CONSTITUTIONAL LAW

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I. AYTONA V. CASTILLO [1]

A. THE COURT'S OPINION

On December 29, 1961, then President Garcia appointed Aytona as *ad-interim* Governor of the Central Bank. On the same day, the latter took the corresponding oath. On December 31, 1961, one day after he assumed office, President Macapagal issued Administrative Order No. 2 recalling, withdrawing, and cancelling all *ad-interim* appointments made by President Garcia after December 13, 1961 (date when he, Macapagal, was proclaimed elected by Congress). On January 1, 1962, President Macapagal appointed Castillo as *ad-interim* Governor of the Central Bank and the latter qualified immediately.

On January 2, 1962, both appointees exercised the powers of their office. The next day and thereafter, Aytona was definitely prevented from holding office in the Central Bank. So he instituted a petition for prohibition and mandamus with preliminary injunction which is practicaliy a quo warranto, challenging Castillo's right to the Office. Aytona claimed that, he having qualified upon a valid appointment, the subsequent appointment and qualification of Castilio was void. Castillo replied that the appointment of Aytona had been revoked by Administrative Order No. 2.

The record showed that President Garcia sent to the Commission on Appointments—which was not then in session—three communications dated December 29, 1961, submitting "for confirmation" 350 "midnight" or "last-time" appointments. One of these contained the name of Aytona as Governor of the Central Bank.

In revoking the appointments, President Macapagal acted for the following reasons: (1) the outgoing President should have refrained from filling vacancies to give the new President opportunity to consider names in the light of his new policies; (2) these hurried appointments in mass do not fall within the intent and spirit of the constitutional provision authorizing *ad-interim* appointments; (3) the appointments were irregular, immoral and unjust because they were issued on the condition that the appointee immediately qualify, thereby preventing a recall by the incoming President; and (4) the

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[1] G.R. No. L-19313, Jan. 20, 1962.

abnormal conditions surrounding the appointments and qualifications showed President Garcia's desire to subvert the policies of the incoming administration.

It was admitted that many of the midnight appointees did not qualify. The evidence showed that in the night of December 29, there was a scramble in Malacañang of candidates for positions trying to get their written appointments or having such appointments changed to more convenient places, after some last-minute bargaining. There was unusual hurry in the issuance of the appointments which were not coursed through the Department Heads.

It also appeared that it was Malacañang's practice to submit *ad-interim* appointments only when the Commission on Appointments was in session. But this time, Malacañang submitted its appointments on the same day they were issued.

Held: (1) Although President Garcia continued to be such until the noon of December 30, 1961, he, after the proclamation of the election of President Macapagal, became no more than a mere "caretaker" administration. "He was duty bound to prepare for the orderly transfer of authority to the incoming President, and he should not do acts which, he ought to know, would embarrass or obstruct the policies of his successor. . . .The filling up of vacancies in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualification may undoubtedly be permitted. But the issuance of 350 appointments in one night and the planned induction of almost all of them a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make corresponding appointments."

(2) In making *ad-interim* appointments, the President should be prudent to insure approval of his selection either by previous consultation with the members of the Commission on Appointments or by thereafter explaining to them the reason for such selection. And where "the Commission on Appointments that will consider the appointees is different from that existing at the time of the appointments, and where the names are to be submitted by his successor, who may not wholly approve of the selections, the President should be *doubly careful* in extending such appointments." In signing the 350 appointments in one night, President Garcia could not have exer-

cised such double care; therefore, "there seems to be force to the contention that these appointments fall beyond the intent and spirit of the constitutional provision granting to the Executive authority to issue *ad-interim* appointments."

(3) Under these circumstances, "what with the separation of powers, this Court resolves that it must decline to disregard the Presidential Administrative Order No. 2 cancelling such 'midnight' or 'last-minute' appointments."

(4) Although there are precedents to the effect that an appointment once issued cannot be reconsidered, specially where the appointee has qualified, none of them refer to mass *ad-interim* appointments issued on the last hours of an outgoing President. "On the other hand, the authorities admit of exceptional circumstances justifying revocation; and if any circumstances justify revocation, those described herein should fit the exception."

B. JUSTICE BARRERA, DISSENTING

Three fundamental legal issues are involved in this case: (1) Is the *ad-interim* appointment of Aytona valid when extended? (2) If so, did it automatically lapse with the ending of the term of office of the twelve congressmen composing one-half of the membership of the Commission on Appointments? and (3) May this appointment be legally recalled or withdrawn after Aytona has duly qualified?

1. Validity of Aytona's Appointment

The Constitution provides that the President shall have the power to make appointments during the recess of Congress,[2] The respondents claimed that Aytona's *ad-interim* appointment was not made during a "recess" of Congress for, citing the case of *Tipton v. Parker*,[3] recess means "the intermission between sittings of the same body at its regular or adjourned session and not to the interval between the final adjournment of one body and the convening of another at the next regular session. When applied to a legislative body, it means a temporary dismissal, and not an adjournment 'sine die.' "

The case of *Tipton v. Parker* is not applicable because it does not refer to the power of the President to make *ad-interim* appointments but rather to the power of one house of the state legislature to confer authority upon its own committee to act beyond the duration of the session of the General Assembly. Certainly, the house's power to confer authority to its committee to act during a recess can exist

[2] PHIL. CONST. Art. VII, sec. 10, par. (4).
[3] 71 Ark. 193; 74 S.W. 298 (1903).

only during the life of the house creating the committee; it cannot go beyond its own existence—beyond its adjournment *sine die*. The fact that a house of the legislature lacks power to authorize its committee to act during such adjournment is no argument that the President lacks the power to make appointments during such adjournment. "One refers to the power of a defunct body to act beyond its life; the other refers to the power of another authority, the Executive, to perform its functions after the expiration of that other body. Non-existence of the first does not mean non-existence of the other."

On the other hand, on the authority of Hinds Precedents of the House of Representatives [4] and the opinion of the Attorney General of the United States,[5] recess means the period after the final adjournment of Congress for the session and before the next session begins.

2. Lapsing of Aytona's Appointment

The respondents contended that since twelve members of the Commission on Appointments ceased to be such at midnight of December 29, 1961, the Commission on Appointments likewise ceased to exist on the theory that the creation can not exist beyond the life of its creator. This stems from the wrong notion that the Commission on Appointments is a creature of the Congress. This confuses the Commission as a body with its members. The body continues to exist; only the membership changes. When the Constitution provides that "the Electoral Tribunal and the Commission on Appointments shall be constituted within thirty days after the Senate and the House of Representatives shall have been organized with the election of their President and Speaker respectively," [6] it did not mean that the two houses of Congress thereby create said bodies. It simply ordained the organization of the Commission by electing the members thereof whose positions have already been created by the Constitution.[7]

3. Recall of Aytona's Appointment After His Qualification

Precedents are to the effect that once an appointment has been made by the President subject only to the consent of the Commission on Appointments and the appointee has accepted the appointment, the same becomes complete and the appointing power can not withdraw it except in cases where the tenure is at the President's pleasure or upon grounds justifying removal and after due process. This is because of the constitutional provision to the effect that "no officer

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[4] Vol. 5, pp. 852-3.
[5] President—Appointment of Officers—Holiday Recess, 1901, 23 Op. Atty. Gen. 599 (U.S.C.A. Const. Art. 2, Sec. 2/2).
[6] PHIL. CONST. Art. VI, sec. 13.
[7] PHIL. CONST. Art. VI, sec. 12.

or employee in the Civil Service shall be removed or suspended except for cause as provided by law." [8]

4. Propriety of the Midnight Appointments

It is not for the court to determine the propriety, morality and good faith of the President in making the appointments in question because of the theory of separation of powers.

C. JUSTICE CONCEPCION, CONCURRING AND DISSENTING

(1) An *ad-interim* appointment, made during a recess of Congress is complete and irrevocable upon the performance of the last act required by law from the appointing power, even without previous notice to the appointee, or acceptance by him or without subsequent action of the legislative organ that may terminate its effectivity. This is so because the Constitution provides that the President shall have the power to *make appointments and not merely nominations* during recess of Congress, which appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.[9] Thus, the appointment alone confers upon the appointee for the time being the right to take and hold office, and constitutes the last act respecting the matter to be performed by the executive power.[10]

The irrevocability of the *ad-interim* appointment becomes more apparent when we consider that the House, Commission on Appointments, or other agency of Congress charged with the function of terminating the effectivity of such appointment, may act thereon, by approving or disapproving the same, even though the Executive had not submitted or forwarded it to said House, Commission, or agency of Congress, and even though either the outgoing or the incoming Executive shall have submitted for confirmation the name of a subsequent appointee in lieu of the first one.[11] Moreover, the Philippine Constitution itself provides that "no officer or employee in the Civil Service shall be removed except for cause as provided by law." [12] Under this provision, the revocation of an appointment, if feasible, should be communicated to the appointee before he qualifies and any revocation thereafter is tantamount to removal.[13] Thus,

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[8] PHIL. CONST. Art. XII, sec. 4.
[9] PHIL. CONST. Art. VII, sec. 10, par. (4).
[10] Barrett v. Duff, 114 Kan. 220, 217 Pac. 918 (1923); McChesney v. Sampson, 232 Ky. 395, 23 S.W. (2d) 584 (1930).
[11] People *ex rel.* Emerson v. Shawver, 30 Wyo. 366, 222 Pac. 11 (1924).
[12] PHIL. CONST. Art. XII, sec. 4.
[13] Mr. Justice Bengzon, concurring in Eraña v. Vergel de Dios, 85 Phil. 17 (1949).

once an appointee has qualified he acquires a legal, not merely an equitable right, which is protected not only by statute, but also, by the Constitution, for it cannot be taken away from him, either by revocation of the appointment or by removal, except for cause, and with previous notice and hearing and in accordance with due process.[14]

(2) The claim of the respondents that on the authority of the case of *Tipton v. Parker*,[15] the appointment here made was not made during a recess of Congress is untenable. The *Tipton v. Parker* case is not applicable. It does not involve the power of the President to make *ad-interim* appointments but rather to the power of the Senate to authorize its own committee to function after the adjournment *sine die* of the regular session of the state General Assembly.[16]

(3) From the foregoing, the question of whether the Commission on Appointments is or is not a continuing body becomes immaterial. Besides, the constitutional provision authorizing *ad-interim* appointments clearly indicates that the Commission on Appointments must have an opportunity to approve or disapprove the appointment and that its inaction, despite such opportunity, at the session of Congress next following the making of the appointment must be understood as an expression of unwillingness to stamp its approval upon the act of the Executive. No such opportunity exists when the outgoing Congress has not held any session, regular or special, after the making of the appointment and before the expiration of the term of said Congress and the new Congress has not, as yet, organized itself or even met.

(4) Appointments made by the President have two aspects, the legal and the political. The first refers to his authority to make the appointments. The second deals with the wisdom, propriety, morality, necessity and expediency of the appointment. Because of the theory of separation of powers, political questions are outside the domain of courts of justice to determine. The judicial department has no power to revise or review even the most arbitrary and unfair actions of the political departments—the executive and the legislative.[17] This is what the Court here reversed. There is

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[14] Segovia v. Noel, 47 Phil. 543 (1925); 67 C.J.S. 117; 42 Am. Jur. 887.

[15] *Supra*, note 3.

[16] On this issue, Justice Concepcion and Barrera are of the same opinion.

[17] Barcelon v. Baker, 5 Phil. 87 (1905); Severino v. Governor General, 16 Phil. 366 (1910); Abueva v. Wood, 45 Phil. 612 (1924); Alejandrino v. Quezon, 46 Phil. 83 (1924); Vera v. Avelino, 77 Phil. 192 (1946); Mabanag v. Lopez Vito, 78 Phil. 1 (1947); Cabili v. Francisco, 88 Phil. 654 (1951); Osmeña v. Pendatun, G.R. No. L-17144, Oct. 28, 1960.

no other question more patently and characteristically political than the case at bar.

(5) However, since the granting of the writs of prohibition and mandamus is within the sound discretion of the courts, to be exercised on equitable principles and issues only when the right to the relief is clear, the same should be denied here.

D. JUSTICE PADILLA, CONCURRING

(1) The term "recess" of the Congress during which the President may make *ad-interim* appointments, refers to the intervening period between adjournment of a regular session (the 100-days exclusive of Sunday sessions) or of a special session (which cannot last longer than thirty days), and the convening thereof in regular session once every year on the fourth Monday of January or in special session. And such intervening period refers to the same Congress that had adjourned and was to be convened. It cannot refer to two different Congresses, one that had adjourned and one newly elected to meet in regular or special session.

(2) If the *ad-interim* appointments made by the President are effective only until disapproved by the Commission on Appointments or until the next adjournment of the Congress, then, it must have been the intent of the framers of the Constitution that such appointments cease to be valid and effective after the term of the Congress existing at the time of the making of such appointments. The effectivity of Aytona's appointment, therefore, lapsed on the thirtieth of December, 1961.

E. JUSTICE ANGELO, CONCURRING

(1) The appointments in question cannot partake of the nature of *ad-interim* appointments since they were not made during recess of Congress. The term "recess" has a definite legal meaning. It means the interval between a session of Congress that has adjourned and another of the same Congress. It does not refer to the interval between the session of one Congress and that of another. In that case, the interval is not referred to as a "recess" but an adjournment *sine die*.[18]

(2) The Commission on Appointments is not a continuing body but one that co-exists with the Congress that has created it. This is so because said Commission is a creation of the Senate and of the House of Representatives. At the expiration of the term of the

[18] Tipton v. Parker, *supra*, note 3.

house every four years, the Commission also expires. Consequently, since the appointments in question could no longer be submitted to the Commission which ceased to function on December 30, 1961, said appointments lapsed upon the cessation of said Commission.

(3) An *ad-interim* appointment is not complete until the appointee takes the oath of office and actually takes possession of the position or enters upon the discharge of its duties. The mere taking of an oath of office without actual assumption of office is not sufficient to constitute the appointee the actual occupant thereof who may not be removed therefrom except for cause.[19]

F. COMMENTS [20]

The Supreme Court, in this case, made two very significant rulings. One defined the status, powers and duties of the outgoing President from the time the new President-elect is proclaimed by Congress and the second ventured into the domain of the propriety of the President's act, a ruling inconsistent with the theory of separation of powers.

The Court ruled that from the time a new President is proclaimed as elected by Congress, the outgoing Chief Executive becomes merely a "caretaker" for the new administration. It becomes his duty to provide for a smooth transition between his and that of the new President's administration. Consequently, his powers should be exercised consistently with the declared policies of the incoming President or stated negatively, he cannot exercise his powers in such a manner as to tie down the hands of the new President. The import of this ruling may be seen from the fact that any act, any performance by the outgoing President of his duties, and any exercise of his powers, done after the proclamation of the incoming President which would in effect hamper the implementation of the policies of the new President would be open to question. If so construed, this would clearly be inconsistent with the constitutional provision that the term of office of the President expires at noon on the thirtieth day of December following the termination of four years after his election [21] since as President, he has all the powers granted him by the Constitution, one of which is the power to make *ad-interim* appointments, and as long as these powers are exercised within the constitutional limitations, neither the legislature nor the judiciary can question him. In this connection, a ques-

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[19] McChesney v. Sampson, 232 Ky. 395, 23 S.W. (2d) 584 (1930).

[20] For a fair comment, see Platon, *The Case of Aytona v. Castillo: A Second Look*, 37 PHIL. L. J. 626 (1962).

[21] PHIL. CONST. Art. VII, sec. 4.

tion inevitably crops up. If the outgoing President becomes a mere "caretaker" of the incoming President from the moment of the latter's proclamation, which branch of the government has the power to pass on the question of whether or not the acts of the outgoing President is in conformity or in pursuance of the policies of the incoming President? The incoming President? Suppose this is contested in court by the outgoing President, claiming that he acted in good faith and in conformity with the declared policies of the new President. The court unavoidably has to make a decision. If it proceeds to determine whether or not the act of the outgoing President is really in confomity with the policies of the new President, it would thereby be determining a political question which is not within its competence to do so. If it refuses to consider the question and abides by whatever action the new President would make, it would thereby be sanctioning or authorizing the President to revoke any action done by the outgoing President after the proclamation of the new President, whether legal or not, under the pretext that the same is not in conformity with his policies. This would clearly be amending the constitutional provision fixing the tenure of the President.

In invalidating the *ad-interim* appointments on the ground that it was not within the intent and spirit of the Constitution, the Court obviously ignored two well settled and established rules: (1) the court may not resort to the spirit and intent when the letter is free from ambiguity;[22] and (2) the court cannot question the wisdom or propriety of the acts of the political departments of the government.[23] That the constitutional provision authorizing the President to make *ad-interim* appointments is clear is impliedly admitted by the Court when it said: "Where, however, *as in this case,* the Commission on Appointments that will consider the (*ad-interim*) appointees is different from that existing at the time of the appointments, and where the names are to be submitted by his successor, who may not wholly approve of the selections, the President should be doubly careful *in extending such appointments.*" (Emphasis supplied.) The Court having found that the President under the Constitution has authority to make the *ad-interim* appointments in question, it would be an error for the Court to resort to the spirit and intent of the Constitution. *Hoc quidem perquam duram est, sed ita lex scripta est.*[24]

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[22] "Where the meaning shown on the face of the words is definite and intelligible, the courts are not at liberty to look for another meaning, even though it would seem more probable or natural, but they must assume that the constitution means just what it says. BLACK, AMERICAN CONSTITUTIONAL LAW, 68 (2nd ed.).

[23] SINCO, PHILIPPINE POLITICAL LAW 352 (11th ed. 1962).

[24] It is exceedingly hard, but so the law is written.

In determining whether President Garcia's act was within the intent and spirit of the Constitution, the Court stepped out of its bounds by going into the propriety of the President's act. It prescribed the standard of care which the President should exercise in making *ad-interim* appointments. The President should be *prudent* in making *ad-interim* appointments. And where the Commission on Appointments that will consider the appointees is different from that existing at the time of the appointments and where the names are to be submitted by his successor, who may not wholly approve of the selections, the President should be *doubly careful* in extending such appointment. Since in signing the 350 appointments in one night, President Garcia could not have possibly exercised such double care, the appointments fell beyond the intent and spirit of the Constitution. But nowhere in the Constitution is such a standard of care prescribed which the Court has the power to pass upon. The act of the Court was clearly unwarranted. As stated by Justice Concepcion to which Justice Barrera was of the same opinion, there is no more patently and characteristically a political question than the case at bar.

II. SEPARATION OF POWERS

Underlying the political set-up of the Philippine Government is the principle of separation of powers. Consistently with this principle, the Supreme Court, in *Advincula and Avelino v. Commission on Appointments, et al.*[25] ruled that courts of justice will not interfere with the interpretation made by the Commission on Appointments of its own rules and regulations. In that case, the petitioners were *ad-interim* appointees of President Garcia. On April 27, 1962, the said *ad-interim* appointments were favorably considered and confirmed by the Commission on Appointments. However, on April 30, the Commission, invoking Section 21 of the Revised Rules of the Commission on Appointments, reconsidered the petitioners' appointments and said appointments remained unacted until the adjournment of the session of Congress.[26] The said Section 21 provides that the Commission may reconsider any appointment if presented not more than one day after their approval. In construing the one-day period prescribed in said section, the Commission held the same to mean "next working day" which is not a Saturday or Sunday. Since April 27 was a Friday, April 28 a Saturday and April 29 a Sunday, the consideration taken on April

[25] G.R. No. L-19823, Aug. 31, 1962.

[26] Ad-interim appointments shall be effective only until disapproved by the Commission on Appointments or until the next adjournment of the Congress. PHIL. CONST. Art. VII, sec. 10, par. (4).

30 was within the prescribed period. This was on the theory that unlike in the computation of the 100 session days of Congress from which only Sunday is specifically excluded,[27] the Commission on Appointments is authorized to hold sessions only on specified days.

In this mandamus proceeding to compel the Secretary of the Commission on Appointments to issue the corresponding certificates of confirmation to the petitioners, the petitioners contended that the confirmation of April 27 became final and irrevocable on April 28 since Republic Act No. 1880,[28] providing for Monday to Friday working days and which apparently influenced the Commission, could not have the effect of amending the constitutional provision excluding Sundays only from the computation of the 100 days sessions of Congress.[29]

Held: The Court cannot pass upon the correctness of the interpretation placed by a co-equal, coordinate department, through one of its duly constituted committees or commissions, a constitutional body no less, on its own rules without violating the principle of separation of powers. The case does not involve an alleged infringement of the Constitution or any lawfully enacted laws or measure but of a supposed misconstruction by the legislature of its own regulation. Certainly, the matter concerns the internal business of such branch of the government which can not be made the subject of judicial inquiry.

III. DELEGATION OF POWERS

From the principle of separation of powers necessarily follows the rule that one department of the government may not delegate to another department or to any other body the powers entrusted to it by the Constitution.[30] Applying this rule, the Supreme Court reiterated its rulings in the leading case of *Corominas, Jr., et al. v.*

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[27] PHIL. CONST. Art. VI, sec. 9.

[28] Approved, June 22, 1957.

[29] *Supra*, note 27.

[30] The rule against delegation of powers is, however, not absolute for the Constitution itself authorizes the delegation of legislative power in certain cases and under specific conditions. Thus, the Congress may by law authorize the President, subject to such limitations and restrictions as it may impose, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues. PHIL. CONST. Art. VI, sec. 22, par. (2). In times of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate such rules and regulations to carry out a declared national policy. PHIL. CONST. Art. VI, sec. 26.

Also, the rule does not destroy the right of the Legislature to delegate to local governments the power to pass ordinances for the regulation of their local affairs. The rule may not also be construed to prohibit Congress from creating administrative agencies endowed to a certain extent and under certain limitations, with legislative, executive and judicial powers.

Labor Standards Commission,[31] as clarified by the case of *Miller v. Mardo, et al.*[32] regarding the validity of Reorganization Plan 20-A and the case of *Pastoral v. Workmen's Compensation Commissioners et al.*[33] regarding the authority of the Workmen's Compensation Commission to issue writs of execution.

A. VALIDITY OF REORGANIZATION PLAN NO. 20-A [34]

Reiterating its ruling in the case of *Corominas*, Jr., the Supreme Court in cases involving claims for unpaid wages, separation pay, overtime pay, payment for vacation leave, salary differential and back wages held that the provision of Reorganization Plan No. 20-A (promulgated by the Government Survey and Reorganization Commission allegedly under the provisions of Republic Act No. 997,[35]) particularly Section 25 [36] thereof, which grants to the regional offices of the Department of Labor original and exclusive jurisdiction over all money claims of laborers, is null and void.[37] Nowhere in Republic Act No. 997 which created the Government Survey and Reorganization Commission is there a grant of authority to the Commission to grant powers, duties, and functions to offices or entities to be created by it which are not already granted to the offices and officials of the Department of Labor. Section 3 of the Act limits the powers of reorganization by the Commission to the offices, bureaus and instrumentalities of the *Executive Branch* of the Government only. Thus, it was not the intention of Congress in enacting Republic Act No. 997 to authorize the transfer of powers and jurisdiction granted to courts of justice from these to the officials

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[31] G.R. No. L-14837, June 30, 1961.

[32] G.R. No. L-15138, July 31, 1961.

[33] G.R. No. L-12903, July 31, 1961.

[34] See Eufemio, *Constitutional Law in Retrospect*, 37 PHIL. L. J. 1, 12 (1962).

[35] Approved, June 9, 1954 and amended by Rep. Act No. 1241 on June 9, 1955.

[36] Reorganization Plan No. 20-A created the regional offices under the Department of Labor with the following authority:

"Sec. 25. Each regional office shall have original and exclusive jurisdiction over (a) all cases falling under the Workmen's Compensation Law; (b) all cases affecting money claims arising from violation of labor standards on working conditions, unpaid wages, underpayment, overtime, separation pay and maternity leave of employees and laborers; and (c) all cases for unpaid wages, overtime, separation pay, vacation pay and payment for medical services of domestic help."

[37] Velez v. Saavedra, *et al.*, G.R. No. L-16386, Jan. 31, 1962; Ruiz v. Pastor, G.R. No. L-16856, April 25, 1962; Worldwide Paper Mills, Inc. v. Labor Standards Commission, G.R. No. L-17016, April 25, 1962; San Felipe Iron Mines v. Naldo, *et al.*, G.R. No. L-18026, May 30, 1962; Davao Far Eastern Commercial Co. v. Montemayor, G.R. No. L-16581, June 29, 1962; Stoll, *et al.* v. Mardo, *et al.*, G.R. No. L-17241, June 29, 1962; Valderrama Lumber Mfg. Co. v. Administrator and Hearing Officer, G.R. No. L-17783, June 30, 1962; Gapan Farmers' Coop. v. Parial, *et al.*, G.R. No. L-17024, July 24, 1962; Gallardo, *et al.* v. MRR, Danting v. MRR, G.R. Nos. L-16919-20, Sept. 29, 1962; Filipro, Inc. v. Fuentes, *et al.*, G.R. No. L-17781, Dec. 29, 1962.

to be appointed and offices to be created by the Reorganization Plan. "Congress is well aware of the provisions of the Constitution that judicial powers are vested 'only in the Supreme Court and in such inferior courts as may be established by law.' The Commission was not authorized to create courts of justice, or to take away from these their jurisdiction and transfer said jurisdiction to the officials appointed and offices created under the Reorganization Plan. *The Legislature may not and cannot delegate its power to legislate or create courts of justice to any other agency of the government.*" [38]

B. REGIONAL OFFICERS HAVE AUTHORITY TO HEAR CLAIMS UNDER WORKMEN'S COMPENSATION LAW

It is true that in a long line of decided cases,[39] the Supreme Court has ruled against the validity and constitutionality of Reorganization Plan No. 20-A insofar as it vests the regional offices of the Department of Law with exclusive and original jurisdiction to try and adjudicate money claims arising out of labor relations. However, as clarified in the case of *Miller v. Mardo*,[40] the invalidity did not extend to the exercise by the said regional offices of jurisdiction over cases falling under the Workmen's Compensation Law [41] because with respect to such matter, the disputed provisions of the Reorganization Plan merely effected a reallocation or reassignment, not a new grant, of authority already bestowed on labor officials by Republic Act No. 997.[42]

C. WORKMEN'S COMPENSATION COMMISSION HAS NO AUTHORITY TO ISSUE WRIT OF EXECUTION [43]

The Supreme Court, reiterating its ruling in the leading case of *Pastoral v. Workmen's Compensation Commissioner, et al.*[44] held that under Section 51 of the Workmen's Compensation Law,[45] the Work-

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[38] Surigao Consolidated v. Collector of Internal Revenue, G.R. No. L-5692, March 5, 1954; Chinese Flour Importers' Assn. v. Price Stabilization Board, G.R. No. L-4465, July 12, 1951; United States v. Shreveport, 287 U.S. 77 (1932); Johnson v. San Diego, 109 Cal. 468, 42 P. 249 (1895) cited in 11 Am. Jur. 921-2.

[39] Corominas, Jr., *et al.* v. Labor Standards Commission, *supra*, note 31, and subsequent cases.

[40] *Supra*, note 32.

[41] Act No. 3428 (Dec. 10, 1927) as amended by Act No. 3812, by Com. Act No. 210, and by Rep. Acts Nos. 772 and 889.

[42] Tay v. Regional Office No. 3, G.R. No. L-16981, March 30, 1962; A. V. H. & Co. v. Workmen's Compensation Commissioner, *et al.*, G.R. No. L-17502, May 30, 1962; Madrigal Shipping Co. v. WCC, G.R. No. L-17495, June 29, 1962.

[43] See Eufemio, *supra*, note 33, at 16.

[44] *Supra*, note 33.

[45] "Sec. 51. *Enforcement of award.*—Any party in interest may file in any court of record in the jurisdiction of which the accident occurred a certified copy of a decision of any referee or the Commissioner, from which no petition for review or appeal has been taken within the time allowed therefor, as the

men's Compensation Commission by itself, has no authority to enforce its awards by issuing a writ of execution; resort must be made to the regular courts for its enforcement. The powers given to the Workmen's Compensation Commission by the Reorganization Acts [46] cannot validly include the power to amend Section 51 of the Workmen's Compensation Law for to do so would be to diminish the jurisdiction and the judicial power and functions vested by law on the courts of record, by virtue of said section, to issue or order a writ of execution upon the promulgation of a judgment, which power or authority the Workmen's Compensation Commission never had, before the Reorganization Acts had been passed.[47]

IV. POLICE POWER

One of the inherent powers of the State is the police power. It derives its existence from the very existence of the State and therefore it need not be expressly provided for in the Constitution. It is boundless in scope and extent except only insofar as it is limited by the Constitution, particularly the due process and equal protection of law clauses [48] found in the Bill of Rights.

A. NATIONALIZATION OF RETAIL TRADE OWNERSHIP AND OPERATION

In the exercise of its police power, the State enacted into law the Retail Trade Law [49] which completely nationalized the retail trade in the Philippines by prohibiting aliens from engaging directly or indirectly in the retail trade business. When its constitutionality was attacked on the ground that it violated the due process and

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case may be, or a certified copy of a memorandum of agreement duly approved by the Commissioner, whereupon the court shall render a decree or judgment in accordance therewith and notify the parties thereof.

"The decree or judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the decree or judgment had been rendered in a suit duly heard and tried by the court, except that there shall be no appeal therefrom.

"The Commissioner shall, upon application by the proper party or the court before which such action is instituted, issue a certification that no petition for review or appeal within the time prescribed by section forty-nine hereof has been taken by the respondent."

[46] Sec. 12, Art. III of Reorganization Plan No. 20-A provides:

"A decision of a regional office or of the commission (WCC) from which no appeal has been taken, and which has become final and executory, shall be enforced like a final decision of a court of justice by writ of execution issued by the regional administrator concerned or by the commission as the case may be, which writ of execution shall be carried out by the sheriff or other proper official in the same manner as writs of execution issued by the court."

[47] Tay v. Regional Office No. 3, G.R. No. L-16981, March 30, 1962; A. V. H. & Co. v. Workmen's Compensation Commissioner, *et al.*, G.R. No. L-17502, May 30, 1962; Syjuco, Inc. v. Resultan, G.R. No. L-15050, Aug. 30, 1962.

[48] PHIL. CONST. Art. III, sec. 1, par. (1).

[49] Rep. Act No. 1180 (June 19, 1954).

equal protection of law clauses of the Constitution, the Supreme Court, in *Lao Ichong v. Hernandez*,[50] declared it to be a valid exercise of the police power.

However, the Retail Trade Law itself and the Supreme Court in the *Lao Ichong* case confined the nationalization of the retail trade merely to its ownership. It did not embrace the management, control or operation thereof. Nevertheless this apparent flaw in the Retail Trade Law cannot be availed of by an unscrupulous alien as a convenient means to go around and circumvent the law and its nationalistic purpose, for in *pari materia* with such law is the Anti-Dummy Law [51] which seeks "to punish acts of evasion of the laws of nationalization of certain rights, franchises or privileges." The Anti-Dummy Law seeks to punish acts intended to circumvent the provisions of the Retail Trade Law.[52]

The Anti-Dummy Law prohibits any person lawfully engaged in a business expressly reserved by the Constitution or the laws to Filipino citizens from allowing or permitting any alien "to intervene in the management, operation, administration or control thereof whether as an officer, employee or laborer therein, with or without remuneration, except technical personnel whose employment may be specifically authorized by the President of the Philippines upon recommendation of the Department Head concerned." [53] The Supreme Court, in *King, et al. v. Hernaez, et al.*,[54] was called upon to interpret this legal provision in relation to Section 1 of the Retail Trade Law which prohibits an alien from engaging directly or indirectly in retail trade. In that case, when King, a naturalized Filipino citizen, acquired the ownership of a grocery wholesale and retail business, he retained the services of three Chinese employees, one as purchaser and the other two as salesmen. Three weeks thereafter, King sought the permission of the President to retain the services of three Chinese employees pursuant to the aforementioned provision of the Anti-Dummy Law. The President, upon the recommendation of the Secretary of Commerce and Industry denied the same since the three Chinese were not employed in technical positions. King and the three Chinese brought a petition for declaratory relief, contending that what is prohibited is employment of aliens in control positions and since they (the three Chinese) had nothing

[50] G.R. No. L-7995, May 31, 1957.
[51] Com. Act No. 108 (Oct. 30, 1936), as amended by Rep. Act No. 134.
[52] King, *et al.* v. Hernaez, *et al.*, G.R. No. L-14859, March 31, 1962.
[53] Sec. 2-A.
[54] *Supra*, note 52.

to do with the management, operation, administration and control of the business nor do they participate in its profit outside their monthly salaries, their employment is not prohibited either by the Retail Trade Law or the Anti-Dummy Law.

The respondents on the other hand contended that since the words management, operation, administration and control are followed by and blended with the words "whether as an officer, employee or laborer therein," what is prohibited is employment not only in control but also in non-control positions.

Held:

> We agree to this contention of respondents not only because the context of the law seems to be clear on what its extent and scope seem to prohibit but also because the same is in full accord with the main objective that permeates both the Retail Trade Law and the Anti-Dummy Law. The one advocates the complete nationalization of the retail trade by denying its ownership to any alien, while the other limits its management, operation, administration and control to Filipino citizens. The prevailing idea is to secure both the ownership and management of the retail business in Filipino hands. It prohibits a person not a Filipino from engaging in retail trade directly or indirectly while it limits the management, operation, administration and control to Filipino citizens. These words may be technically synonymous in the sense that they all refer to the exercise of a directing, restraining or governing influence over an affair or business to which they relate, but it cannot be denied that by reading them in connection with the positions therein enumerated one cannot draw any other conclusion than that they cover the entire range of employment regardless of whether they involve control or non-control activities. When the law says that you cannot employ an alien in any position pertaining to management, operation, administration and control "whether as an officer, employee, or laborer therein," it only means one thing: the employment of a person who is not a Filipino citizen even in a minor or clerical or non-control position is prohibited. The reason is obvious: to plug any loophole or close any avenue that an unscrupulous alien may resort to to flout the law or defeat its purpose, for no one can deny that while one may be employed in a non-control position who apparently is harmless he may later turn out to be a mere tool to further the evil designs of the employer. It is imperative that the law be interpreted in a manner that would starve off any attempt at circumvention of this legislative purpose.

B. MEDICAL LAW

The Medical Law,[55] which regulates the practice of medicine in the Philippines, is another law enacted in the exercise of the state's police power. In *People v. Ventura*,[56] Guillermo Ventura, who for 35

[55] Secs. 758-783, Revised Administrative Code.
[56] G.R. No. L-15079, Jan. 31, 1962.

years had been practising as a naturopathic physician "treating human ailments without the use of drugs and medicines" and employing in his practice "electricity, water and hand," was convicted by the Court of First Instance of Rizal of illegal practice of medicine and sentenced to pay a fine of ₱500.00 with subsidiary imprisonment in case of insolvency, for having practiced his profession without the required certificate of registration either from the Board of Medical Examiners or from the Committee of Examiners of Masseurs. On appeal, Ventura assailed the constitutionality of the provisions of the Medical Law under which he was convicted [57] contending that to require him whose business is merely to stimulate by medical means the nerves of the body, many years of study in medical schools curtails his right to exercise his calling. The Supreme Court held that the Medical Law has already been upheld as a valid exercise of the police power.[58] The State may prescribe such regulations as in its judgment will secure the general welfare of the people, to protect them against the consequences of ignorance and incapacity as well as of deception and fraud. To this end, it has been the practice in different states to exact in any pursuit, profession or trade, a certain degree of skill and learning upon which the community may confidentially rely, their profession being generally ascertained in an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal.[59]

V. CIVIL RIGHTS

A. DUE PROCESS

No person shall be deprived of his life, liberty, or property without due process of law.[60] As to what due process of law means, courts have refused to give a comprehensive definition but has preferred that its meaning be gradually determined by the process of inclusion and exclusion as cases arise. But it generally embraces and comprehends those fundamental principles of justice without which democracy would be a mere illusion.

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[57] Sec. 770 of the Revised Administrative Code which requires a certificate of registration issued by the Board of Medical Examiners before one can practice medicine in the Philippines in relation to Sec. 775 of the same Code which prescribes the prerequisite qualifications for the medical examination.

[58] People v. Buenviaje, 47 Phil. 536 (1925).

[59] United States v. Gomez Jesus, 31 Phil. 225 (1915).

[60] PHIL. CONST. Art. III, sec. 1, par. (1).

1. Litigants Entitled to a Day in Court

Although the matter of adjournment and postponement of trial lies within the sound discretion of the court, it is fundamental that a party-litigant should be given a reasonable opportunity to prepare for trial and to obtain due process of law.[61] Thus, where it appeared that the notice of hearing was received by counsel for the plaintiff only in the afternoon of the day previous to the date of hearing; that it was impossible for him to notify his client because the latter resided in a remote barrio; that said counsel had another trial in another city on the date set for hearing; that any motion for postponement which the counsel may file would not reach the trial court as well as the adverse party on time; and that the case involved no less than the means of livelihood of the plaintiff, the trial court (Court of Agrarian Relations) acted with grave abuse of discretion in dismissing the case upon failure of the plaintiff and his counsel to appear on the date set for trial. The plaintiff has been denied his day in court in violation of the due process of law.[62]

2. Right to Appeal Not Part of Due Process

The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law authorizing the same.[63] Thus, when the record on appeal and appeal bond were filed out of time, the court would be justified in denying the appeal.[64]

B. RIGHT TO PROPERTY

The right to property is guaranteed and protected not only by the due process clause but also by other specific provisions of the Constitution. So specific is the Constitution that in all cases where a person may be deprived of his property in favor of the government, whether by eminent domain,[65] expropriation of land[66] or expropriation of utilities and other private enterprises,[67] he is entitled to just compensation. Thus, a law which forbids the owners of

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[61] Cing Hong So v. Tan Boon Kong, *et al.*, 53 Phil. 437 (1929).
[62] De Guzman v. De Guzman, G.R. No. L-18585, June 29, 1962.
[63] Aguilar v. Navarro, 55 Phil. 898 (1931); Santiago v. Valenzuela, 78 Phil. 397 (1947).
[64] Bello v. Fernando, G.R. No. L-16970, Jan. 30, 1962.
[65] PHIL. CONST. Art. III, sec. 1, par. (2).
[66] PHIL. CONST. Art. XIII, sec. 4.
[67] PHIL. CONST. Art. XIII, sec. 6.

land subject to expropriation to bring an ejectment suit even though no expropriation proceeding has yet been filed or commenced is unenforceable as such law amounts to confiscatory legislation. The owner would in effect be deprived of one of the essential attributes of ownership without just compensation indefinitely and for all the time that the government has not yet commenced the expropriation proceeding.[68]

In *Garchitorena v. Panganiban, et al.*,[69] the landlord brought a petition either to transfer his 34 tenants to other portions of his land or eject them because he wished to convert the land they were occupying from palay land to pasture land and because the respondent tenants failed to pay their rentals. The Court of Agrarian Relations denied the petition after finding that the land was not suitable to grazing and that the failure to pay the rentals was not deliberate on the part of the tenants, it being caused by the low fertility of the land occupied. The Supreme Court, after reviewing the records of the case found that the land was more suitable to grazing than planting. Regarding the claim that the failure to pay the rent should be excused because it was not deliberate, the Court said that if non-payment was due to a poor harvest owing to an extraordinary event or an unusual act of God, the Court of Agrarian Relations would be justified in excusing non-payment. However, when the land *normally* has a poor yield by reason of the condition of the soil, to excuse the non-payment would in effect authorize the tenants to hold the land for life or at least indefinitely, without giving the owner or landowner any share in its produce, thus virtually depriving him of one of the main attributes of ownership which is the enjoyment of the possession and use of the thing owned, as well as of the products thereof. Such results cannot be countenanced by the Constitution and tenancy laws. The same amount to a taking of private property for private use and without compensation. The principle of social justice cannot and should not be so construed as to violate the elementary principles of justice and bring about a patent injustice. If the land in question is poor for agriculture, the continuance thereof of the tenants would tend to perpetuate their precarious condition, instead of promoting their well-being and economic security which is the immediate objective of social justice. Accordingly, the tenants should be transferred as requested by the petitioner.

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[68] Cuatico, *et al.* v. Court of Appeals, *et al.*, G.R. No. L-20141-42, Oct. 31, 1962; J. M. Tuason & Co. v. Cabildo, G.R. No. L-17168, Oct. 31, 1962.

[69] G.R. No. L-17784, Oct. 30, 1962.

C. FREEDOM OF SPEECH AND THE PRESS

Indispensable in a free society is the freedom of speech and the press. No less than the Constitution itself safeguards this freedom by providing that "no law shall be passed abridging the freedom of speech or of the press." [70] But the freedom of speech and the press is by no means absolute. The State for the preservation of public order and the protection of private rights, may regulate it. Laws punishing libel, obsenity, inciting to rebellion and sedition and contempt are recognized limitations upon this right.

However, although one may be liable for libel for having made a libelous publication, he may still escape punishment if the publication falls within the doctrine of privileged communications. In this jurisdiction, there are two kinds of privileged communications, the absolute and the qualified. The absolute privileged communication is found in the Constitution which provides that for any speech or debate in Congress, no Senator or Congressman shall be questioned in any other place.[71] The testimony of a witness in a judicial proceeding and the allegations in the pleadings of a party may also be classed as absolute privileged communications.[72]

The qualified privileged communication may be found in the Revised Penal Code.[73] Thus, a fair and true report, made in good faith without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in such proceedings, or of any other act performed by public officers in the exercise of their functions are deemed privileged and not punishable. The reason for this has been aptly stated in the case of *United States v. Canete:*[74]

> Public policy is the foundation of the doctrine of privileged communications. It is based upon the recognition of the fact that the right of the individual to enjoy immunity from the publication of untruthful charges derogatory to his character is not absolute and must at times yield to the superior necessity of subjecting to investigation the conduct of persons charged with wrongdoing. In order to accomplish this purpose and to permit private persons having, or in good faith believing themselves to have, knowledge of such wrongdoing, to perform the legal, moral, social duty resulting from such knowledge or belief, without restraining them by the fear that an error, no matter how innocently or honestly made,

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[70] PHIL. CONST. Art. III, sec. 1, par. (8).
[71] PHIL. CONST. Art. VI, sec. 15.
[72] SINCO, *op. cit., supra*, note 23 at 666.
[73] Art. 354, Revised Penal Code.
[74] 38 Phil. 253, 263-4 (1918).

> may subject them to punishment for defamation, the doctrine of qualified privilege has been evolved. . . .

In *People v. Castelo, et al.*,[75] while the Monroy murder case was pending before Judge Rilloraza, Abaya, as news editor of the Manila Daily Bulletin, caused a news story to be published concerning the investigation being conducted by the Philippine Constabulary of an alleged attempt made by two society matrons to extort ₱100,000.00 from a friend of Castelo in order to secure the latter's acquittal. For this publication, Judge Rilloraza convicted Abaya of indirect contempt on the ground that the news story in effect tended to obstruct or impede the administration of justice because its ultimate purpose was to secure immorally and illegally the acquittal of Castelo in the Monroy murder case which was then pending. Abaya appealed, invoking his constitutional right of freedom of the press.

The Supreme Court held that for a publication to be considered as contempt of court there must be a showing not only that the article was written while a case is pending but that it must really appear that such publication does impede, interfere with and embarrass the administration of justice.[76] The publication in question may be searched in vain for any word which would in any way obstruct or defeat the administration of justice. The trial judge even admitted that said publication did not in any way affect his decision.

Even if the publication tended to obstruct or defeat the administration of justice, the publication comes within the constitutional guarantee of freedom of the press. It is a fair and true report of an official investigation that comes within the principle of a privileged communication so that even if the same is defamatory or contemptuous, the publication need not be prosecuted upon the theory that he has done it to serve the public interest.

"While the present case involved an incident of contempt, the same is akin to a case of libel for both constitute limitations upon freedom of the press or freedom of expression guaranteed by the Constitution. So what is considered a privilege in one may likewise be considered in the other. The same safeguard should be extended to one whether anchored in freedom of the press or freedom of expression. Thus, the principle regarding privileged communications can also be invoked in favor of the appellant."

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[75] G.R. No. L-11816, April 23, 1962.
[76] People v. Alarcon, 69 Phil. 265 (1939).

VI. RIGHTS OF THE ACCUSED

The Constitution has been so vigilant in protecting the rights of the accused that it specifically enumerated the basic rights [77] which could not ordinarily be taken from him.

A. RIGHT TO BAIL

1. In Capital Offenses

The Constitution provides that "all persons shall before conviction be bailable by sufficient sureties except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required." [78] And a capital offense is an offense which, under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death.[79]

In *Pareja v. Gomez*,[80] where the accused was charged with murder attended by five aggravating circumstances, the Supreme Court sustained the respondent judge's action in denying the application for bail on the strength of the prosecution's evidence which established the following facts—the three slugs found in the deceased body were fired from a revolver found in the safe of the accused which was searched upon authority of a search warrant secured on the basis of the informations furnished by the other co-accused. The alleged sole mitigating circumstance of voluntary surrender was not sufficient to offset the five aggravating circumstances alleged in the information, thereby making him liable for the supreme penalty. Section 98, Rule 123 of the Rules of Court [81] relied upon by the accused is not applicable in an application for bail, it being a rule which governs the quantum of evidence essential for a conviction.

However, where the evidence for the prosecution in opposing the application for bail of a person charged with murder and frustrated murder consisted mainly of an affidavit establishing the following facts—(1) that there was a standing grudge between the accused and Benedicto, one of the offended parties; (2) that on the evening in question, when the accused and Benedicto were drinking

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[77] PHIL. CONST. Art. III, sec. 1, pars. (1), (3), (11-21).

[78] PHIL. CONST. Art. III, sec. 1, par. (16). This is implemented by Rule 110, Rules of Court.

[79] Rule 110, Sec. 5, Rules of Court.

[80] G.R. No. L-18733, July 31, 1962.

[81] "Sec. 98. *Circumstancial evidence, when sufficient.*—Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt."

beer together in a restaurant, there was hot exchange of words; (3) that the accused immediately drew his gun and fired at Benedicto; and (4) that one of the bullets hit Buenafe, a bystander, which caused his instantaneous death — the Supreme Court granted the bail for on the basis of such affidavit, the accused could only be held liable for homicide (not a capital offense) and not murder. A person charged with a capital offense will not be entitled to bail even before conviction only if the charge against him is a capital offense and the evidence of his guilt *of said offense* is strong.[82]

2. In Deportation Proceeding

In *Ong Hee Sang v. Commissioner of Immigration*,[83] the petitioners, aliens who were allowed temporary stay in the Philippines, were found by the immigration authorities to have violated the conditions of their temporary stay. Accordingly, the Board of Immigration ordered their deportation. While confined in the Engineer's Island and pending their actual deportation, the petitioners filed a habeas corpus petition. The trial court denied the same but released them on bail on the ground that the right to bail is guaranteed by the Constitution. The Supreme Court ruled that the petitioners may not invoke the right to bail guaranteed by the Constitution since deportation proceedings are not criminal actions [84] and the order of deportation is not a punishment for a crime,[85] it being merely for the return to his country of an alien who has violated the conditions of his stay in the Philippines.[86]

Aliens in deportation proceedings, as a rule, have no inherent right to bail [87] unless that right is granted expressly by law.[88] And under Section 37 (9) (e) of the Philippine Immigration Act of 1940 [89] the Commissioner of Immigration has the discretionary power to release aliens on bail. The Commissioner in this case having exercised his discretion by refusing to release the petitioners on bail, the Court will not interfere with the Commissioner's exercise of discretion.

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[82] Bernardez v. Valera, G.R. No. L-18462, April 13, 1962.

[83] G.R. No. L-9700, Feb. 28, 1962.

[84] Lao Tang Bun v. Fabre, 81 Phil. 682 (1948); United States *ex rel.* Zapp, *et al.* v. District Director of Immigration and Naturalization, 120 F. 2d. 762 (1941).

[85] United States v. Go-Siaco, 12 Phil. 397 (1916); Lao Tang v. Fabre, *supra*, note 84.

[86] United States v. De los Santos, 33 Phil. 397 (1916); Lao Tang Bun v. Fabre, *supra*, note 84.

[87] Prentis v. Manoogian, 16 F. 2d. 422; United States *ex rel.* Pappis v. Tomlinson, 45 F. Supp. 447 (1942); United States *ex rel.* Iaonnis *et al.* v. Garfinkle, 44 F. Supp. 518 (1942).

[88] Bengzon v. Ocampo, *et al.*, 84 Phil. 611 (1949).

[89] Com. Act No. 613 (May 5, 1941) as amended.

B. DOUBLE JEOPARDY

The right against double jeopardy is guaranteed to an accused by the Constitution in the following manner: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." [90] As to what constitutes double jeopardy the Rules of Court provides: "When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated, without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant has pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same, or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." [91]

The right against double jeopardy is a right which can be waived or which if not invoked at the proper time, may be considered as waived.[92] If an accused unqualifiedly appeals from a decision of the Court of First Instance, he waives the constitutional safeguard against double jeopardy and throws the whole case open to review of the appellate court, which is called upon to render such judgment as law and fact dictate, whether favorable or unfavorable to the appellant.[93] If this is true with respect to appeals from the Court of First Instance, with more force would it be in relation to appeals from the municipal and justice of the peace courts, since the Rules of Court [94] provides that after the notice of appeal, all the proceedings and judgment of said courts are vacated and the case tried *de novo* in the Court of First Instance as if originally instituted there.[95]

If the prosecution appeals from an order of the trial court dismissing the case, the accused, if he files a brief in the appellate court, must allege the defense of double jeopardy in his brief, otherwise he is deemed to have waived his right.[96]

And where the trial judge withdrew her verbal and unsigned order of dismissal immediately after it was granted and the prosecu-

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[90] PHIL. CONST. Art. III, sec. 1, par. (20).
[91] Rule 113, Sec. 9, Rules of Court.
[92] People v. Casiano, G.R. No. L-15309, Feb. 16, 1961; People v. Finuila, G.R. No. L-11374, May 30, 1958.
[93] Lontoc v. People, 74 Phil. 513 (1943).
[94] Rule 119, Sec. 8, Rules of Court.
[95] People v. Carreon, G.R. No. L-17920, May 30, 1962.
[96] People v. Manantan, G.R. No. L-14129, Aug. 30, 1962.

tion thereafter continued the direct examination of the complainant, these without any objection on the part of the defense, but on the contrary, the defense proceeded to cross-examine the complainant and alleged the defense of double jeopardy only seven days later during the second hearing of the case, the defendant can no longer invoke his right, it having been waived. Moreover, since the judgment was incomplete, it not being in writing and signed by the judge as required by the Rules of Court,[97] there was no valid judgment which can be made the basis of double jeopardy.[98]

C. SPEEDY TRIAL

The constitutional right to a public and speedy trial [99] does not extend to the act of pronouncement of sentence.[100] Trial and judgment are two different stages of a judicial proceeding: the former is provided for in Rule 115 of the Rules of Court and the latter is governed by Rule 116.[101] And the period of the trial terminates when the period of judgment begins.[102] Thus, if the accused does not avail himself of the writ of mandamus to compel the trial judge to pronounce the corresponding judgment, he shall be deemed, in the light of the ruling laid down in *Talabon v. Iloilo Provincial Warden*,[103] to have waived his right to a speedy trial.[104]

VII. CITIZENSHIP

Among those persons considered by the Constitution as citizens of the Philippines are those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.[105] For such election to be effective, two conditions must concur: (1) the mother of the person making the election must be a citizen of the Philippines; and (2) such election must be made upon reaching the age of majority. In *Dy Cueco v. Secretary of Justice*,[106] the petition for mandamus to compel the respondents Secretary of Justice and the Commissioner of Immigration to recognize as valid the petitioner's election of Philippine citizenship was denied by the Court since (1) the petitioner failed to prove the citizenship of his mother, and (2) the election was made only seven years after he reached the age of majority. The only evidence of the political status

[97] Rule 116, Sec. 2, Rules of Court.
[98] Cabarroguis v. San Diego, G.R. No. L-19517, Nov. 30, 1962.
[99] PHIL. CONST. Art. III, sec. 1, par. (17).
[100] Reed v. State, 46 N.E. 135.
[101] Talabon v. Iloilo Provincial Warden, 78 Phil. 599 (1947).
[102] Felismino *et al.* v. Gloria, 47 Phil. 967 (1924).
[103] *Supra*, note 101.
[104] Acosta v. People, G.R. No. L-17427, July 31, 1962.
[105] PHIL. CONST. Art. IV, sec. 1, par. (4).
[106] G.R. No. L-18069, May 26, 1962.

of the petitioner's mother consisted of a certificate of baptism stating her parents' names, the date and place of her birth and a picture showing that she has the features of a Filipina woman. Since mandamus will not issue to control the exercise of judgment in the construction of a law and the application of fact thereto [107] but merely to exact compliance with a clear legal duty resulting from an office, trust, or station,[108] the Court refused to reverse the conclusion of the Secretary of Justice that such evidence was insufficient to prove the citizenship of the mother. Regarding the petitioner's contention that the delay in making the election was not unreasonable and should be excused since it was caused by his belief that he was already a Filipino citizen, the Court ruled that although the Secretary of Justice has considered a delay of three years which may be extended under certain circumstances, as when the person has always considered himself a Filipino citizen, as a reasonable time within which to make the election, the petitioner in this case was guilty not merely of three years but of seven years delay. Moreover, he had not always considered himself as a Filipino citizen since he joined a unit of Chinese volunteers and registered himself in the Bureau of Immigration as a Chinese.

VIII. THE LEGISLATURE

A. POWERS

Under the Constitution, the legislative power is vested in the Congress of the Philippines.[109] It has been said that "a grant of legislative power means a grant of all legislative powers." [110] One of such powers which is inherently legislative in character is the power to create and abolish municipal corporations. In the leading case of *Mendenilla v. Onandia,*[111] the Court had occasion to rule on the legal effect which a conversion of a municipality into a city had on the existing municipal offices. In that case, the petitioner, a civil service eligible, was, since 1954, Chief of Police of the Municipality of Legaspi, Albay, he having been appointed by the municipal mayor in accordance with the Revised Administrative Code. On June 12, 1959, Republic Act No. 2234, converted the Municipality of Legaspi into the City of Legaspi. Section 22 thereof provides that the President with the consent of the Commission on Appointments shall appoint among others, the Chief of Police. On February 26, 1960, the Pres-

[107] Policarpio v. Veterans Board, 52 O.G. 14, 6178 (1956); Behn, Meyer & Co. v. Antholtz, 51 Phil. 796 (1928).

[108] Viuda e Hijos de Zamora v. Wright, 53 Phil. 613 (1929); Ng Gioc Liu v. Secretary of Foreign Affairs, 47 O.G. 10, 5112 (1950).

[109] PHIL. CONST. Art. VI, sec. 1.

[110] Ocampo *et al.* v. Cabangis, 15 Phil. 626, 631 (1910).

[111] G.R. No. L-17803, June 30, 1962.

ident, upon application of the petitioner, designated him as acting Chief of Police of the City effective as of June 12, 1959. On March 19, 1960, the President appointed the respondent as Chief of Police of the City and terminated the petitioner's office. The petitioner then brought a quo warranto petition questioning the respondent's right to the office.

Held: The power to create or establish municipal corporations, to enlarge or diminish their area, to reorganize their governments, or to dissolve and abolish them altogether is a political function which rests solely in the legislative branch of the government and, in the absence of constitutional restrictions, the power is practically unlimited.[112] Pursuant to this power, Congress enacted Republic Act No. 2234. With the creation of the City, the legal personality of the Municipality was extinguished and the City came into being as a new legal entity or Municipal corporation. The consequent effect of said dissolution, was the abolition of all municipal offices then existing under the superseded municipality including that held by the petitioner, save those excepted in the Charter itself. The petitioner's appointment therefore by the municipal mayor ceased to have legal force and effect on June 12, 1959.

The case of *Brillo v. Enage*,[113] cited by the petitioner in support of his theory that there was no abolition of the municipal offices upon the dissolution of the Municipality is not in point. The *Brillo* case involves the office of the Justice of the Peace while the present case involves a municipal office. The *Brillo* case is distinguishable from the case at bar in at least two aspects: (1) the Justice of the Peace is not a municipal official, he being paid with national funds and is appointed and supervised by the national government. Here, the Chief of Police is a municipal official, receiving salary from the municipal coffers; and (2) the Justice of the Peace, before and after the conversion of the Municipality into a city was appointed by the President; there was no change in the appointing power. Here, there was a change from the municipal mayor to the President. This change had the consequent result of abolishing the position of the Chief of Police of the dissolved Municipality.

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[112] Chuoco Tiaco v. Forbes, 228 U.S. 549 (1913); Asuncion *et al.* v. Yriarte, 28 Phil. 67 (1914); 37 Am. Jur. 626; MCQUILLIN, MUNICIPAL CORPORATIONS, 509-512 (3rd ed.).

[113] G.R. No. L-7115, March 30, 1954. The Supreme Court in this case held that the conversion of the Municipality of Tacloban into the City of Tacloban by virtue of Republic Act No. 760 did not have the effect of abolishing the office of the Justice of the Peace of the defunct Municipality.

B. FORMAL LIMITATION ON POWER TO PASS LAW

Republic Act No. 1199 [114] is entitled "An Act to Govern the Relations Between Landholders and Tenants of Agricultural Lands (Leasehold and Share Tenancy)." Republic Act No. 2263 [115] is entitled "An Act Amending Certain Sections of Republic Act No. 1199, Otherwise Known as the Agricultural Tenancy Act of the Philippines." Sections 19 and 20 of Republic Act No. 2263 created and defined the functions of the Tenancy Mediation Division of the Department of Justice. Nowhere in the titles of both Acts is the creation of the Tenancy Mediation Division ever mentioned. It was contended that Sections 19 and 20 of Republic Act No. 2263 are void [116] since that Act did not satisfy the constitutional requirement that the subject of the bill be expressed in its title.[117] The Supreme Court, in *Cordero v. Cabatuando*,[118] upheld the validity of the provisions. The constitutional requirement is satisfied if all parts of the law are related and are germane to the subject-matter expressed in the title of the bill. The constitutional requirement is complied with as long as the law, as in this case, has a single general subject, which is the Agricultural Tenancy Act, and the amendatory provisions no matter how diverse they may be, as long as they are not inconsistent with or foreign to the general subject, will be regarded as valid.[119] Sections 19 and 20 are germane to and are reasonably necessary for the accomplishment of the one general subject, agricultural tenancy.

In *Teresa Realty, Inc. v. Maxima Blouse de Potenciano*,[120] the lessor appealed from the decision of the Court of Appeals modifying the Court of First Instance's decision in an ejectment suit by reducing the rental to not more than 8% of the assessed value as provided by the second proviso of Section 5, Republic Act No. 1599,[121] amendatory to Republic Act No. 1162,[122] on the ground that since Section 5 applies only to landed estates to be expropriated under said Act, the

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[114] Approved, Aug. 30, 1954.

[115] Approved, June 19, 1959.

[116] Article VI, Sec. 21, par. (1) of the Philippine Constitution which provides that "no bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill" prohibits the passage of two classes of bills: (1) a bill containing provisions not fairly embraced in its title; and (2) a bill which embodies different subjects, all of them being expressed in its title. In the first case, the bill is valid except the provision not fairly embraced in the title. In the second case, the whole act is void. SINCO, *op. cit., supra*, note 23 at 224.

[117] PHIL. CONST. Art. VI, sec. 21, par. (1).

[118] G.R. No. L-14542, Oct. 31, 1962.

[119] SINCO, *op. cit., supra*, note 23 at 225; COOLEY, CONSTITUTIONAL LIMITATIONS, 172 (6th ed.). *See* also Public Service Commission v. Recteweald, 290 Ill. 314; 8 A.L.R. 466.

[120] G.R. No. L-17588, May 30, 1962.

[121] This Act became a law without executive approval on June 17, 1956.

[122] Approved, June 18, 1954.

second proviso thereof is not applicable to the case at bar because the petitioner's land was not being subjected to expropriation. Upholding the contention of the lessor-petitioner, the Court said that since Section 5 applies only to lands to be expropriated, the second proviso thereof cannot apply to the petitioner's land which was not being subjected to expropriation. The restriction on rentals prescribed in the second proviso of Section 5 may not be construed as an independent legislation, enforceable in every case even if the remainder of the section should not be applicable for in that event, the Act would cover two different and unrelated subjects: authority to expropriate estates, and a general regulation of collectible rentals for estates whether subject to expropriation or not. Thus construed, it would violate the constitutional provision that "no bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill." [123] The title [124] of the Act (Rep. Act No. 1162) gives no inkling that a general ceiling on rentals was being established.

IX. THE JUDICIARY

A. ADMINISTRATION OF JUSTICE A MATTER OF NATIONAL CONCERN

In *Lacson v. Villafranca, et al.*[125] a question arose as to who has the power to appoint the Deputy Clerk of the Municipal Court of Manila, the Secretary of Justice or the City Mayor. The petitioner, an appointee of the mayor, invoked Section 22 of the Revised Charter of Manila [126] which provides that the mayor shall appoint the other officers and employees *of the city* whose appointment is not vested in the President. Consequently, the answer depended on whether or not the Deputy Clerk of Court is an employee of the City of Manila. The Supreme Court held that the Deputy Clerk of Court is not an employee of the City of Manila. Section 20 of the Charter enumerates the "city departments" and the Municipal Court is not included in the enumeration. Even the Office of the City Fiscal, one of the city departments mentioned in said Section 20 has been placed under the Department of Justice and beyond the supervision

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[123] PHIL. CONST. Art. VI, sec. 21, par. (1).

[124] "An Act Providing for the Expropriation of Landed Estates or Haciendas or Lands Which Formed Part Thereof in the City of Manila, their Subdivision into Small Lots, and the Sale of Such Lots at Cost or Their Lease on Reasonable Terms, and for Other Purposes."

[125] G.R. No. L-17398, Jan. 30, 1962.

[126] Rep. Act No. 409 (June 18, 1949) as amended.

and control of the Mayor. Moreover, Section 39 confers upon the Secretary of Justice administrative supervision over the Municipal Court. This is in line with Section 83 of the Revised Administrative Code which vests in the Department of Justice the executive supervision over courts of first instance as well as inferior courts. Since the Municipal Court of Manila is under the executive supervision of the Department of Justice, it follows that the Deputy Clerk of Court and all other subordinate officers and employees of said court are appointees of the Secretary of Justice. The reason for this rule is that the administration of justice is a matter of national and not of local concern.

The rule in *Lacson v. Villafranca* was amplified in the case of *Sangalang v. Vergara*[127] where the Court held that although the Office of the City Fiscal of Manila is enumerated as one of the city departments, the fact that it has been placed, by virtue of Republic Act No. 1201[128] amending Section 20 of the Charter, under the Department of Justice and beyond the supervision and control of the mayor has the effect of withdrawing the fiscal's office from the list of the city departments under the mayor. Consequently, it is the Secretary of Justice and not the mayor who has the power to appoint clerks in the Office of the City Fiscal.

B. DISQUALIFICATION OF JUDGES

The due process of law requires a hearing before an impartial and disinterested tribunal and every litigant is entitled to nothing less than the cold neutrality of an impartial judge.[129] Courts should administer justice free from suspicion of bias and prejudice. To secure the litigants of an impartial and disinterested tribunal, Rule 126 of the Rules of Court[130] enumerates the grounds upon which the parties litigants may move for the disqualification of the judge. And the enumeration therein is not exclusive in the sense that a judge may voluntarily and without challenge from either party, inhibit himself from taking cognizance of the case even on grounds not enumerated therein. Cases of voluntary inhibition, based on good, sound and/or ethical grounds are matters within the discre-

[127] G.R. No. L-16174, Oct. 30, 1962.
[128] Approved, Sept. 2, 1954.
[129] Gutierrez v. Hon. Santos, *et al.*, G.R. No. L-15824, May 30, 1961.
[130] "Section 1. *Disqualification of judges.*—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of the Civil Law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record."

tion of the judge. Thus, a judge cannot be compelled by mandamus to take cognizance of a case where said judge, to remove any cloud of suspicion, voluntarily inhibited himself on the ground of close blood relationship with the counsel of one of the parties, a ground not enumerated in Rule 126.[131]

C. JUDICIAL FUNCTIONS

Courts of justice exist to settle actual controversies and adjudicate upon the rights of the parties affected. Once the question before the court has become moot or academic, the court will dismiss the case even though the legal issues involved therein are precedent-setting, since a decision that may be rendered therein can have no practical effect.[132]

In *Palaran v. Republic*,[133] the Supreme Court, reiterating its ruling in the cases of *Danilo Channie Tan v. Republic* [134] and *Tan Yu Chin v. Republic* [135] which overruled the cases of *Sen, et al. v. Republic*,[136] *Serra v. Republic*,[137] and *Sy Quimsuan v. Republic* [138] held that courts cannot make a judicial declaration that a person is a Filipino citizen in a petition for naturalization even though the evidence of the applicant proves his status as a Filipino citizen. The reason is that courts of justice exist for the settlement of justiciable controversies which imply a given right, legally demandable and enforceable, an act or omission violative of said right, and a remedy, granted or sanctioned by law, for said breach of trust. As an incident only of the adjudication of the rights of the parties to a controversy, may the court pass upon and make a pronouncement relative to their status. Otherwise, such pronouncement is beyond judicial power.

D. FORM OF DECISIONS

In order that rights based on decisions of the court may have a concrete, tangible and lasting evidence and that errors committed by the court may be detected and corrected,[139] the Constitution requires that decisions rendered by courts of record must state clearly

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[131] Del Castillo v. Javelona, *et al.*, G.R. No. L-16742, Sept. 29, 1962.
[132] Lewin v. Deportation Board, G.R. No. L-16872, Jan. 31, 1962; Cachuela v. Castillo, *et al.*, G.R. No. L-18316, Aug. 31, 1962.
[133] G.R. No. L-15047, Jan. 30, 1962.
[134] G.R. No. L-14159, April 18, 1960.
[135] G.R. No. L-15775, April 29, 1961.
[136] G.R. No. L-6868, April 30, 1955.
[137] G.R. No. L-4223, May 12, 1952.
[138] 49 O.G. 2, 492 (1953).
[139] SINCO, *op. cit., supra*, note 23 at 332.

and distinctly the facts and the law on which it is based.[140] In *Griñen v. Consolacion*,[141] Griñen filed a petition for prohibition with preliminary injunction to restrain the city fiscal from proceeding with the preliminary investigation in which he was charged of malversation. The Court of First Instance rendered the following decision: "It appearing from the petitioner's testimony that the auditor of the Philippine Charity Sweepstake Office had written a letter to the city fiscal of Iloilo charging the petitioner with complicity in the criminal acts of . . . who had issued rubber checks in payment of Charity Sweepstakes tickets which they had received from the petitioner who was the cashier of the Iloilo branch of said Charity Sweepstakes Office, the petition praying that the city fiscal of Iloilo be restrained from investigating the petitioner is without merit. Petition dismissed . . ." The petitioner appealed from this decision contending among others that the trial court erred in not clearly and distinctly stating the facts and law on which the decision was based.

Held: The decision satisfies the constitutional requirement regarding form of decision. It states the facts upon which the decision was based—the auditor wrote a letter to the fiscal charging the petitioner with complicity in the criminal acts in connection with the issuance of rubber checks. The ultimate test as to the sufficiency of the trial court's findings of fact is whether they are comprehensive enough and pertinent to the issue raised to provide a basis for decision. When the issue involved is simple, as in this case, the trial court is not required to make a finding of fact upon all evidence adduced. It must state only such findings of facts as are within the issue presented and necessary to justify the conclusion.[142] The petitioner's admission that there was such a letter of complaint which the trial court considered as the legal basis for the fiscal to conduct the preliminary investigation is sufficient to support the judgment of the court. The dominant issue in a petition for prohibition under the Rules of Court, is whether the proceedings are without or in excess of jurisdiction. In dismissing the petition, the trial court had in mind the doctrine that as a general rule, the prosecution in a criminal offense cannot be the subject of prohibition or injunction, the same being invested with public interest.[143]

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[140] PHIL. CONST. Art. VIII, sec. 12.

[141] G.R. No. L-16050, July 31, 1962.

[142] Ongsiako v. Magsilang, 50 Phil. 380 (1927); I MORAN, RULES OF COURT 617-8 ((3rd ed.).

[143] Kwong Sing v. City of Manila, 41 Phil. 103 (1920); Dimayuga v. Fernandez, *et al.*, 43 Phil. 304 (1922); Gorospe, *et al.* v. Peñaflorida, G.R. No. L-11583, July 19, 1957.

X. COMMISSION ON ELECTIONS

A. FUNCTIONS

To protect the sanctity of the ballots, safeguard the free exercise of the right of suffrage and insure a free, honest and orderly election, the Commission on Elections, if it was to accomplish these objectives free from outside influence, was in 1940, elevated from the status of a statutory to a constitutional entity. As such, it was vested with the exclusive power and authority to administer and enforce all laws relative to the conduct of elections. It shall decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. And its decisions, orders, and rulings shall be subject to review by the Supreme Court only.[144] In *Albano v. Arranz*,[145] the petitioner, a Nacionalista Party candidate for representative of Isabela, questioned the returns produced by the provincial treasurer for certain precincts on the ground that said returns showed a different number of votes cast for the contending parties, as compared with the carbon copies furnished to the representatives of the Nacionalista Party at said precincts. When notified of this, the Commission ordered the suspension of the proclamation of winning candidates until further orders and the provincial board of canvassers accordingly suspended the canvass of votes in the questioned precincts. Respondent Reyes, a Liberal Party candidate for the same position, filed a mandamus petition with the Court of First Instance of Isabela to compel the provincial board of canvassers to canvass the disputed votes and proclaim the winner, contending that the orders of the Commission were null and void. The respondent judge issued a writ of preliminary injunction ordering the provincial board of canvassers and the provincial treasurer to refrain from bringing the questioned returns to Manila, as per instruction of the Commission.

Held: The respondent judge acted without jurisdiction. The suspension of the proclamation of the winning candidate pending an inquiry into irregularities brought to the attention of the Commission was well within its administrative jurisdiction, in view of the exclusive authority conferred upon it by the Constitution to administer and enforce all laws relative to the conduct of elections. The Commission certainly had the right to inquire whether or not discrepancies existed between the various copies of election returns

[144] PHIL. CONST. Art. X, sec. 2.
[145] G.R. No. L-19260, Jan. 31, 1962.

for the precincts in question and suspend the canvass in case of variance.

Even assuming that the order to suspend the proclamation of the winner was in any way defective, the correction thereof did not lie within the authority of the Court of First Instance since the Constitution expressly provides that the orders, decisions and rulings of the Commission shall be subject to review only by the Supreme Court and by no other tribunal.[146] Chaos would ensue if the Court of First Instance of each and every province were to arrogate unto itself the power to disregard, suspend, or contradict any order of the Commission. That constitutional body would be readily reduced to impotence.

B. POWER TO PUNISH CONTEMPT

Under the law and the Constitution, the Commission has not only the duty to enforce and administer all laws relative to the conduct of elections but also the power to try, hear and decide any controversy that may be submitted to it in connection with the election. In this sense, the Commission, although it cannot be classified as a court of justice within the meaning of the Constitution for it is merely an independent administrative body, may, however, exercise quasi-judicial functions insofar as controversies that by express provision of law come under its jurisdiction. But the difficulty lies in drawing the demarcation line between the duty which inherently is administrative in character and a function which calls for the exercise of the quasi-judicial function of the Commission. And when the Commission exercises a ministerial or administrative function, it cannot exercise the power to punish for contempt because such power is inherently judicial in nature.[147] Thus, the Commission has no power to punish for contempt a provincial treasurer who was designated by the Commission to take charge and custody of official ballots as well as their distribution among the different municipalities of the province for having violated the instructions and resolutions of the Commission by opening three ballot boxes not in the presence of certain persons specified in the resolutions and instructions since such resolutions and instructions merely called for the exercise of an administrative or ministerial function. They merely contained the procedure to be followed in the distribution of ballots among the different municipalities.[148]

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[146] Luison v. Garcia, G.R. No. L-10916, May 20, 1957.

[147] Guevara v. Commission on Elections, G.R. No. L-12596, July 31, 1958.

[148] Masangcay v. Commission on Elections, G.R. No. L-13827, Sept. 28, 1962. Supposed that the Commission was in the exercise of its quasi-judicial functions. Does it have the power to punish for contempt in that capacity? The

XI. AUDITOR GENERAL

In *Guevara v. Gimenez and Mathay*,[149] the petitioner brought a mandamus suit to compel the respondents Auditor General and auditor of the Central Bank to pass in audit two bills of the petitioner for legal services rendered by the latter to the Bank. The respondents refused to audit the bills on the ground that the fees stipulated for between the petitioner and the Central Bank were excessive. One of the defenses interposed was that appeal and not mandamus is the proper remedy.

Held: When a contract is executed by an agency of the government, acting through its duly authorized officer and there is an appropriation made by law to cover the disbursement required by said contract, apart from the fact that the delivery of the goods or rendition of the services stipulated has been duly attested to, the Auditor General has the duty, enforceable by mandamus, to ap-

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Commission seems to be authorized to do so by Section 5 of the Revised Election Law (Rep. Act No. 180, as amended) which provides that the Commission or any member thereof shall have the power to punish contempts provided for in Rule 64 of the Rules of Court, under the same procedure and with the same penalties provided therein. Considering that the power to punish for contempt is inherently judicial in nature, is Section 5 of the Revised Election Law unconstitutional as violative of the principle of separation of powers? The petitioner in the Masangcay case so contended but the Court refused to answer this question, it appearing that the Commission was then in the exercise of a ministerial and not a quasi-judicial function and therefore a resolution of the question would be unnecessary and would not be determinative of the controversy.

But it is submitted that if the Commission is in the exercise of its quasi-judicial function, it may accordingly punish any person for contempt because it is so authorized by Section 5 of the Revised Election Law. The said Section 5 may not be attacked as a violation of the principle of separation of powers because it is an accepted rule that administrative agencies may be vested with powers and functions pertaining to the executive, legislative or judicial departments. Thus, they may exercise the power to promulgate rules and regulation having the force of law (legislative); to hear and decide controversies (judicial); and to issue permits and fix rates, wages or prices (executive). If Congress is granted by the Constitution with the power to create inferior courts as well as the power to define, prescribe and apportion the jurisdiction of the various courts, there is no reason why Congress cannot grant judicial or adjudicative powers to administrative agencies. And if Congress can grant judicial powers to administrative agencies, there is no reason why it cannot, when such agencies are exercising such judicial functions, grant such agencies the power to punish for contempt which is but an incident to the exercise of judicial powers.

Thus, administrative agencies like the CIR (Sec. 6, Com. Act No. 103), CAR (Sec. 8, Rep. Act No. 1267), and CTA (Sec. 10, Rep. Act No. 1125) have similar powers like the Commission on Elections to punish for contempt, yet such powers have never been seriously questioned.

The same conclusion was intimated by the Supreme Court in the case of Guevara v. Commission, *supra* note 147.

See also SINCO, *op. cit.*, *supra*, note 23 at 388.

[149] G.R. No. L-17115, Nov. 30, 1962.

prove and pass in audit the voucher issued by the proper officer for said disbursements.[150]

> Under the Constitution, the Auditor General's authority in connection with expenditures of the government is limited to the auditing of expenditures of funds or property pertaining to, or held in trust by, the the government or the provinces or municipalities thereof.[151] Such function is limited to a determination of whether there is a law appropriating funds for a given purpose; whether a contract, made by the proper officer, has been entered into in conformity with said appropriation law; whether the goods or services covered by said contract have been delivered or rendered in pursuance of the provisions thereof, as attested to by the proper officer; and whether payment therefor has been authorized by the officials of the corresponding department or bureau. If these requirements have been fulfilled, it is the ministerial duty of the Auditor General to approve and pass in audit the voucher and treasury warrant for said payment. He has no discretion or authority to disapprove said payment upon the ground that the aforementioned contract was unwise or that the amount stipulated thereon is unreasonable. If he entertains such belief, he may do no more than discharge the duty imposed upon him by the Constitution[152] "to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant." This duty implies a negation of the power to refuse and disapprove payment of such expenditures, for its disapproval, if he had authority therefore, would bring to the attention of the aforementioned administrative officer the reasons for the adverse action thus taken by the General Auditing Office, and hence, render the imposition of said duty unnecessary.

XII. CIVIL SERVICE

To promote an efficient and qualified corps of civil servants, the framers of the Constitution deemed it wise to insert provisions on the civil service. One of such provisions prohibits the removal or suspension of officers and employees in the Civil Service except for cause as provided by law.[153] But this guarantee of security of tenure cannot stand in the way of the exercise by the legislature of its inherent power to alter, abolish or create a municipal corporation, or convert a municipality into a city with the consequent effect of the extinction of the existing municipal offices, as long as such power is exercised in good faith and not merely to do away with a particular incumbent and replacing him with a political favorite.[154] The reason has been stated in the leading case of *Manalang v. Quitoriano et al.*,[155] to wit:

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[150] Ynchausti & Co. v. Wright, 47 Phil. 866 (1925); Tan C. Tee & Co. v. Wright, 53 Phil. 171 (1929); Radiowealth, Inc. v. Agregado, 86 Phil. 429 (1950).

[151] PHIL. CONST. Art. XI, sec. 2.

[152] *Ibid.*

[153] PHIL. CONST. Art. XII, sec. 4.

[154] Mendenilla v. Onandia, *supra*, note 111.

[155] G.R. No. L-6898, April 30, 1954.

> To remove an officer is to oust him from office before the expiration of his term. A removal implies that the office exists after that ouster. So that, when an office has been abolished, the officer thereof could not have been removed therefrom. . . . The abolition of the office of the petitioner is not against the prohibition of the Constitution against removal of a civil service officer or employee except for cause inasmuch as the petitioner has neither been removed nor suspended from office.

XIII. EXPROPRIATION

It is the declared principle of the Constitution that the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State.[156] And to give effect to this declaration of principle, the Constitution authorizes Congress to expropriate, upon payment of just compensation, lands to be subdivided into small lots and conveyed at cost to individuals.[157]

Pursuant to its power under the Constitution to expropriate lands, Congress enacted Republic Act No. 2616 [158] providing for the expropriation of the Tatalon Estate. The said Act provides:

> Sec. 4. After the exprppriation proceedings mentioned in section two of this Act shall have been initiated and during the pendency of the same, no ejectment proceedings shall be instituted or prosecuted against the present occupant of any lot in said Tatalon Estate, and no ejectment proceedings already commenced shall be continued. . . .

Subsequently, Congress passed Republic Act No. 3453,[159] amending Section 4 of Republic Act No. 2616 to read as follows:

> Sec. 4. Upon approval of this amendatory Act, no ejectment proceedings shall be instituted or prosecuted against the present occupants of any lot in said Tatalon Estate, and no ejectment proceedings already commenced shall be continued. . . .

The question therefore arose as to whether Republic Act No. 3453 amounts to a confiscatory legislation and, hence, unconstitutional since it deprives the owners of the land subject to expropriation of the right to bring an ejectment suit even though no expropriation proceeding has yet been filed. The Supreme Court in *Cuatico, et al. v. Court of Appeals, et al.*[160] and *J. M. Tuason & Co. v. Cabildo*,[161] held that the amendment is a radical one in that it allows the continuance of the occupation of the land on the part of the tenant indefinitely even if no expropriation proceedings are taken or contemplated. This

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[156] PHIL. CONST. Art. II, sec. 5.
[157] PHIL. CONST. Art. XIII, sec. 4.
[158] This Act became a law without executive approval on August 3, 1959.
[159] Approved, June 16, 1962.
[160] G.R. Nos. L-20141-42, Oct. 31, 1962.
[161] G.R. No. L-17168, Oct. 31, 1962.

is clearly confiscatory for its result is to eventually take from the owner his property without compensation or to deprive him of his dominical rights of ownership over it in violation of the Constitution.

Section 4 of Republic Act No. 2616 has already been interpreted to mean that an ejectment proceeding cannot be barred or suspended under said section unless the following conditions are present: (1) an action for expropriation is actually filed; (2) the government takes possession of the land; and (3) coetaneous payment of just compensation is made.[162] Republic Act No. 3453 brushes aside all these requirements for the valid exercise of the power of eminent domain[163] contemplated in our Constitution. The Court continued thus:

> It in effect commands that no ejectment proceedings shall be instituted, or if one shall have been commenced it shall be suspended, even if no expropriation proceedings shall have been filed by the government. This is indeed confiscatory, for its necessary implication is that as long as the government refrains from filing an action for expropriation the owner cannot enjoy its dominical rights over the property. And if the government chooses not to take any action for expropriation indefinitely the occupant would remain in the illegal possession of the land also indefinitely. Such a situation cannot be sanctioned by this Court for it will result in a flagrant confiscation of private property without due process in violation of our Constitution. It is, therefore, imperative that we declare, as

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[162] J. M. Tuason & Co. v. Court of Appeals, *et al.*, G.R. No. L-18128; Republic v. J. M. Tuason & Co., *et al.*, G.R. No. L-18672, Dec. 26, 1961.

[163] The Supreme Court in this dictum seems to imply that the power of eminent domain and the power to expropriate are similar in that both have the same requisites. This is not so. The validity of the exercise of eminent domain depends upon two conditions: (1) that there be just compensation; and, (2) that the property be taken for public use. Both requisites are subject to judicial review. However, as regards expropriation, the Constitution prescribes only one requisite, just compensation. Whether the expropriation constitutes what the courts consider public use or not is immaterial. The only issue subject to judicial review is whether there is just compensation. "When Congress authorizes the taking of private land for the purpose of subdividing it into small lots to be sold at cost to individuals, no court or any other authority has any lawful right to subject the validity of the taking to the tests ordinarily employed in determining the legitimate exercise of the general right to eminent domain." SINCO, *op. cit.*, *supra*, note 23 at 451.

The Court may probably have been influenced by its ruling in Guido v. Rural Progress Administration (47 O.G. 4, 1848 [1949]) and subsequent cases where, indulging in judicial legislation, it erroneously applied the test for the validity of the exercise of eminent domain to expropriation and held that expropriation to be valid needs two more requisites: (1) that the land expropriated must be large landed estate, trust in perpetuity or land that embraces a whole town or a large section of a town or city; and (2) that the object must be public safety, health, morals, community prosperity and contentment, and public peace and order.

The decision of the Court, however, is correct for the effect of the amendment is to deprive the owner of the lands subject to expropriation of their property without payment of just compensation. The owners, even though no expropriation proceedings has been instituted, are deprived of their dominion over their property without payment of just compensation.

we now do that Section 4 of Republic Act No. 3453 which prohibits the filing of an ejectment proceeding, or the continuance of one that has already been commenced, even in the absence of expropriation proceedings, offends our Constitution and, hence, is unenforceable.

XIV. PROHIBITION AGAINST ALIEN LAND HOLDING

The Constitution provides that save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of public domain in the Philippines.[164] This is but a realization of the long time preoccupation of the Filipinos to conserve and develop the patrimony of the nation as expressed in the Preamble of the Constitution.

Register of Deeds of Manila v. China Banking Corporation[165] clarified what transfer or assignment is prohibited by the above constitutional provision. In that case, the China Banking Corporation acquired a residential lot[166] covered by a Torrens certificate by virtue of a deed of transfer executed by one of its employees in satisfaction of the civil liability arising from the criminal offense of qualified theft committed by the employee against the bank. The bank sought to register this deed but the Register of Deeds and the Land Registration Commissioner refused on the ground that the bank was alien owned and thus prohibited from acquiring lands under the Constitution. The bank contended that (1) under Section 25 of the General Banking Act,[167] an alien commercial bank may acquire lands in the Philippines subject to the obligation of disposing of it within five years from the date of its acquisition and (2) what the constitutional prohibition against alien landholding contemplates is permanent and not temporary holding of land. The Solicitor General, representing the Register of Deeds and the Land Registration Commissioner, on the other hand, contended that (1) Section 25 of the General Banking Act is not an amendment of the constitutional prohibition but is merely an exception to the general rule, under the existing banking and corporation laws, that banks and corporations can engage only in the particular business for which they were specifically created and (2) what is material is the character and nature and not the length of possession, so that real property may not be held in ownership by an alien even for a single day.

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[164] PHIL. CONST. Art. XIII, sec. 5.

[165] G.R. No. L-11964, April 88, 1962.

[166] The case of Krivenko v. Register of Deeds of Manila (79 Phil. 461 [1947]) ruled that residential lots are covered by the term "private agricultural land."

[167] Rep. Act No. 337 (July 24, 1948).

Held: Assuming *arguendo* that under Section 25 [168] of the General Banking Act, any commercial bank, whether alien owned or controlled or not, may purchase and hold real estate for the specific purposes and in the particular cases enumerated therein,[169] the present case does not fall under anyone of them. The conveyance in question was not in satisfaction of a debt previously contracted in the course of its business dealings but was in satisfaction of "civil liability" arising from the criminal act of qualified theft.

The contention that the constitutional prohibition should be limited to permanent acquisition of real estate is untenable. The character and nature, not the length of possession is the test. This can be clearly implied from the case of *Smith Bell & Co. v. Register of Deeds of Davao* [170] where a lease for 50 years in favor of an alien was held to be registrable.[171] The constitutional prohibition is absolute in terms prohibiting all acquisitions and holdings in ownership.[172]

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[168] "Sec. 25. Any commercial bank may purchase, hold, and convey real estate for the following purposes:

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(c) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(d) Such as it shall purchase at sales under judgments, decrees, mortgages, or trust deed held by it and such as it shall purchase to secure debts due to it.

"But no such bank shall hold the possession of any real estate under mortgage or trust deed, or the title and possession of any real estate purchased to secure any debt due to it, for a longer period than five years."

[169] It is submitted that the contention of the Solicitor General regarding the applicability of Section 5 of the General Banking Act is correct. Section 25 can not be construed as an amendment of the Constitution. It must be construed according to the Solicitor General's contention, otherwise, it would be unconstitutional insofar as it applies to commercial banks which are alien owned.

[170] 50 O.G. 11, 5293 (1954).

[171] There are those who contend that the Court's ruling in the Smith Bell & Co. case has opened the door for a possible circumvention of the purpose underlying the constitutional prohibition. Under the doctrine of Smith, Bell & Co. case and the provision of the New Civil Code authorizing lease for a period not exceeding 99 years (Art. 1643), a lease to an alien of land for 99 years would be valid and it is thus claimed that this would in effect be defeating the purpose of the Constitution. It is submitted, however, that such would not be the effect, for lease and sale or absolute transfer are two entirely separate and distinct contracts. In lease, the lessee acquires only the possession of the property, the title remaining in the lessor. As title remains in the lessor, he has all the rights of an owner subject, of course, to the right of the lessee. The lessor may sell or otherwise encumber the leased property. However, in sale, all the rights of the original owner over the property passes to the purchaser. Nothing remains in the original owner.

[172] Ong Sui Si Temple v. Register of Deeds of Manila, G.R. No. L-6776, May 21, 1955.