letter of the statute refers to the wife exclusively; that in case of mismanagement by the wife, the husband should be entitled to similar relief as the wife, otherwise, there would be a void in the law. This contention, the Court said ignores the philosophy underlying the provisions in question. The wife is granted a remedy against the mismanagement of the husband because by express provision of law, it is the husband who has the administration of the conjugal partnership.[91] Hence, the Court concluded, the enumeration in Article 191 must be regarded as limitative, in view of the restrictive policy of the law.

B. Legislative Materials.

The history of a statute from its introduction as a bill down to its final enactment may be resorted to by courts in resolving ambiguities in statutes. They consist chiefly of statements made by persons taking a hand in its enactment as to the nature and effect of the proposed law and the evils intended to be remedied.[92]

Thus, in the case of *Stonehill Steel Corp. v. Commissioner*[93] the Supreme Court turned to the House Congressional Records in discovering the intent of the legislature as to the scope of Section 4 of Republic Act No. 901, particularly the phrase, to "retroact as of the date of the filing of the application for exemption." The Congressional Records read in part:

89 G.R. No. L-8100, May 26, 1958.

90 NEW CIVIL CODE, Art. 140; OLD CIVIL CODE, Art. 1432.

91 NEW CIVIL CODE, Art. 165 provides: The husband is the administrator of the conjugal partnership. NEW CIVIL CODE, Art. 172 provides: The wife cannot bind the conjugal partnership without the husband's consent, except in cases provided by law.

92 GONZAGA, op. cit. supra note 8 at 165; SUTHERLAND, op. cit. note 54 at 484.

93 G.R. No. L-10841, March 24, 1958, 54 O.G. No. 35, 8034 (1958).

> "Mr. Cea: x x x Now, my question is: will the retroactive effect of this law cover the 2 year period during which that industry has been paying taxes to the government?
>
> "Mr. Roy: No, it will not. It will only cover the period after the passage of this law. It will not cover the period before the passage of the present bill. (House Congressional Records, Vol. 48, Second Congress, Fourth Regular Session, April 14, 1953, pp. 47-48)."

The question, therefore, of whether or not petitioner is entitled to exemption of the customs duties paid by it before the promulgation of Republic Act No. 901, particularly Section 4 which provides that

> "The benefits of exemption of new and necessary industries from the payment of all taxes under this Act shall, upon the approval of the application for exemption by the Secretary of Finance, retroact as of the date of filing of the application for exemption"

was answered by the Supreme Court in the negative.

Another kind of legislative material which may be referred to in interpreting an ambiguous statute is the explanatory note or memorandum which usually accompanies the introduction of a proposed legislation.[94] A very interesting case which illustrates this method of discovering intent is *Sampaguita Shoe and Slipper Factory v. Commissioner of Customs*.[95] The issue involved in this case was whether an appeal from a decision of the collector of customs may be brought directly to the Court of Tax Appeals without the necessity of first bringing the matter to the attention of the Commission. Section 1380 of the Revised Administrative Code explicitly provides:

> "Sec. 1380. REVIEW BY COMMISSIONER.—The person aggrieved by the decision of the collector of customs in any matter presented upon protest or by his action in any seizure may, within fifteen days after notification in writing by the collector of his action or decision, give written notice to the collector signifying his desire to have the matter reviewed by the Commissioner . . . "

Petitioner, however, asserts that Section 11 of Republic Act No. 1125, which reads as follows:

> "Sec. 11. WHO MAY APPEAL; EFFECT OF APPEAL.—Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs, or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after receipt of such decision or ruling . . . "

speaks of appeals from decision of the Collector of Customs and thus concludes that an appeal may be brought directly to the Court

94 GONZAGA, op. cit. at 168.
95 G.R. No. L-10285, January 14, 1958.

of Tax Appeals from the Collector. On the other hand, Section 7 of the same statute conferring jurisdiction on the said Court of Tax Appeals prescribes the following:

> "SEC. 7. JURISDICTION.—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided —
>
> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property effected; fines, forfeitures or other penalties imposed . . . "

The Court of Tax Appeals expresses belief that the apparent inconsistency in the wording of the law was brought about by an oversight on the part of the Legislature and contends that the phrase "Collector of Customs" appearing in section 11 should properly be read as "Commissioner of Customs". Petitioner argues, however, that there is no need for such interpretation because the language of the law is clear and that even granting that there exists an inconsistency, Section 11 must prevail over section 7 because the former provision is latest in the order of position. The Court, speaking through Justice Felix, did not countenance this argument, because, "while it is true that where the language of the statute is plain and unambiguous there is no occasion for construction, even though other meanings could be found (Crawford Statutory Construction, sec. 162, pp 250-251), yet, considering that in the instant case, the apparent inconsistency already pointed out creates a certain degree of vagueness that may likely result in confusion in the application of the law, the court, must of necessity step in and exercise its duty to interpret it and determine the intent of Congress in enacting the same. An examination of the Congressional Record bearing the discussions on H. Bill No. 175, which eventually became Republic Act No. 1125, in the hope that it could shed light on the matter elicits no result. It is significant, however, that in the explanatory note of the bill and the discussions that ensued following the presentation of the same for the consideration of the lawmaking body, reference was consistently made to cases arising from decisions of the Collector of Internal Revenue, Commissioner of Customs and the Boards of Assessment Appeals. It must also be remembered that the Court of Tax Appeals merely took over the functions previously exercised by the defunct Board of Tax Appeals . . . which then had jurisdiction to review the decisions of the Commissioner of Customs. Moreover, in the case of *Rufino Lopez v. C.T.A.*[96] this Court, resolving the same question herein involved, has already pronounced through Mr. Justice Montemayor that the legislature must have meant and intended to say *Commissioner of Customs instead of Collector of Customs* . . . and in effect rectified said clerical error."

96 53 O.G. No. 10, 8005.

C. Contemporaneous Construction.

Contemporanea exposito est fortissima in lege—Contemporary construction is the strongest in law.[97] This includes the construction placed upon the statute by its contemporaries at the time of its enactment and soon thereafter — the judicial, legislative, and executive authorities.[98] The meaning given to a statute by its contemporaries is more likely to reveal its true meaning than a construction given by men of another day or generation. Even words change with the march of time.[99]

(1) *Administrative officials.* The contemporaneous construction of statutes made by administrative officials in the discharge of their official duties is entitled to considerable weight.[100]

Thus, in the case of *Lim Hoa Ting v. Central Bank*,[101] the Supreme Court recognized the persuasive value of the construction made by the Institute of Science and Technology on the meaning of "flavor" used in Republic Act No. 601, the pertinent provision of which states:

> "Sec. 2. . . the tax collected on foreign exchange used for the payment of the cost, transportation and/or other charges incident to importation in the Philippines of . . . flavor . . . shall be refunded to any importer making application therefore . . . "

The Monetary Board's Regulation No. 1, implementing Circular No. 44, considered and classified mono-dodium geutamate as a flavoring extract and, therefore, allowed to be imported. Later, however, the Board eliminated "mono-dodium geutamate" as a flavoring extract under existing regulations for the use of foreign exchange for importation upon the suggestion of the Exchange Tax Administration for the reason that if said substance is to be used in the manufacture of condiment known as "Vetsin", then, onions, garlics, catsup, etc. might also be considered as flavors when they are really condiments and therefore exchange taxes paid for their importation should also be refunded. The said officer later changed his mind after a conference with the Director of the Institute of Science and Technology on the meaning and scope of "condiment" and "flavor". "Flavor" was defined as a general term which includes those preparations regarded as condiments even if such preparations contain pepper, mustard, garlic and other spices; and that the word "flavor" is used in Republic Act No. 601 and not "condiments" inasmuch as the former embraces the limited meaning of the latter, and, therefore, mono-dodium geutamate falls under the exemption. The Central Bank thought otherwise, and cited

97 CRAWFORD, THE CONSTRUCTION OF STATUTES 388 (1940).

98 SUTHERLAND, op. cit. supra note 54 at 515.

99 CRAWFORD, supra at 388 et. seq.

100 With respect to its provative value, recent decisions have established a distinction between two types of administrative interpretation: (1) those made by officials charged with the enforcement of the law, and (2) those handed down in adversary proceedings, otherwise known as decisions inter partes, by pointing out that while the latter is entitled to respectful consideration by the Courts, the other is not regarded as authoritative. See Fishgold v. Sullivan, 154 F. (2d) 785, affirmed in 328 U.S. 270, 90 L. Ed. 1230.

101 G.R. No. L-10666, September 24, 1958.

articles published in *Chemical Engineering Progress* of the American Institute of Chemical Engineers, the *Scientific Monthly,* and other periodicals. The Supreme Court upheld the construction made by the Institute of Science and Technology. It said: "The practice and interpretative regulations by officers, administrative agencies, departmental heads and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute.[102] In the construction of a doubtful and ambiguous law, the contemporary construction of those who are called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect."[103] The Court also reinforced its ruling by stating that mono-dodium geutamate has, in the past, been consistently considered as a flavor not only by the Import Control Commission but also by its successor, the Central Bank.

(2) *Construction by the authors of the Ordinance.* The construction made by the framers of an ordinance was considered by our Supreme Court in the case of *Gacho v. Osmeña, Jr.*[104] in resolving the question whether the use of the term "patrolmen" in Ordinance No. 188 of Cebu City in lieu of "detectives" indicates the intent to abolish the latter positions. In holding that the language used in Item 19 of the ordinance indicates the intent to *maintain* and not *abolish* the positions in question, the Court said: "This was evidently what the framers of Ord. No. 188 had in mind, for the administration that approved it, in 1955, did not declare that the positions held by petitioners had been abolished, and instead, retained them in their aforesaid positions without extending to them new appointments. Such contemporaneous interpretation given by those responsible for the enactment of said Ordinance is strongly indicative of the intent of its authors."

D. Adopted Construction.

When the legislature adopts the statute of another country as a guide for the preparation and enactment of a statute, the courts of the adopting state will usually adopt the construction placed upon it in the country of origin. The reason for the rule is that the legislature is presumed to have adopted the construction which had been placed on the statute by courts in the state of its origin. Thus, in *U.S. Lines v. Associated Watchmen*[106] one of the issues involved the interpretation of the word "substantial evidence" found

102 2 SUTHERLAND, STATUTORY CONSTRUCTION 516.

103 Edward's Lessees v. Darby, 12 Wheat. 206, 210. The Court also quoted with approval E.N. Griswold of Harvard Law School: "Another reason why contemporaneousness is an important factor is its bearing on the need for certainty and predictability in our tax laws. This is where the notion of the Court's function in the scheme of judicial tax administration becomes important. A statute is enacted. A regulation is issued. It will, in the normal course of events, be five or six years and very likely more, before the construction of the statute, in the light of the regulation will come before the Supreme Court. In the meantime, people will go on living, and transactions will be conducted under the statute. Thus, it seems that a strong argument can be made in favor of giving very heavy weight to a contemporaneous regulation, so that tax-payers may rely upon it and leave some certainty that will be followed by the Courts." 54 HARV. LAW REV. 398, 406.

104 G.R. No. L-10989, May 28, 1958.

105 CRAWFORD, op. cit. supra, 439-440.

106 G.R. No. L-12205-11 May 21, 1958.

in Section 6 of Republic Act No. 785. Evidently, the Court observed, there was no definition of the term in the statute nor was there a precedent in this jurisdiction which may serve as a guide in the determination of the existence of substantial evidence. The Court, nevertheless, took judicial notice of the vast reservoir of precedents in America regarding this subject. "Since our Magna Charta is of American origin, to enlighten us, we may resort to American interpretation, more so in this case when the issue is raised for the first time."

(1) *Exceptions.* One of the exceptions to the application of the rule just discussed is when the adopted statute differs substantially in its form or language from the foreign statute. "In deliberately changing the words, the legislature had some purpose in mind. That purpose was doubtless to limit or enlarge the adopted law as the change in words implies."[107] This exception to the rule was illustrated in the case of *People v. Gatchalian.*[108] Gatchalian was charged for violating the Minimum Wage Law. He contended that the violation does not constitute a criminal offense but carries only a civil liability, and even if it does, the section violated does not carry any penalty at all. The Prosecutor, however, pointed out that criminal liability was covered by Section 15 which provides for the penalty for all willful violation of any of the provisions of the Minimum Wage Law. In resolving this contention, the Court held: "A study of the origin of the Minimum Wage Law, Republic Act 602, may be of help in arriving at an enlightened and proper interpretation of the provisions under consideration. Republic Act 602 was patterned after the U.S. Fair Labor Standards Act of 1938, as amended. An examination of both will show that, while in substance they are similar, they however, contain some differences in their phraseology and in the apportionment of their provisions." After making a distinction between Section 16 of the Fair Labor Standards Act and Section 15(a) of our law, it said: "This distinction is very revealing. It clearly indicates that while the Fair Labor Standards Act intends to subject to criminal action only acts that are declared unlawful, our law by legislative fiat intends to punish not only those expressly declared unlawful but even those not so declared but are clearly enjoined to be observed to carry out the fundamental purpose of the law . . . This is the only rational interpretation that can be drawn from the attitude of our congress in framing our law in a manner different from that appearing in the mother law."

E. Report of the Code Commission.

The extensive and scientific reports of Code Commissions are often cited by Courts to shed real light into the meaning of the law. These reports are entitled to great weight usually to the extent that they are adopted by the legislature.[109] In the case of *Chan v.*

107 In re Eaton's Estate, 16 P. (2d) 433.
108 G.R. No. L-12011-14, September 30, 1958.
109 SUTHERLAND, op. cit. supra, Sec. 5005-5010, at 489-499.

Yatco,[110] the interpretation of Article 2177 of the New Civil Code was put at issue.[111] In explaining this provision, the Court resorted to the Report of the Code Commission which categorically stated that "acquittal from an accusation of criminal negligence whether on reasonable doubt or not, shall not be a bar to a subsequent civil action x x x for damages due to quasi-delict or culpa aquiliana."[112]

F. Textbooks and Treatises.

Standard works of generally accepted authorities are often used by Courts to determine the meaning of ambiguous provisions. The degree of respect accorded to these textbooks and treatises will vary with the learning and reputation of the author and the measure of care and reason with which he has elucidated his subject.[113]

Our Supreme Court in the case of *Gorrea v. Lezama*[114] referred to the writings of Fletcher, Thompson, and Grange in determining the question whether a "manager" of a corporation is an "officer" of the corporation so much so that he could only be removed by the affirmative vote of two-thirds of the paid shares of stock, and not by the mere resolution of the Board of Directors, as provided in Section 33 of the Corporation Law.[115] Despite the reference to well-known authorities on Corporation law, however, our Supreme Court appeared to have reached a very unsatisfactory conclusion, and three distinguished Justices rang with dissent.[116] The majority decision, penned by Mr. Justice Bautista Angelo, answered the question in the affirmative, citing American authorities in support of its conclusion that a "manager" of a corporation is not an "officer", and therefore may be removed by the Directors as they may see fit. It is obvious that the question is one of first impression in this jurisdiction and is rather hair-splitting.

In a vigorous dissenting opinion, Mr. Justice Bengzon argued that authorities hold that the manager is the principal executive officer of the corporation because our Legislature considers him as such. He cited several statutes which have been expressly enacted making the "manager" criminally responsible for violations by the corporation of the Usury Law,[117] the Price Control Law,[118] the law on Employment of Women and Children,[119] the Chemistry law,[120]

110 G.R. No. L-11163, April 30, 1958.

111 NEW CIVIL CODE, Art. 2177 provides: Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

112 REPORT OF THE CODE COMMISSION 162.

113 BLACK op. cit. supra 282-284; GONZAGA, op. cit. 100.

114 G.R. No. L-10556, April 30, 1958.

115 The Corporation Law (Act 1459 as amended) sec. 33 provides; "Immediately after the election, the directors of a corporation must organize by the election of a president, who must be one of their number, a secretary or clerk who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. The directors and officers so elected shall perform the duties enjoined on them by law and by the by-laws . . . "

116 Justices Labrador, A. Reyes, and Bengzon, dissented.

117 Act No. 3096

118 Republic Act No. 509, sec. 12.

119 Republic Act No. 679, sec. 12 (c).

120 Republic Act No. 754, sec. 28.

the Minimum Wage Law,[121] the Chemical Engineering law,[122] the Labor and Supply law,[123] and the other laws.[124] Then, Justice Bengzon continued, "The majority disregarded the extensive treatises of Thompson on Corporations (12 volumes) and Fletcher on Corporations (20 volumes), only to rely on the one-volume work of Attorney Grange, confessedly (in its preface) not written for the "corporation lawyer", being a concise statement of the basic principles of corporation law. In support of his statement, said attorney cites two cases only . . . The first was decided *in illo tempore*, long ago, in 1889; at that time corporate development was in its initial stages. And it was decided by the Supreme Court of New York, which everybody knows is only an *appellate court* . . . On the other hand, more than ten cases from eight states of the American Union support the Thompson and Fletcher excerpts above quoted. Clearly the choice of this Court's *majority* reflects the *minority* view. Worse still, it ignores the Congressional viewpoint." To this contention, the majority answered that its view is supported by 9 states whereas only 6 states adopt the dissenting opinion. In answer to majority's rebuttal, Mr. Justice Bengzon pointed out that the majority has plunged into a fallacious argumentation known as Equivocation, which consisted in using the same word in different meanings. He also amplified his view by adding 4 more states in support of the dissent.

G. Dictionaries.

In order to ascertain the meaning, ordinary or technical, of words used in statutes, resort may be had to definitions given by well-recognized lexicographers.[125] Although these standard lexicons are not binding authorities so far as the Court is concerned, they carry with them some persuasive value which Courts do not usually ignore. Our Supreme Court in the case of *Collector v. Oteyza*[126] made use of the Webster's International Dictionary, among other things, in defining the word "ballet". The Court was asked to interpret section 1 of Republic Act No. 728, which provides the following:

> "The holding of operas, concerts, recitals, dramas, painting and and art exhibition, and literary, oratorical or musical programs, except film exhibitions and radio or phonographic records thereof, shall be exempt from the payment of any national or municipal amusement tax on the receipts therefrom."

Petitioner maintains that ballet performance is not expressly exempted from the payment of the amusement tax and, under the principle of *expresio unius est exclusio alterius*, the enumeration in Republic Act No. 722 should be considered exclusive. The Court, however, utilized the following definitions found in the Webster's International Dictionary and 5 Corpus Juris, 588: "Ballet means

121 Republic Act No. 602, sec. 15 (b).
122 Republic Act No. 318.
123 Republic Act No. 946.
124 Republic Act No. 776, Commonwealth Act No. 303, and Commonwealth Act No. 617.
125 Kuenzle & Streiff v. Collector, 32 Phil. 510 (1915).

a theatrical dance; . . . a kind of artistic dancing, marked by a great variety, intricacy, and expressiveness in its movements . . . signify an art in its higher manifestations, or art *par excellence*, as it is represented in works of art by those who are distinctively denominated artists." It is conceded that ballet is an art. Under our Constitution,[127] arts are under the patronage of the State and Republic Act No. 722 seeks to implement the constitutional provision. Miss Jovita Fuentes, whose qualification as an expert witness was admitted by counsel for petitioner, testified that "recital" includes piano, songs and ballet, and that "concert" includes symphony and ballet. Mrs. Trinidad Legarda, another expert witness testified to the same effect. From these extrinsic aids, the Court concluded that ballet performance besides being truly an art, *par excellence*, is in fact included in the terms "concert", "opera" or "recital" and therefore exempted from the payment of the amusement tax.

VI. CONSTRUCTION OF STATUTES AS A WHOLE

Courts often seek to avoid any conflict in the provisions of the statute by endeavoring to harmonize and reconcile every part so that each shall be effective. Consequently, that construction which will leave every word operative will be favored over one which assumes inconsistencies thereby leaving other words meaningless.[128]

In the case of *Abad v. The Government*[129] it appears that the Court of Appeals made a ruling that the relocation of monument M-20 of a certain lot in Nueva Ecija on the ground that a mistake was made on the original survey can be undertaken under Section 112 of the Land Registration Law which provides:

> "No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum hereon and the attestation of the same by the clerk or any register of deeds, except by the order of the Court. Any registered owner or other person in interest may at any time apply by petition to the Court, upon the ground that registered interests of any description, whether vested contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate, or that the name of any person on the certificate has been changed . . . ."

Our Supreme Court noted that the alteration or amendment authorized in Section 112 of the Land Registration Act can only refer to a certificate of title or to a memorandum thereof, and not to a decree of registration, for otherwise, a contrary interpretation would have a derogatory effect upon Section 28 of the same law which provides that "Every decree of registration shall bind

126 G.R. No. L-10290, May 28, 1958.
127 PHIL. CONST. Art. XIV, sec. 4.
128 CRAWFORD, op. cit., 262.
129 G.R. No. L-10678, March 29, 1958, 54 O.G. No. 28, 6871 (1958).

the land, and quiet title thereto, subject only to the exceptions stated in the following section" (referring to legal encumbrances), that "it shall be conclusive upon and against all persons including the Insular Government." It is also provided in Section 38 that "upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible."

A. *Generalia Specialibus Non Derogant.*

Where a statute contains both a general enactment and also a specific or particular provision, the effort must be, in the first instance, to harmonize all the provisions of the statute by construing all the parts together. But if after such construction, there is an irreconciliable conflict between the two, the specific or special provisions shall control, and this irrespective of their relative dates or relative position in the statute.[130]

One of the most noteworthy decisions in 1958 which applied this principle was the case of *Hebron v. Reyes.*[131] Reyes and the amicus curiae cited sections 64 (b) and (c), 79 (c) and 86, of the Revised Administrative Code to support their contention for the suspension of Hebron, even in the face of sections 2188 to 2191, of the same Code. The Supreme Court ruled: "If there is any conflict between sections 64 (b) and (c), 79 (c), and 86, R.A.C., and sections 2188 to 2191 of the same Code, the latter being specific provisions, setting forth the procedure for the disciplinary action that may be taken, particularly, against municipal officials — must prevail over the former, as general provisions, dealing with the powers of the president and the department heads over the offices of the government. '(d) General and Special Statutes'. Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute, unless it appears that the legislature intended to make the general act controlling; and this is true *a fortiori* when the special act is later in point of time although the rule is applicable without regard to the respective dates of passage. It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute, whether it was passed before or after such general enactment. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special statute will be construed as remaining an ex-

130 BLACK, op. cit., 258; CRAWFORD, op. cit. 263.
131 G.R. No. L-9124, July 28, 1958.

ception to its terms, unless it is repealed in express words or by necessary implication.' (59 C.J. 1056-1058)."

In *Prisco v. Prisco Workers' Union*[132] it appears that Executive Order No. 350 creating the PRISCO provided in Section 10 that "all officers and employees of the Prisco shall be subjected to the Civil Service Law, rules and regulations, except those whose positions may upon recommendation of the Board of Directors, the Secretary of Economic Coordination, be declared by the President policy determining, primarily confidential or technical in nature." Selection 566 of the Revised Administrative Code also provides that

> "When the interest of the public service so requires, the head of any department, bureau, or office may extend daily hours of labor, ... for any or all the employees under him, and may likewise require any or all of them to do overtime work not only on workdays but on holidays."

The same Code likewise provides in Section 259:

> "In the absence of special provisions, persons regularly and permanently appointed under the Civil Service Law or whose salary, wages, or emoluments are fixed by law or regulations shall not, for any service rendered or labor done by them on holidays or for other overtime work, receive or be paid any additional compensation."

Prisco in this case contends that Comomnwealth Act No. 444, known as Eight Hour Labor Law, is not applicable to Prisco. The Supreme Court held: "This contention overlooks the fact that even if the employees and workers of the Prisco are subject to the Civil Service rules and regulations, they may however be paid additional compensation for overtime work or works rendered on Sundays and holidays if there is a special legal provision authorizing payment of such additional compensation, and here there is such provision as found in the Eight Hour Labor Law. Thus, Section 2 of said Act provides: 'This Act shall apply to all persons employed in any industry or occupation whether public or private' and there is no doubt that the Prisco is engaged in an industry within the purview of the Act . . ."

Thus, it will be seen from the foregoing cases, that the rule, *Generalia speciallibus non derogant*, is likewise applicable to two conflicting statutes. This rule was further applied in the case of *Abiaza v. Ignacio*.[133] The lower court dismissed this case notwithstanding the fact that defendant was declared in default and plaintiff presented enough evidence to support his claim because, being an action for deficiency on a chattel mortgage, the mortgage creditor is no longer entitled to it under the provisions of the New Civil Code. The Civil Code provides: "Article 2181.—The provision of this Code on pledge in so far as they are not in conflict with the Chattel Mortgage Law, shall be applicable to Chattel Mortgages." The Supreme Court, in reversing the judgment of the lower court, held:

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132 G.R. No. L-4594, December 22, 1958.
133 G.R. No. L-11460, May 23, 1958.

"It is clear from Article 2141 that the provisions of the new Civil Code on pledge shall apply to a chattel mortgage *only* in so far as they are not in conflict with the Chattel Mortgage Law. In other words, the provisions of the new Civil Code on pledge can only apply if they do not run counter to any provision of the Chattel Mortgage law, otherwise, the latter shall apply. Here we find that the provisions of the Chattel Mortgage law with regard to foreclosure . . . are precisely contrary to the provisions of Article 2115 of the Civil Code . . . "

Again, in the case of *People v. Ching Lak*,[134] the Court was faced with a problem presented by two conflicting laws. Defendant in this case filed his motion to quash on the ground that more than five years have elapsed since February 7, 1948 up to the filing of information; that the prescriptive period applicable in this case is found in Act No. 3585, which provides, in its pertinent portion, that all offenses against any law or part of law administered by the Bureau of Internal Revenue shall prescribe after 5 years. The fiscal argued that the provisions of the Revised Penal Code on prescription should govern. The Supreme Court ruled that Acts 3226 and 3585 were not repealed by the Revised Penal Code. It follows, according to the Court, that Article 90 of the Revised Penal Code would not apply to prescription of violations of special laws or part of laws administered by the Bureau of Internal Revenue, it being a well-known rule of statutory construction that "in case of conflict between a special law and a general law, the former shall govern."

The above pronouncements affirm the one undeniable fact that a statute is not an isolated conglomeration of provisions that can stand alone by its terms. Every statute must be so construed and harmonized with other statutes as to form an existing body of uniform jurisprudence. The principle is expressed in the age-old maxim, *interpretare et concordare leges legibus est optimus interpretandi*.[135]

VII. IN CASE OF DOUBT IN THE INTERPRETATION OF LAWS.

Article 10 of the New Civil Code provides that "in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."

In a strongly-worded dissenting opinion, Mr. Justice Alfonso Felix, concurred in by Chief Justice Ricardo Paras, found occasion to apply this principle in the case of *Manzano v. Lacson*.[136] Mr. Justice Felix started by invoking the above salutary rule thus: "We have the sacred duty of construing the law applicable to the controversy, and in so doing, we must have in mind the very words of our Civil Code which says that 'in case of doubt in the interpretation or application of laws, it is presumed that the law-mak-

134 G.R. No. L-10609, May 22, 1958.
135 BLACK, op. cit. 345-347.
136 G.R. No. L-1105, June 30, 1958.

ing body intended right and justice to prevail,' and it could not be otherwise because laws are enacted to protect rights and to do justice. Under the influence of this provision, let us now examine whether in the case at bar, the majority of this Court had in mind this salutary principle of construction." The majority opinion laid much stress in the provision of Section 103 of the Revised Ordinances of the City of Manila.[137] The majority quoted with approval the contention of the City Mayor that said section 103 can *only* apply to streets and alleys duly constructed, and not to an area set aside for this purpose, and to strengthen its argument, the majority calls attention to the last proviso requiring that any such private alley should be *"maintained and kept in good repair by the grantee,"* a requirement that would have no reason to exist if the alley were merely an open transitable area, without paving, drains or gutters, for the obvious purpose of the requirement was to insure the safety and health of the residents within the area. "I have stated that by the construction of the house for which the building permit is sought, will not endanger in any way the safety and health of the residents within said area. And in turn I have also to call the attention of the majority that the second proviso of said section 103 mentioned by it, has nothing to do with the first proviso thereof, because the second proviso refers *only* to cases of "private street or alley already opened in an interior lot", and, naturally, in that event the owner of those private alleys or grantee should maintain and keep them in good repair. Evidently, such requirement has nothing to do with respect to public or private streets or alleys which had been *officially approved.* What is more, the fact that the second proviso had to be specifically incorporated in said section 103, making special reference to streets or alleys *opened* in an interior lot inevitably would lead anyone to the conclusion that what was intended thereby was to distinguish its scope from the requirement of the first proviso which merely refers to streets or alleys which have been *officially approved."*

The result of this reasoning is desirable both as a culmination of a cogent analysis and for the policy which it thereby effectuates.

VIII. EFFECT AND APPLICATION OF LAWS.

(A) *Lex Prospecit Non Respicit.*

Statutes are generally prospective and not retroactive in their operation.[138] Thus, in *Manalang v. Tuason de Richards,*[139] the munic-

137 Revised Ordinance of the City of Manila, sec. 103, provides:

"Sec 103. ISSUANCE.—When the application, plans, and specifications conform to the requirements of this title and of title thirteen hereof, the city engineer shall issue a permit for the erection of the building and shall approve in writing such plans and specifications, one copy of which shall be returned to the owner or his agent and one copy shall be retained by the city engineer: Provided, that the building shall abut or face upon a public street or alley or on a private street or alley which has been OFFICIALLY APPROVED: and provided further, that any private street or alley opened in an interior lot for the purposes of this section, once officially approved, shall be opened to the general public, and with its approved width preserved shall be maintained and kept in good repair by the grantee of the permit, . . . and shall never be closed by any person so long as there is a building or other structure abutting or facing upon such private alley." (Emphasis supplied by Felix, J.)

138 NEW CIVIL CODE, Art. 4 provides: "Laws shall have no retroactive effect, unless the contrary is provided."

139 G.R. No. L-11980, July 31, 1958.

ipal court denied the motion to dismiss the ejectment proceedings against the lessee, thus: "Court is of the opinion that from the approval of the Republic Act 1162, no ejectment proceedings should be instituted or prosecuted against any tenant . . . But inasmuch as these . . . cases of ejectment have been instituted before the approval of said Act, it is . . . the opinion of this Court that its prosecution should be suspended . . . " In affirming the decision of the municipal court, the Supreme Court said: " . . . The ruling is understandable. It appears that the actions for ejectment were filed before the enactment of R. A. 1162 and conceivably under the general principle that laws can only be enforced prospectively, the municipal court saw it fit to suspend the proceedings . . . "

(B) When the Law Cannot Retroact.

(1) *When Vested rights are impaired.* A retraoctive statute cannot interfere with or divest vested rights. Retroactive operation is not favored by the courts, and a law will not be construed as retroactive unless the act clearly indicates that the legislature intended a retroactive operation.[139a] Thus, in the case of *Daney v. Garcia*,[140] it appears that Bernarda Camporedondo, common-law wife of deceased Christensen, claimed ownership over one-half of the estate of the latter in virtue of her relationship with deceased, alleging that they having lived together as husband and wife continuously for thirty years, the properties acquired during such cohabitation should be governed by the rules on co-ownership as provided by Article 144 of the New Civil Code. The Court, stated, however, that even granting for the sake of argument, that this case falls within the provisions of Article 144 of the Civil Code, the same would be applicable *only* as far as properties acquired after the effectivity of Republic Act 386 are concerned and to no other, for such law cannot be given retroactive effect to govern those already possessed before August 30, 1950. The Court concluded, after citing Article 2252 of the Civil Code[141] that as it cannot be denied that the rights and legitimes of the compulsory heirs of deceased would be impaired or diminished if the claim of appellee would succeed, the action cannot stand.

Since the New Civil Code became effective on August 30, 1950, a considerable number of cases, including the one cited above, have reached the Supreme Court. The majority of these cases involved questions of retroactivity. One such case is *Laperal v. Katigbak*.[142] The Laperals brought an action to enforce a prior judgment secured by them against Katigbak on the fruits of his wife's paraphernal property. The Court of First Instance by applying Article 161 of the New Civil Code,[143] held that as the obligations were contracted and

139a SUTHERLAND & HORACK, op. cit. supra, 114. (1943).

140 G.R. No. L-11484, February 14, 1958.

141 NEW CIVIL CODE, Art. 2252, provides: "Changes made and new provisions and rules laid down in this Code which may prejudice or impair vested or acquired rights in accordance with the old legislation shall have no retroactive effect . . .

142 G.R. No. L-11418, December 27, 1958.

143 NEW CIVIL CODE, Art. 161 provides: "The conjugal partnership shall be liable for: (1) all debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife . . . "

made payable under the regime of the Old Civil Code, the action would lie to enforce payment against conjugal properties, although as the law now stands, the conjugal partnership cannot be liable for an obligation of the husband unless it was contracted by him for the benefit of the family. Since the exemption from liability for personal obligations of the husband is a right given to the conjugal partnership for the first time by this Code, it should be operative at once, unless it should impair a right vested under the old Code. On the question whether or not any vested or acquired right is involved, the Supreme Court said: "When Laperal granted the loans and delivered the jewelry to Katigbak, the law then in force (Article 1408, Old Civil Code) made the conjugal partnership liable for the obligation . . . The right of the Laperals vested at the very moment the obligation was contracted, under the provisions of the Old Civil Code. For this reason, the provisions of Article 161, New Civil Code, cannot apply."

(2) *When the law attaches a civil sanction or penalty.* Statutes imposing a new penalty or forfeiture, or a new liability or civil sanction will not be construed as having a retroactive effect.[144] This was the rule applied in the case of *Jalandoni v. Martir-Guanzon.*[145] The appellants on January 9, 1947 filed a suit for partition of certain lots and recovery of damages caused by defendant's wrongful refusal to recognize plaintiff's right to partition. The C.F.I. on February 22, 1955 held in favor of plaintiffs but denied the claim for damages. Plaintiffs on August 26, 1955 brought action for recovery of moral and exemplary damages. In upholding the dismissal of the latter case by the lower court, the High Tribunal explained: "Except as concomitant to physical injuries, moral and corrective damages (allegedly due to suffering, anguish, and anxiety caused by refusal of defendants in 1941 to partition the common property) were not recoverable under the Civil Code of 1899 which was the governing law at the time. Recovery for such damages was established for the first time in 1950 by the New Civil Code and cannot be made to apply retroactively to acts that occurred under the prior law in view of the punitive or deterrent character of such damages. The rule is expressly laid down by par. 1 of Article 2257 of the new Code:

> "Art. 2257. Provisions of this Code which attach a civil sanction or penalty or a deprivation of rights to acts or omissions which were not penalized by the former laws, are not applicable to those who, when said laws were in force may have executed the act or incurred in the omission forbidden or condemned by the Code . . . "

The above ruling should be deemed to abrogate the rule laid down in *Co Tao v. Vallejo*[146] which gave retroactive effect to the provisions of the new Civil Code on moral damages because it did not impair vested rights as provided in Articles 2252 and 2253 of

144 BLACK, op. cit. supra 401-403; SUTHERLAND & HORACK, op. cit. at 114 et. seq.
145 G.R. No. L-10428, January 21, 1958, 54 O.G. No 9, 2907 (1958).
146 G.R. No. L-9194, April 25, 1957.

the Civil Code. The case of *Jalandoni, supra,* was decided under 2257 of the new Civil Code.

(3) *R.A. No. 1612 cannot retroact to sales made before its effectivity.* In the case of *Collector v. Viduya,*[147] it appeared that a staff member of the American embassy (who was exempt from compensating tax under Section 190 of the National Internal Revenue Code) sold his car to respondent Viduya. The Collector exacted compensating tax from Viduya, but the latter demanded the refund of the amount paid. The Supreme Court, in this appeal brought by Viduya, considered section 11 of Republic Act No. 1612 amending Section 190 of the Revenue Code which provides as follows:

> "In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt private persons or entities, the purchasers or recipients shall be considered the importers thereof. The tax due on such articles shall constitute a lien on the article itself superior to all other charges or items irrespective of the possessors thereof."

"This amendment, however, was approved and took effect only on August 24, 1956 and cannot retroact to the sale made on December 4, 1953. The law itself provided that it shall not have retroactive effect except as to Section 10 thereof."

(4) *Retroactive Effect of Republic Act No. 901.* In the case of *Stonehill Steel Corporation v. Commissioner*[148] it appeared that Stonehill being engaged in a new and necessary industry was exempt from tax under the provisions of Republic Act No. 35. Petitioner, however, paid customs duties on its imports of nails which were not exempted under said Act. On June 20, 1953, Republic Act No. 901 was passed exempting new and necessary industries from customs duties and all kinds of taxes. The question in this case was whether Stonehill is entitled to exemption from customs duties paid by it before the promulgation of Republic Act No. 901, section 4 of which provides:

> "The benefits of exemption of new and necessary industries from the payment of all taxes under this Act shall, upon approval of the application for exemption by the Secretary of Finance, retroact as of the date of the filing of application for exemption."

The Supreme Court ruled: "As we understand, the provision of Republic Act Nos. 35 and 901, a new and necessary industry, has to have two applications, one under Republic Act No. 35, for exemption from all internal revenue taxes, and another for exemption under Republic Act 901 from the payment of *all* taxes. Section 4 of Republic Act 901, in speaking of the retroactivity of the benefits of exemption as of the date of the filing of the application, clearly refers to the application for exemption under said Act . . . Naturally, the exemption shall retroact to the date of the filing of such application under R.A. No. 901."

147 G.R. No. L-10808, February 28, 1958, 54 O.G. No. 20, 5502 (1958).
148 G.R. No. L-10841, March 24, 1958, 54 O.G. No. 35, 8054 (1958).