CONSTITUTIONAL LAW AND NATURALIZATION LAW

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The Philippine constitutional scheme underwent a crisis of sorts last year. It was not the crisis which faced the American system during the era of the New Deal, although the same boldness and determination to explore hitherto untravelled fields characterized the decisions of the New Era. The "Constitutional Revolution" of the New Deal was more extensive and spanned a longer period of time.[1] The Philippine constitutional revolution seems to be just beginning. The case of Aytona v. Castillo [2] was the opening salvo in an exchange which continued through 1963 and promises to resume with renewed vigor this year.[3]

A spate of cases was spawned by the Aytona ruling: one was held to be outside of this decision and the rest squarely within it.[4] And about the middle of the year, the New Era won another victory —the word is used advisedly—when the incumbent President's appointee to the Commission on Elections was given judicial approval by the Supreme Court over the appointee of his predecessor.[5] Towards the end of 1963, the Supreme Court handed down what many critics of the New Era called a stinging rebuff of the incumbent and his administration in the much-publicized Rice Importation Case.[6]

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* Recent Decisions Editor, PHILIPPINE LAW JOURNAL (1963-1964).

[1] See EDWARD S. CORWIN, THE CONSTITUTION AND WHAT IT MEANS TODAY, 39-45 (1958 ed.).

[2] G.R. No. L-19313, Jan. 20, 1962. See section on "The 'midnight' appointments"; also footnote 116, *infra*.

[3] The Agricultural Land Reform Code (Rep. Act No. 3844, Approved, Aug. 8, 1963) is facing its first serious judicial scrutiny: a rice-planter (the same person who won in the case of Gonzales v. Hechanova, decided Oct. 23, 1963) has filed a suit before the Supreme Court attacking its constitutionality.

[4] The petitioners in the following cases were declared to be "midnight" appointees and covered by the ruling in Aytona v. Castillo: Merrera v. Liwag, G.R. No. L-20079, Sept. 30, 1963; Rodriguez v. Quirino, G.R. No. L-19800, Oct. 28, 1963; Valer v. Briones, G.R. No. L-20033, Nov. 29, 1963; Siguiente v. Sec. of Justice, G.R. No. L-20370, Nov. 29, 1963; and, Ronquillo v. Galano, G.R. No. L-21117, Nov. 29, 1963. The petitioner in the case of Soreno v. Sec. of Justice, G.R. No. L-20272, Dec. 27, 1963, fell outside the scope of the Aytona ruling, i.e., his appointment was valid. On the other hand, the Supreme Court declared void the petitioners' appointments in the cases of Valencia v. Peralta, G.R. No. L-20864, Aug. 23, 1963, and Batario v. Parentilla, G.R. No. L-20485, Nov. 29, 1963, on other grounds, ignoring the question of whether or not the Aytona ruling was in point.

[5] Visarra v. Miraflor, G.R. No. L-20508, May 16, 1963. This case is discussed under the section on the Commission on Elections.

[6] Gonzales v. Hechanova, G.R. No. L-21897, Oct. 23, 1963. This will be discussed extensively in the section "The President as commander-in-chief."

The cases previewed above were the highlights of an eventful year in the constitutional history of this Republic. Quite clearly, they show, on one hand, a Chief Executive courageous enough—though certainly far from being foolhardy—to test the extent of the powers vested upon him by the fundamental law and, on the other, a judicial tribunal sagaciously pointing out the metes and bounds of presidential power, nodding in assent when the act or decision fell within the permissible area and dissenting strongly when the presidential foot stepped out of bounds.

On the other hand, there were cases where the Supreme Court, undisturbed by the glare of publicity which had scrutinized its more "sensational" decisions, handed down equally vital rulings. Whether these rulings set precedents or simply reiterated past cases, they made for another exciting year in the field of constitutional law. For unlike other areas involving mere legislative enactments, the field of constitutional law is ever challenging. Indeed, what an American Justice once said of the United States Constitution may likewise be said of our own fundamental law: "In the Constitution of the United States—the most wonderful instrument ever drawn by the hand of man—there is a comprehension and precision that is unparalleled; and I can truly say that after spending my life in studying it, I still daily find in it some new excellence." [7]

CIVIL RIGHTS

Due Process

Strict construction to assure due process

In the case of *Kamuning Theater, Inc. and Stewart v. Quezon City and Amoranto*,[8] the Supreme Court held valid a resolution of the Quezon City Council withdrawing from petitioners the authorization to operate a supermarket in Project 4, on the ground that petitioners sold perishable, unrefrigerated goods therein. Petitioners' authority, the Supreme Court went on, did not include the right to operate a public market but only a supermarket where only refrigerated goods are to be sold. Nevertheless, the Supreme Court finally held that "petitioners' right to due process, equal protection of the laws and protection against impairment of contracts would be violated if they were totally prohibited from operating the supermarket. They may do so, provided only refrigerated goods, aside from other unperishables, excluding unrefrigerated perishables, are sold."

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[7] Justice Johnson, in Elkson v. Deliesseline, 8 Federal Cases 593 (1823).
[8] G.R. No. L-19136, Feb. 28, 1963.

Not necessarily judicial process

Authorities generally agree that due process is not limited to judicial proceedings. Thus, one authority says that there are matters which may be validly settled through administrative action with slight intervention or no intervention at all by courts.[9] So it was that the Supreme Court upheld the constitutionality of Republic Act No. 2056 empowering the Secretary of Public Works and Communications to remove unauthorized obstructions or encroachments on public streams or other navigable rivers.[10] According to the Court, the Secretary exercises such power, upon notice to parties concerned, and it does not matter that the law does not expressly provide for an appeal to the courts for it is a well-known rule that due process does not have to be judicial process. Anyway, the Court went on, the judicial review of the Secretary's decision will always remain, even if not expressly granted, whenever his act violates the law or the Constitution, or imports abuse of discretion amounting to excess of jurisdiction.

Day in court not a matter of right in administrative cases

This rule, first formulated in this jurisdiction in the case of Cornejo v. Gabriel and Provincial Board of Rizal,[11] was reiterated by the Supreme Court in the case of *Bisschop v. Galang* [12]. In this case, Bisschop, an American citizen working in the Philippines as a pre-arranged employee, asked for an extension of his three-year stay which request was summarily turned down by the respondent Commissioner of Immigration who advised him at the same time to leave the country within five days from receipt of the order. When the Commissioner refused to give him a copy of the formal decision, much less allow him a formal hearing, de Bisschop sued to enjoin the respondent from deporting him. The Court, holding that extension of stay of aliens is purely discretionary on the part of immigration authorities, ruled that a day in court is not a matter of right in administrative proceedings.

Freedoms of speech and assembly

In the case of *Gallego v. People*,[13] the Supreme Court reiterated the rule that the rights to freedom of speech and to peaceably assemble, while fundamental personal rights of the people, are not absolute. The petitioner and his companions were prohibited from hold-

[9] VICENTE G. SINCO, PHILIPPINE CONSTITUTIONAL LAW 102 (1960 ed.), citing U.S. v. Gomez Jesus, 31 Phil. 218.
[10] Lovina and Montilla v. Moreno, G.R. No. L-17821, Nov. 29, 1963.
[11] 41 Phil. 188.
[12] G.R. No. L-18365, May 31, 1963.
[13] G.R. No. L-18247, Aug. 31, 1963.

ing a meeting of the Jehovah's Witnesses in front of the public market because they had no permit to do so from the municipal mayor. They attacked the constitutionality of the Municipal Ordinance requiring such permit as violative of their freedom of speech and assembly. The Supreme Court turned down their arguments and, holding the said ordinance valid, ruled that the exercise of these rights may be regulated so that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. The power of the state to so regulate the exercise of these rights, the Supreme Court further held, is the sovereign police power which may be delegated to political subdivisions, in this case the municipality of Lambunao, Iloilo.[14] The Court found the ordinance to be a reasonable regulation of the use of public streets and that it does not give the authorities arbitrary power to grant or deny a permit.

Arrest for investigation by deportation authorities

May aliens be arrested by immigration officers to face investigation in order to determine whether they should be deported? The Supreme Court answered the question in the negative in the cases of *Qua Chee Gan v. The Deportation Board* [15] and *Kishu Dalamal v. The Deportation Board.*[16] The Court held that while the Deportation Board has the power to investigate aliens to determine their deportability, a power validly delegated to it by the President pursuant to Sec. 69 of the Revised Administrative Code, it can not issue warrants of arrest against such aliens preparatory to their investigation.

According to the Supreme Court, the Constitution [17] in providing that the probable cause upon which a warrant of arrest may be issued, must be determined by the judge, does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. The Court asked: if one suspected of having committed a crime is entitled to a determination of the probable cause against him by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee? There is of course no question, the Court went on, that if the warrant is issued to effect a *final* order of deportation, the same is valid, whether issued by an executive or legislative officer or agency duly authorized. In this case, the warrant is not that mentioned in the Constitution.

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[14] The Court cited as authority the case of Primicias v. Fugoso, 80 Phil. 71.
[15] G.R. No. L-10280, Sept. 30, 1963.
[16] G.R. No. L-16812, Oct. 31, 1963.
[17] PHIL. CONST., Art. III, sec. 1.

And without expressly holding that the President himself may not order the arrest of aliens preparatory to their investigation, the Supreme Court held the warrants issued in these two cases void upon the additional ground that the issuance of warrants of arrest being a power which involves the exercise of discretion can not be delegated by the officer to whom the law originally gives it.

Habeas corpus and detention before deportation

The case of *Republic v. Cloribel* [18] is authority for the rule that when an alien is detained by the Bureau of Immigration for deportation pursuant to an order of deportation by the Deportation Board, the courts of first instance have no power to release such alien on bail even in habeas corpus proceedings because there is no law authorizing it.[19] The Supreme Court held that in habeas corpus proceedings, such as this case, which challenge a deportation order issued by the President upon recommendation of the Board, the real issue is whether or not due process has been observed. Finding that due process had been so observed in this case, the Court refused to issue the writ prayed for.

EXPROPRIATION

Patrimonial property of municipality

In August, 1956, the National Waterworks and Sewerage Authority took possession and ownership of the waterworks system of the Municipality of Naguilian, pursuant to Republic Act. No. 1383. The Municipality sued the NWSA before the La Union Court of First Instance which found that the waterworks were created and acquired out of the Municipality's own funds and maintained for the use and benefit of its residents. The court declared Republic Act No. 1383 unconstitutional insofar as it transfers ownership of said water system, patrimonial property of the Municipality, to the NWSA without just compensation. The Supreme Court agreed with the trial court and citing its decisions in three earlier cases likewise involving the NWSA [20], held that said Republic Act does not provide for effective payment of just compensation; hence, it is unconstitutional in that respect.[21] And neither is the contention that

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[18] G.R. No. L-20458, Oct. 31, 1963.

[19] The Court cited as authorities the following: Bengzon v. Ocampo, 84 Phil. 61, and Ong Hee Sang v. Commissioner of Immigration, G.R. No. L-9700, Feb. 28, 1962.

[20] City of Baguio v. NWSA, G.R. No. L-12032, Aug. 31, 1959; City of Cebu v. NWSA, G.R. No. L-12892, April 30, 1960; Municipality of Lucban v. NWSA, G.R. No. L-15525, Oct. 11, 1961.

[21] Municipality of Naguilian v. NWSA, G.R. No. L-18540, Nov. 29, 1963.

the NWSA merely exercises supervision and control over such water system without necessarily acquiring ownership thereof acceptable. The Court said that Republic Act No. 1383 does not constitute a valid exercise of police power in this case, for it actually transfers ownership to the NWSA.

Grouping of several lots into one vast estate

Lots which are too small and which have already been subdivided may no longer be expropriated.[22] Section 4, Article XIII of the Constition [23] applies only to large estates.[24] As to what constitutes a large estate was squarely decided by the Supreme Court in two recent cases.[25] In the case of *Republic v. Prieto*, the lands sought to be expropriated by the Land Tenure Administration by authority of Republic Act No. 1162, as amended by Republic Act No. 1599, had an area of 28,799.1 square meters with respect to the portion owned by defendants Antonio and Mauro Prieto and an area of 22,726.60 square meters with regard to that owned by defendants Carmen and Ramon Caro. Defendants argued that said lands have already been subdivided and, anyway, they are not contiguous with one another. The Supreme Court agreed and held that the authority under which the complaints for expropriation were filed is limited only to the expropriation of landed estates as specifically provided in Sec. 1 of Republic Act No. 1990, which the lands in question are not.

The Supreme Court made its point clearer in the later case of *Republic v. Samia* when it found that the "estate" being expropriated by the Land Tenure Administration had an area of 38,298.30 square meters only because the LTA had grouped together 31 parcels of land owned by 14 persons, which lands are not even contiguous with one another. Citing the case of Municipality of Caloocan v. Manotok Realty, Inc.,[26] the Court stated that it would "undoubtedly be unfair to implead twenty owners of small contiguous lands and then maintain that they own a large estate subject to condemnation proceedings."

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[22] Guido v. Rural Progress Administration, 47 O.G. 1848, 84 Phil. 847.

[23] "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."

[24] Guido v. Rural Progress Administration, *supra*.

[25] Republic of the Philippines v. Prieto and Prieto, G.R. No. L-17946, Republic of the Philippines v. Caro and Caro, G.R. No. L-18042, jointly prom. April 30, 1963; Republic of the Philippines v. Samia, et al., G.R. No. L-17569, May 31, 1963.

[26] G.R. No. L-6444, May 14, 1954.

CITIZENSHIP AND NATURALIZATION

JUDICIAL DECLARATION OF CITIZENSHIP

The Supreme Court has held in a long line of cases that there is no proceeding established by law, or the rules, for the judicial declaration of the citizenship of an individual.[27] Hence, the petitioner in the case of *Santiago v. Commissioner of Immigration*[28] could not have a court order declaring his citizenship by way of granting his petition for declaratory relief. According to the Court, while the petition ostensibly prays only for cancellation of petitioner's alien certificate of registration, the plea for declaration of Filipino citizenship is implicit therein for the cancellation cannot be based on any other ground other than that petitioner is a Filipino citizen. As to why a petition for declaratory relief is not the proper remedy, the Court quoted from the cases of E. F. Tan v. Republic[29] and Tan v. Republic,[30] to wit: None of the circumstances justifying declaratory relief exist in a case to declare citizenship. "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 right. As an incident only of the adjudication of the rights of the parties to a controversy, the court may pass upon, and make a pronouncement relative to their status. Otherwise, such a pronouncement is beyond judicial power."

In the later case of *Board of Commissioners v. Domingo and Muya*,[31] likewise an action to declare citizenship, the Court suggested that the proper remedy to test the respondent Muya's detention by petitioners is a petition for writ of habeas corpus, not an action for declaratory judgment with incidental mandamus to release him.[32]

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[27] Palaran v. Republic, G.R. No. L-15047, Jan. 30, 1962; Channie Tan v. Republic, G.R. No. L-14159, April 18, 1960; Tan Yu Chin v. Republic, G.R. No. L-15775, April 29, 1961; Delumen v. Republic, G.R. No. L-5552, Jan. 28, 1954; In re Hospicio Obiles, 49 O.G. 923; Sen v. Republic, G.R. No. L-6868, April 30, 1955; Tiu Navarro v. Commissioner of Immigration, G.R. No. L-15100, Dec. 29, 1960.

[28] G.R. No. L-14653, Jan. 31, 1963.

[29] G.R. No. L-16108, Oct. 31, 1961.

[30] G.R. No. L-14159, April 18, 1960, reiterated in G.R. No. L-15775, April 19, 1961.

[31] G.R. No. L-21274, July 31, 1963.

[32] Citing Lao Tan Bun v. Fabre, 31 Phil. 682. In the case of Santiago v. Commissioner of Immigration, *supra*, at note 28, the Court suggested, in a footnote, a remedy—a petition for naturalization with an alternative prayer for declaration of their status as Filipino citizens. The Court went on: "Thus in Sy Quimsuan v. Republic, 49 O.G. 492, No. 2, 'where the evidence in applicant's possession proved in his opinion that he has already the status of a Filipino citizen as would make it unnecessary to press further his petition for naturalization, he may be declared a Filipino citizen in the same proceedings.'"

REQUISITES FOR NATURALIZATION

Income

One qualification which an alien desiring to apply for citizenship should have is that provided in Sec. 2, par. 4, of the Revised Naturalization Law (Commonwealth Act No. 473), to wit: "He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation . . ." There would appear to be little doubt as to the value of realty that should be owned by the applicant. The question that often faces the Supreme Court—and upon which many petitions are denied—is that having to do with the meaning of "lucrative" in reference to the alien's trade, profession or occupation. In earlier cases, an income of ₱250 a month,[33] or ₱300 monthly,[34] or ₱3,000 annually,[35] or a share in a rice mill worth ₱10,000,[36] or ₱36,000 annually [37] from "commission" was considered lucrative enough.

But last year, the Supreme Court decided that incomes in the levels above shown were insufficient. Thus, where the petitioner had an annual income of ₱3,000, augmented by his wife's yearly income of ₱3,600, the Court, considering the fact that the couple had a child to support and the fact that the already high cost of living continues to go up, held such income not lucrative within the meaning of the Revised Naturalization Law.[38] So is an average annual income, from 1956 to 1958, of ₱3,300 annually insufficient considering that the petitioner has a wife and four small children and rents a house for ₱200 monthly and considering further the high cost of living at present.[39] Nor is a monthly income of from ₱130 to ₱170,[40] nor a monthly income of ₱500 for a family of six,[41] nor a yearly income ranging from ₱1,107.87 for 1957 to ₱2,693.96 for 1959,[42] nor a net income for 1959 of ₱1,746 [43] sufficiently lucrative

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[33] Republic v. Rafael Lim, G.R. No. L-3030, Jan. 31, 1951.
[34] Yuchongtian v. Republic, G.R. No. L-6016, March 17, 1954.
[35] Domingo v. Republic, 50 O.G. 1025.
[36] Uy Chiong v. Republic, G.R. No. L-3233, July 23, 1951.
[37] Ang Veloso v. Republic, G.R. No. L-5117, May 15, 1953.
[38] Justo Tan v. Republic, G.R. No. L-16013, March 30, 1963; citing Koa Gui v. Republic, G.R. No. L-13717, July 31, 1963.
[39] Leoncio Ngo v. Republic, G.R. No. L-18319, May 31, 1963; citing Keng Giok v. Republic, G.R. No. L-13347, Aug. 31, 1961; Ngo Bun Ho v. Republic, G.R. No. L-15518, Nov. 29, 1961.
[40] Oscar Tan v. Republic, G.R. No. L-18242, Dec. 24, 1963; citing Que Choc Gu v. Republic, G.R. No. L-16184, Sept. 30, 1961; Zacarias v. Republic, G.R. No. L-14860, May 30, 1961; and Sy Ang Hoc v. Republic, G.R. No. L-12400 and L-14861, March 17, 1961.
[41] Go Bon The v. Republic, G.R. No. L-16813, Dec. 27, 1963; citing Keng Gick v. Republic, *supra* at note 39.
[42] Nicolas Lo Tee v. Republic, G.R. No. L-18009, Dec. 27, 1963, citing Ngo v. Republic, *supra* at note 39.

to qualify applicant. And while petitioner might be a graduate of commerce who can easily find employment netting him a bigger income, what is important to determine is his present earning or income and not what he expects to earn in the future.[44]

Credible witnesses

A credible witness within the meaning of Sec. 7 of the Revised Naturalization Act is one who has not been previously convicted of a crime; who is not a police character and has no police record; who has not perjured in the past; or whose affidavit or testimony is not incredible; such person must have a good standing in the community and known therein to be trustworthy and reliable and whose word may be taken on its face value as a good warranty of the worthiness of the applicant.[45]

And the witnesses of an applicant for naturalization must have known him for such period as required by law and to such an extent that they can sincerely testify as to the character of such applicant.[46] Consequently, if the acquaintance of the applicant with his witnesses is based on the fact that the latter are merely employees in the company where the applicant works and in which his father has an interest as a stockholder, such witnesses are hardly the credible witnesses required by law.[47] There is a danger in a situation such as this that such witnesses testified favorably because petitioner holds a high position in the company and his father has an interest therein.[48] Similarly, if the petitioner and his witnesses only have personal contacts with each other during the time when the latter visit the store where the former works to buy gifts or at occasional social gatherings where they meet, such persons are not credible witnesses.[49] Moreover, if they only came to know him in 1948 and 1949, respectively, the petitioner having arrived in this country in 1946, these persons do not qualify as character witnesses.[50]

The fact that the witnesses are lawyers do not make them trustworthy. To be credible, the witnesses "must have a good standing

[43] Nanikran Serwani v. Republic, G.R. No. L-18219, Dec. 27, 1963.
[44] *Ibid.*
[45] Te Tay Seng v. Republic, G.R. No. L-15956, March 30, 1963; citing Ong v. Republic, 55 O.G. 3290.
[46] Chua Tiong Chia v. Republic, G.R. No. L-5029, May 22, 1953; Com. Act No. 473, sec. 7.
[47] Ngo v. Republic, *supra* at note 39; citing C. K. Lo v. Republic, G.R. No. L-15919, May 19, 1961.
[48] *Ibid.*
[49] Uy Tian It v. Republic, G.R. No. L-18248, Dec. 27, 1963.
[50] *Ibid.*

in the community; that he is known to be upright; that he is reputed to be trustworthy and reliable; and this qualifications must be proven by sufficient evidence.[51]

Knowledge of local dialect and Constitution

In the case of *Wong Kit Keng v. Republic*,[52] the petitioner was asked on the Bill of Rights and he answered that anyone "can live in any place within the Philippines; that citizens can vote; that citizens can choose the best man to any position by election." To another question he answered that the Executive Department can declare war with the consent of the Supreme Court, and to another, that the members of the Supreme Court and Congress can be impeached. When asked to translate in Chavacano, the principal dialect in Zamboanga where he lives, petitioner said he could not write in the dialect. The trial court, turning down his petition, noted that he answered questions with facility during direct examination but had a markedly difficult time answering on cross-examination. The Supreme Court, affirming the lower court's decision, held that the latter was in the best position to observe the demeanor of the petitioner in answering questions directed to him by his counsel as well as by the Solicitor-General.

Former places of residence

Section 7 of the Revised Naturalization Law requires the applicant for naturalization to state in his petition his present and former places of residence. According to the Supreme Court in two cases decided last year, the purpose of the requirement as to a statement of the petitioner's former residences is to enable the government to determine his fitness to be a citizen by giving it a chance to check up on the different activities of petitioner and make such appropriate inquiry as may be necessary to determine his character. Failure to state his former residences disqualifies an applicant.[53]

Thirty-year residence

To be exempt from filing a declaration of intention to become a citizen, the applicant-alien must have resided continuously in the Philippines for a period of thirty years or more before filing his petition.[54] If, at any time within this thirty-year period, the peti-

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[51] Serwani v. Republic, *supra* at note 43; citing Ong v. Republic, *supra* at note 45.

[52] G.R. No. L-18898, Dec. 24, 1963.

[53] Ngo v. Republic, *supra* at note 39, Go Bon The v. Republic, *supra* at note 41.

[54] Com. Act No. 473, sec. 6.

tioner leaves the country briefly, he can not enjoy the benefit of this exemption. Thus, in the case of *Tan v. Republic*,[55] the court found that the petitioner, who had resided continuously in the Philippines since his birth on 1926, went to Amoy, China, in 1941 and returned to the Philippines in January, 1948. Deducting the period of time during which he was out of the country, the trial court, affirmed by the Supreme Court, held that his entire residence here was less than thirty years. Holding that petitioner had to file a declaration of intention, the Supreme Court held that Section 6 of Commonwealth Act No. 473 "contemplates actual and substantial residence within the Philippines, not legal residence alone, because only by actual and substantial residence may the said qualification be acquired by an applicant." [56]

Children below school age

The petitioner in the case of *Lu Beng Ga. v. Republic* [57] had five children, only two of whom were enrolled in the schools recognized by the government. A third child had not yet reached school age—seven years—when petitioner filed his petition. The Supreme Court held that the requirement of sending an applicant's children to school should be interpreted reasonably, so that although the law says that the applicant must enroll all his children, the requirement should apply only to children of school age. Considering however that at the time of the hearing of the petition, said child was already 7½ years old, petitioner should have enrolled him. At any rate, even if the child was below school age, he should still be registered under the Alien Naturalization Law (Republic Act No. 562). Failure to do so constitutes a violation of this law, a sufficient ground to deny petitioner's application for naturalization.[58]

Decision granting petition not final

The fact that the petition of an alien to become a citizen has been granted by the trial court does not make him an alien immediately. Section 12 of Commonwealth Act. No. 473, as amended by Section 1, Republic Act No. 530, provides that no decision granting the petition shall become executory until after two years from its promulgation and after the court, on proper hearing, is satisfied that the petitioner has conducted himself properly. This being so, the family of Liu Giok in the case of *Kua Suy v. Commissioner of*

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[55] G.R. No. L-16013, March 30, 1963.
[56] Citing Dy v. Republic, 48 O.G. 4813.
[57] Nov. 29, 1963.
[58] Citing Chung Hong v. Republic, G.R. No. L-17391, Nov. 29, 1962, and B. Go v. Republic, G.R. No. L-12150, May 26, 1960.

Immigration [59] could not validly ask the court to compel the respondent to allow them an extension of their temporary stay, at least until petitioner's husband took his oath of allegiance two years hence. A mere naturalization decree, before the lapse of two years from its promulgation, can not vest upon the applicant's consort and next of kin the right to remain in this country beyond the time set in the entry visa by any valid extensions thereof.[60]

Denial of previous petitions; effect thereof

The facts of the case of *Republic v. Maglanoc and Tiu San* [61] are as follows: On July 13, 1950, the Court of First Instance of Quezon granted Tiu San's petition and upon the lapse of two years, he asked the same court, under Republic Act No. 530, to allow him to take the oath of allegiance. The petition was denied on the ground that during the probationary period, Tiu San had been convicted of a violation of Municipal Ordinance No. 14, Series of 1946, of Lucena, Quezon, and fined ₱50. The Supreme Court denied his appeal on April 20, 1955.

He filed another petition on January 27, 1958, alleging that he had been unconditionally pardoned on December 23, 1957. Again, his petition was denied.

Tiu San filed another petition on January 30, 1959 before the respondent Judge who granted the same on February 22, 1960.

On appeal, the Government contended that respondent's last petition, being in effect a petition for relief under Rule 38, is out of order being outside the legal period. Tiu San however argued that he is not seeking relief from previous judgments but is seeking to enforce the original decision of July 13, 1950, the same being still executory. He alleged that there is no legal provision limiting the period of time after two years to file a petition for the issuance of a certificate of naturalization in conjunction with the basic decision; nor is there any limitation on the number of petitions to be field, particularly so when the ground for the denial on the previous petitions exists no longer.

The Supreme Court, quoting its decision in the case of *Tiu San v. Republic* (G. R. No. L-7301, April 20, 1955), involving respondent, held that he became barred from securing the certificate of naturalization despite the decision granting his petition, thus in fact nulli-

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[59] G.R. No. L-13790, Oct. 31, 1963.
[60] Lu Choy Fa, et al. v. Commissioner of Immigration, G.R. No. L-20597, Nov. 29, 1963, citing Kua Suy v. Commissioner, *ibid.*
[61] G.R. No. L-16848, Feb. 27, 1963.

fying the basic decision, when he violated the municipal ordinance. His failure to pass the two-year probationary period results in the loss of whatever rights he may have acquired under the original decision.[62] It is of no moment whether he was pardoned unconditionally, the same having been granted after the denial of the first petition since a pardon has no retroactive effect.[63]

Marriage to citizen; effect thereof

Section 15 of the Revised Naturalization Act (Commonwealth Act No. 473) provides that "any woman who is now or who may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines." The phrase "who might herself be lawfully naturalized" has been construed to mean that the woman must prove not only that she has all the qualifications of a citizen but also that she has none of the disqualifications.[64] Consequently, the failure of each of the petitioners in the cases referred to above to prove they have all the qualifications and none of the disqualifications is fatal: they do not follow the citizenship of their respective husbands.

Filipina who marries alien; effect thereof

The petitioner in the case of *Yee v. The Director of Public Schools*[65] was a public school teacher since 1951 who passed the civil service examinations in 1955 and who had been teaching at a public school in Antique. She married a Chinese in 1957, becoming therefore a Chinese herself. The Division Superintendent of Schools for Antique removed her from the service effective October, 1957. She filed a petition for mandamus to compel respondents to reinstate her.

The Supreme Court affirmed her removal. Not being included in Sec. 671 of the Revised Administrative Code which enumerates the officers and employees constituting the unclassified service nor in the classified service, positions that may be occupied only by Filipino citizens, she had no right to ask for reinstatement. After qualifying for a civil service service position, she must continue to be a citizen. A voluntary change of citizenship or a change thereof by

[62] Citing Isasi y Larrabide v. Republic, G.R. No. L-9823, April 30, 1957.
[63] Citing 67 C.J.S. 578, sec. 11.
[64] Kua Suy v. Commissioner, *supra* at note 59, citing Ly Giok Ka v. Gulay, 54 O.G. 356, and Cua v. Board of Immigration Commissioners, 53 O.G. 8567; Lu Choy Fa v. Commissioner, *supra* at note 60; Lo San Tuang v. Emilio Galang, G.R. No. L-18775, Nov. 30, 1963; Sun Peck Young, et al. v. The Commissioner of Immigration, G.R. No. L-29784, Dec. 27, 1963; Tong Siok Sy v. Vivo, et al., G.R. No. L-21136, Dec. 27, 1963.
[65] G.R. No. L-16924, April 29, 1963.

operation of law disqualifies her to continue holding the civil service position to which she had qualified and had been appointed.

Child of naturalized citizen born abroad

Section 15, paragraph 3 of the Revised Naturalization Act extends citizenship to a child born abroad "if dwelling at the time of the naturalization of the parent." Construing this provision, the Supreme Court in the case of *Kua Suy v. Commissioner, supra,* held that "dwelling" must necessarily mean "lawful residence." Since before the parent of the children took his oath on August 24, 1959, the lawful period during which they may stay here had already expired (in 1957), they were no longer lawfully residing in the Philippines and have therefore no right to be considered as also naturalized.

Petition for repatriation of widow of alien

A woman who has lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of Commonwealth Act No. 63. This was what Trinidad Guillermo [66] tried to do in 1959 after the death of her alien husband. The Court of First Instance of Baguio granted her petition, including therein her five children. Upon the basis of the ruling in Villahermosa v. Commissioner,[67] the Supreme Court modified the lower court's order insofar as it also granted citizenship to the children. Citing the case of Villahermosa, the Supreme Court ruled: "Commonwealth Act No. 63 does not provide that upon repatriation of a Filipino her children acquire Philippine citizenship. It would be illogical to consider Delfin as repatriated like his mother, because he never was a Filipino ctizen and could not have acquired such citizenship. After that re-acquisition by his mother, Delfin could claim that his mother was a Filipina within the meaning of par. 4, sec. 1 of Art. IV of of the Constitution; but, according to the same Organic Act, he had to elect Philippine citizenship upon attaining his majority. Until he becomes of age and makes the election, he is the Chinese citizen that he was at the time of his father's demise."

THE LEGISLATIVE DEPARTMENT

The Commission on Appointments

The Supreme Court ruled in the case of Advincula and Avelino v. Commission on Appointments [68] that the Commission, being an

[66] Guillermo v. Republic, G.R. No. L-16984, June 29, 1963.
[67] 80 Phil. 541.
[68] G.R. No. L-19823, Aug. 23, 1962; discussed in 38 PHIL. L. J. 192-193, No. 2 (March, 1963).

independent body, has the power to promulgate rules and regulations to govern its internal business. Consequently, the Commission can determine the days when it should meet and discuss official business, the only limitation being that it should meet while Congress is in session.[69] The petitioners in this case filed a motion for reconsideration which was however denied by the Supreme Court.[70]

At issue, in the original case as well as in their motion for reconsideration, is the interpretaton of Sec. 21 of the Revised Rules of the Commission on Appointments, to wit: "Resolutions of the Commission on any appointment may be reconsidered on motion by a member presented not more than one (1) day after their approval." Petitioner contended that since their appointments were confirmed on April 27 (a Friday) and the motion for reconsideration was filed on April 30 (the following Monday), the confirmation had become final and irrevocable, and its subsequent reconsideration was null and void.

The Supreme Court, citing its decision in the original case, held that the Commision has ruled that the one-day provision refers to a working day, and Saturday not being one, the motion made on the following Monday fulfills the requirement of the rule.

The Court re-affirmed its decision on the following grounds:

(1) Article VI, Sec. 9, of the Phil. Constitution, provides: "The Congress shall convene in regular session once every year on the fourth Monday of January, unless a different date is fixed by law. It may be called in special session . . . No special session shall continue longer than thirty days and no regular session longer than one hundred days, exclusive of Sundays." This does not apply to the Commission. Otherwise, it would be declaring that the sessions of this body are coetaneous with those of the Congress itself. At least in the first session of the Congress when it will have to organize itself first by electing the President of the Senate and the Speaker of the House of Representatives, the Commission does not come into existence until it is constituted within thirty days after the organization of both houses. Consequently, by necessity, the number of days of session of the Commission fall short of those of the Congress.

(2) The only provision that governs the sessions of the Commission is Sec. 13, Article VI, *supra*. The sole mandatory injunction

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[69] PHIL. CONST., Art. III, sec. 13.

[70] Advincula and Avelino v. Commisnion on Appointments, G.R. No. L-19823, Jan. 12, 1963.

that is obligatory on the Commission is that it shall meet only while the Congress is in session. How often and how long it shall meet is left entirely to the discretion of the Commision.

(3) The interpretation of its own rules adopted by the Commission in this case is in accordance with Rep. Act. No. 1880, which fixed the minimum requirements of legal hours of labor to 40 hours a week or 8 hours a day for 5 days a week, resulting in the closing from public transactions of all government offices on Saturday, save those excepted by law. And the Commission is not one of those excepted by law.

Enrolled bill—conclusive upon courts

An enrolled bill is the copy that has been certified by the presiding officers and attested by the secretaries of the respective houses, signed by the President and kept by the official custodian of such bills.[71] Such bill is conclusive upon the courts as regards the tenor of the measure passed by Congress and approved by the President.[72] In the case of *Casco Philippine Chemical Co., Inc. v. Gimenez and Mathay*,[73] the petitioner bought foreign exchange for the importation of urea and formaldehyde, the main raw materials in the production of synthetic resin glue, and paid therefor the margin fees required by Republic Act No. 2609 and implemented by Central Bank Circular 95. Subsequently, it sought a refund of the sum it had paid on the ground that Resolution No. 1529 of the Monetary Board exempts the importation of the two chemicals from the margin fees. On the other hand, Republic Act No. 2609 provides in Sec. 2 thereof that the margin fee shall not be imposed upon the sale of foreign exchange for the importation of (among others) "urea formaldehyde." The petitioner insists that the phrase "urea formaldehyde" should be construed as "urea *and* formaldehyde."

The Supreme Court disagreed with petitioner. The enrolled bill uses the term "urea formaldehyde" instead of "urea and formaldehyde"—such bill is conclusive upon the courts. The Court stated that if there was a mistake in the printing of the bill before it was certified by the officers of Congress and approved by the Chief Executive—on which the Court dared not speculate without jeopardizing the principle of separation of powers—the remedy is by amendment or curative legislation, not by judicial decree.

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[71] I TAÑADA & CARREON, POLITICAL LAW OF THE PHILIPPINES, 268.

[72] Casco Phil. Chem. Inc. v. Hon. Pedro Gimenez and Hon. Ismael Mathay, G.R. No. L-17931, Feb. 28, 1963; citing Primicias v. Paredes, 71 Phil. 118, 120; Mabanag v. Lopez Vito, 78 Phil. 1; Macias v. Commission on Elections, G.R. No. L-18684, Sept. 14, 1961.

[73] *Ibid.*

DELEGATION OF POWER

Re-organization Plan 20-A; validity thereof

Pursuant to Republic Act No. 997 [74], the Government Survey and Reorganization Commission, a creation of the Act, promulgated Reorganization Plan No. 20-A.[75] Section 25 of this Plan grants to the regional offices of the Department of Labor original and exclusive jurisdiction over all money claims of laborers. This particular section was declared void in several cases [76] on the ground that Republic Act No. 997 does not authorize the Government Survey and Reorganization 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. Much less does the Act authorize the transfer of powers granted to courts of justice to offices created and officials appointed by said Plan, upon the theory that the Congress may not and cannot delegate its power to legislate or create courts of justice to any other agency of the government.[77]

Last year, the Supreme Court again had occasion to pass upon the validity of Reorganization Plan No. 20-A. Insofar as Sec. 25 thereof grants original and exclusive jurisdiction to the regional offices of the Department of Labor to hear and decide money claims of laborers, the same is void.[78]

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[74] Approved, June 9, 1954; amended by Rep. Act No. 241, Approved, June 9, 1955.

[75] Submitted to the President who transmitted the same to Congress on Feb. 14, 1956. Congress adjourned its session without expressly approving or disapproving the said plan. It was argued in the case of Miller v. Mardo, G.R. No. L-16781, July 31, 1961, that Reorganization Plan No. 20-A was thereby enacted by non-action on the part of Congress, pursuant to sec. 6(a) of Rep. Act No. 997. The Supreme Court however overruled this contention upon the ground that "such a procedure of enactment of laws by legislative inaction is not countenanced in this jurisdiction." (See 37 PHIL. L. J. 14, No. 1 [Jan., 1962], for a more extended discussion of this point.)

[76] Velez v. Saavedra, 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-17106, April 25, 1962, etc. (See 38 PHIL. L. J. 194, No. 2 [March, 1963], footnote 37, for other cases on the same point.)

[77] Surigao Consolidated v. Collector of Internal Revenue, G.R. No. L-5692, March 5, 1954; Chinese Flour Importers' Association 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. 921-922.

[78] Villafuerte v. Marfil, G.R. No. L-1775, Feb. 28, 1963; citing Corominas v. Labor Standards Commission, G.R. No. L-14837, June 30, 1961; De Vera v. Supitran, G.R. No. L-13945, July 31, 1961; Davao Far Eastern Commercial Co. v. Montemayor, G.R. No. L-16581, June 29, 1962. NASSCO v. Calixto, G.R. No. L-18471, Feb. 28, 1963; Andan v. The Sec. of Labor, G.R. No. L-18556, March 29, 1963; Victoria Biscuit Co., Inc. v. Benedicto, et al., G.R. No. L-18800, March 30, 1963; Gomez v. Fookien Times Co., Inc., G.R. No. L-17916, April 30, 1963; Pangasinan Transportation Co., Inc. v. Workmen's Compensation Commission and Gatdula, G.R. No. L-16490, June 29, 1963.

On the other hand, the Regional Offices may act as referees, in cases under the Workmen's Compensation Act, and render reports to the Workmen's Compensation Commission. Upon the reports, the Commission may render final awards or judgments, which may be executed by writs of execution to be issued by courts of justice.[79] The Regional Offices themselves are not empowered to order the execution of their awards by writs of execution, such power being exclusively vested in courts of justice.[80]

Central Bank's power to control exchange

This issue was squarely raised in the case of *Bacolod Murcia Milling Co., Inc. v. Central Bank.*[81] Plaintiff was in possession of drafts drawn against an American firm which had bought sugar from it. Upon being informed by its depositary bank that pursuant to Circular No. 20 of the Central Bank[82] plaintiff must sell its drafts to the Central Bank, the former informed the Bank as to its doubts on the validity of said circular, demanding compensation for its drafts the real international value and prevailing market price of the said dollar proceeds of the sugar. Plaintiff filed a special civil action for prohibition against the Central Bank and the lower court ruled that the enactment of a law on currency and even issuance of paper money as legal tender are attributes of the sovereign power.

The Supreme Court affirmed the decision, holding that the Central Bank Act contains sufficient standards to authorize the Bank to promulgate necessary rules and regulations to carry out its primary duty "to administer the monetary and banking system of the Republic, to maintain monetary stability in the Philippines, to preserve the international value of the peso, and to promote a rising level of production, employment and real income in the Philippines."[83]

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[79] NASSCO v. Calixto, PANTRANCO v. WCC, *ibid.*

[80] *Ibid.*

[81] G.R. No. L-12610, Oct. 25, 1963.

[82] Promulgated Dec. 9, 1949. Sec. 4(a) thereof requires that all receipts of foreign exchange shall be sold daily to the Central Bank by those authorized to deal in foreign exchange. Sec. 8 enjoins strict observance with the provisions of the Circular and provides for penal sanctions contained in the Central Bank Act (Rep. Act No. 265) against violators.

[83] Rep. Act No. 255, sec. 2. The standards referred to are the following:
Sec. 64—it is given the duty to "control any expansion or contraction in the money supply, or any rize or fall in prices which, in the opinion of the Monetary Board, is prejudicial to the attainment or maintenance of a high level of production, employment and real income."
Sec. 68—enjoins the Central Bank to maintain an international reserve "adequate to meet any foreseeable net demands on the Bank for foreign currencies."
Sec. 70—the Central Bank shall take remedial measures as are appropriate and within its powers whenever the international reserve falls "to an amount which the Monetary Board considers inadequate to meet the prospective net demands on the Central Bank for foriegn currencies."

On the other hand, the Court stated, in what amounts to an *obiter dictum*, that authorities on foreign exchange and international trade [84] agree that the grant of power to adopt "exchange restrictions" and to license exchange should, if a reasonable construction is to be adopted, not be extended to include the most drastic step of control, namely, the commandeering of the exchange earned by private individuals and the power to pay therefor at prices which the commandeerer itself fixes. While Sec. 70, *supra*, authorizes the Central Bank to adopt such remedial measures appropriate to maintain the international reserve at a desired level, it does not, the Court "ventured to suggest," allow the commandeering of an exporter's dollars for a price less by 50% than its value and the selling of said dollars to an importer to the exclusion of the exporter himself. Such confiscation can be exercised only under a clear and express provision of law.

The fundamental grounds upon which plaintiff's action for prohibition was dismissed were: 1) Estoppel—as plaintiff obtained the license to export under Circular No. 20, it may not question the right or power of the Bank to enforce the provisions of said Circular requiring surrender of the proceedings of the shipment obtained through the use of the license; 2) Under present laws and because of international agreements which the country has entered into, the Bank may not unilaterally change the present rate of exchange of ₱2.00 to the dollar, e.g., the International Monetary Fund Agreement of which the Philippines is a signer; and, 3) The Central Bank may not be empowered to change the par value of the peso for under Art. 49 of Republic Act No. 265, this can only be done by the President upon proposal of the Monetary Board and with legislative approval.

Arrest of aliens prior to investigation

The sole provision of law governing the President's power to deport is Sec. 69 of the Revised Administrative Code. Section 69 empowers the President to investigate aliens to determine their deportability, which power may be exercised by him personally or his authorized agents.[85] The delegation of the power to investigate has been held to be valid, being expressly permitted by Sec. 69.[86]

Sec. 74—the Central Bank "may temporarily suspend or restrict sales of exchange and may subject all transactions in gold and foreign exchange to license."

[84] H. E. EVITT, MANUAL OF FOREIGN EXCHANGE (1946); HENIUS, DICTIONARY OF FOREIGN TRADE; LAWRENCE W. TOWLE, INTERNATIONAL TRADE AND COMMERCIAL POLICY 93.

[85] See discussion on deportation proceedings, *supra*.

[86] Dalamal v. Deportation Board, *supra* at note 16.

However, the power to arrest aliens prior to their investigation cannot be delegated, "either under the principle of *delegata potesta non potest delegari* or upon the theory that it is non-delegable because it involves the exercise of judgment or discretion." [87] The execrise of the power to order the arrest of a person demands the exercise of discretion which, being personal to the one upon whom the authority devolves, cannot be validly delegated. Only ministerial duties may be so delegated.[88] Consequently, Executive Order No. 398, series of 1951, is illegal insofar as it empowers the Deportation Board to issue warrants of arrest upon the filing of formal charges against an alien or aliens and to fix bond and prescribe the conditions for the temporary release of said aliens.[89]

Secretary's power to remove dams

The power of the Secretary of Public Works and Communications, under Republic Act No. 2056, to clear navigable streams of unauthorized obstructions or encroachments was upheld in the case of *Lovina v. Moreno*.[90] Plaintiffs contended that said Act was unconstitutional when it empowers to Secretary to determine whether dams built across navigable streams are public nuisances and hence, may be abated, being an unlawful delegation of judicial power.

The Supreme Court found a direct precedent in the "Bridge cases" wherein the United States Supreme Court upheld the constitutionality of the US River and Harbor Act of March 3, 1899 insofar as it empowers the Secretary of War to take action, after hearing, for the removal or alteration of bridges unreasonably obstructing navigation.[91] The US Supreme Court had ruled: "This is not an unconstitutional delegation of legislative or judicial power to the Secretary. x x x The statute itself prescribes the general rule applicable to all navigable waters, and merely charged the Secretary of War with the duty of ascertaining in each case, upon notice to

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[87] *Ibid.*, citing Qua Chee Gan v. Deportation Board, *supra* at note 15

[88] *Ibid.*

[89] Qua Chee Gan v. Deportation Board, *ibid.* It must be noted that the Supreme Court declared, in the case of Dalamal v. Deportation Board, *supra*, that sec. 69 of the Revised Administrative Code does not authorize even the President to issue a warrant of arrest against an alien in the course of his investigation with a view to determining if he is liable to deportation. In the case of Qua Chee Gan v. Deportation Board, decided a month earlier, the Court declined to rule on whether the President himself can make such arrest. The Court confined itself to the question of whether, assuming the President has such power, he can validly delegate the same to the Deportation Board.

[90] *Supra* at note 10.

[91] Louisville Bridge Co. v. U.S., 61 L.ed. 395; Union Bridge Co. v. U.S., 204 US 304, 385, 51 L.ed. 523, 533, 27 Sup. Ct. Rep. 367; Monongahela Bridge Co. v. U.S., 216 US 177, 192, 54 L.ed. 453, 441; Hannibal Bridge Co. v. U.S., 221 US 194, 205, 55 L.ed. 699, 703.

the parties concerned, whether the particular bridge came within the general rule."

According to the Supreme Court, the Secretary of Public Works and Communications may determine issues of fact, viz., the existence of the stream and its previous navigable character. These functions, however, are merely incidental to the exercise of the power granted by law to clear navigable streams of unauthorized obstructions or encroachments, and authorities are clear that they are validly conferable upon executive officials provided the party affected is given opportunity to be heard, as is expressly required by Rep. Act No. 2056, Sec. 2.[92]

THE EXECUTIVE DEPARTMENT

Power of control over departments, bureaus and offices

The petitioner in the case of *Uichanco v. Secretary of Agriculture and Natural Resources*[93] filed a sales application with the Bureau of Lands. After investigation, the Director of Lands denied the application which decision was however suspended later when petitioner filed a motion for reconsideration. During the suspension, the Director ordered a re-investigation. Before this could be carried out however, the Secretary of Agriculture and Natural Resources began his own investigation on the basis of a protest filed by five persons occupying lands adjacent to that applied for by the petitioner. The Secretary cancelled his application to the extent that it included the lands owned by the protestants. The petitioner filed a petition for certiorari, alleging that the Secretary had no right to act until after here had been an appeal from a decision of the Director of Lands.

The Supreme Court held that, pursuant to Sections 97 (A), (B) and (C) of the Revised Administrative Code, the Secretary has the power to promulgate rules for the internal administration of offices and bureaus under his jurisdiction and to repeal or modify the decisions of the chiefs thereof. Such power, the Supreme Court held, is derived not only from the Administrative Code but also, and mainly, from the Constitution which explicitly ordains that "the President shall have control over all executive departments, bureaus and

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[92] Citing 3 WILLOUGHBY, CONSTITUTION OF THE UNITED STATES 1654-1655; 11 AM. JUR., Constitutional Law, 950, sec. 235, 952, sec. 237. This power, the Supreme Court further held, was granted as far back as Act No. 3208 of the old Philippine Legislature and has been upheld in the cases of Palanca v. Commonwealth, 69 Phil. 449, and Meneses v. Commonwealth, 69 Phil. 647.

[93] G.R. No. L-17328, March 30, 1963.

offices." [94] "Control" in this sense implies the power of an officer to alter or modify or nullify or set aside what a subordinate officer has done and to substitute the judgment of the former for that of the latter.[95] This power—insofar as bureaus and offices are concerned—is exercised by the President through the heads of the executive departments who, as agents or tools of the Chief Executive, shall have direct control over all bureaus and offices when advisable in the public interest.[96]

Consequently, the rule governing appeals from the decision of the Director Lands having been passed for the convenience of the Department as well as litigants, the same may be implicitly overruled by the Secretary when, as in this case, it would be more expedient and practical for him to take direct action.

Secretary as alter-ego of President

Another way of saying that heads of Departments are agents of the President through whom he exercises control over bureaus and offices is that they are alter-egos of the Chief Executive. Being such, the Secretary of Public Works and Communications can render a decision ordering the removal of causeways illegally constructed across the mouth of a navigable stream, which decision may be directly appealed by the owner of the causeway to the courts, without first appealing to the President.[97] The failure to appeal to the President cannot preclude the plaintiff from taking court action in view of the theory that the Secretary of a Department is merely an alter-ego of the President; the assumption is that the action of the Secretary bears the implied sanction of the President, unless the same is disapproved by the latter.[98]

Of course, the Supreme Court explained in the same case, the President can well review the action of the Secretary. Inspite of the silence of Republic Act No. 2056, governing the removal of obstructions from navigable streams, as to appeal from decisions of the

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[94] PHIL. CONST., Art. VII, sec. 10.

[95] Citing Mondano v. Silvosa, 51 O.G. 2487.

[96] See Acting Collector of Customs v. Court of Tax Appeals, G.R. No. L-8811, Oct. 31, 1957. Substantially the same ruling was made by the court in the earlier case of Suarez v. Reyes, G.R. No. L-19828, Feb. 28, 1963.

[97] Marinduque Iron Mines Agents, Inc. v. The Secretary of Public Works and Communications, G.R. No. L-15982, May 31, 1963.

[98] *Ibid.*, citing Dimaisip v. Court of Appeals, G.R. No. L-13000, Sept. 25, 1959. To the same effect, the Court overruled respondents' contentions, in the case of Gonzales v. Hechanova, *infra*, that petitioner cannot sue in court until he has exhausted all administrative remedies available to him. The Court held that the principle does not apply where, among others, the respondent is a department secretary, whose acts as an alter-ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him, or where there are circumstances indicating the urgency of judicial intervention.

Secretary to the President, the latter can review such decisions pursuant to his constitutional power of conrol over all execuive departments.[99]

Meaning of power of control

However broad the power of control of the President, the same may be not be exercised in violation of law. Such was the decision of the Supreme Court in the case of *Ang-angco v. Castillo.*[100] Granting that the President is the Department Head of the Civil Service Commission, the Supreme Court held, his power of control thereover does not include the power to remove officials and employees in the Civil Service, in violation of the Civil Service Law. The Court clarified the definition of "control" as stated in the case of Hebron v. Reyes [101] as not including the power to remove an officer or employee in the executive department. Apparently, the Court went on, the power merely applies to the exercise of control over the acts of the subordinate and not over the actor himself or agent of the act. Neither does the power of control, which may include the power to investigate, suspend or remove those who are presidential appointees or who do not belong in the classified service, cover the power to remove those in the classified service.[102]

Power to appoint and remove

The same case of *Ang-angco v. Castillo, supra,* is authority for the rule that while under Sec. 64(b) of the Revised Administrative Code the President is given the power to remove officials, the same provision requires that such removal must be "conformably to law."

The facts of the case are as follows: Isidro C. Ang-angco was the Collector of Customs of Manila. He was suspended in December, 1956, after investigation by a Presidential committee of the complaints filed against him for grave neglect of duty and conduct prejudicial to the best interest of the service. He was reinstated April 1, 1957 while the decision of the committee recommending his suspension was awaiting action of the President. On February 12, 1960, then Executive Secretary Natalio Castillo, by authority of the President, found him guilty as charged and considered him resigned. Ang-angco appealed to the President, contending that respondent's action deprived him of the right to appeal to the Commissioner of Civil Service, as well as of his right to appeal to the Civil Service Board of Appeals whose decision under Republic Act No. 2260 is

[99] PHIL. CONST., Art VII, sec. 10(1).
[100] G.R. No. L-17169, Nov. 30, 1963.
[101] G.R. No. L-9124, July 28, 1958.
[102] Ang-angco v. Castillo, *supra* at note 100.

final. Respondent, again by authority of the President, denied his appeal, holding that the President, by virtue of his power of control over executive departments, bureaus and offices, can take direct action and dispose of the administrative case and laws vesting final authority on subordinate officials cannot divest the President of this power.

The Supreme Court allowed Ang-angco's petition for certiorari, prohibition and mandamus. It held that under Sec. 16(i) of Republic Act No. 2260, it is the Commissioner of Civil Service who has original and exclusive jurisdiction to decide administrative cases of all officers and employees in the classified service, with power to review vested in the Civil Service Board of Appeals whose decision shall be final.[103] The law does not provide for appeal to the President, nor is he given the power to review the decision *motu proprio,* unlike the provision of the previous law, Commonwealth Act No. 598 which has been expressly repealed by Republic Act No. 2260. The Supreme Court ruled that when the Revised Administrative Code gives the President the power to remove officials, it must be "conformably to law." The Civil Service Act is one such law.

Filling of vacancy created by transfer

In the case of *Calo v. Magno,*[104] respondent had been appointed to act as Treasurer of Butuan City vice the regular incumbent who had been detailed in Manila. Magno was designated by the President under Commonwealth Act No. 588. The lower court upheld his appointment, holding that under said Act, one of the cases wherein the President may make the designation is in case of vacancy in office. Ths phrase, the trial court continued, does not appear in par. 2, sec. 18 of Republic Act No. 523 which only provides that the officer next in charge shall act in the City Treasurer's place in case of absence or sickness or inability to act. Consequently, in case of vacancy, Commonwealth Act No. 588 must apply. At any rate, the trial court continued, even if Republic Act No. 523 were to be applied, subsuming vacancy in office under the phrase "inability to act," still the designation of respondent is valid because under sec. 19 of the Republic Act (the city charter), the City Treasurer holds office at the pleasure of the President and is removable at his will. If the President has the right to remove the City Treasurer at his pleasure, certainly he has the power to designate any other officer to act temporarily for him.

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[103] Rep. Act No. 2260, sec. 18.
[104] G.R. No. L-18399, Feb. 28, 1963.

The Supreme Court adopted the decision of the trial court. It added that the fact that the designation of the regular Treasurer to the Department of Finance was approved by the President who thereafter named Magno as acting city treasurer points to the fact that there was a vacancy in the office. In other words, the Supreme Court held, the designation of the regular treasurer created a vacancy in the city treasurer's office which vacancy may be filled permanently or temporarily, by the President under Commonwealth Act No. 588.[105]

Removal of chief of police

Two cases involving the removal of chiefs of police reached the Supreme Court last year. In the first case, the Court found the removal void,[106] in the second, the court declared it valid.[107]

The petitioner in the case of *Libarnes v. Executive Secretary* was appointed by the President chief of police of Zamboanga City, which appointment was confirmed by the Commission on Appointments on Feb. 25, 1959. On May 16, 1963, the President appointed respondent as Acting Chief of Police, informing the petitioner that under the provisions of Sec. 34 of the City Charter (Commonwealth Act No. 39), under which petitioner held office at the pleasure of the President, his services were terminated. In his petition for quo warranto and injunction, petitioner anchors his case on Sec. 5 of the Local Autonomy Act [108] and the Civil Service Law,[109] alleging that he is entitled to hold office until removed for cause and after due process.

The Supreme Court, finding petitioner's removal invalid, held that the Zamboanga City Charter has been repealed by the Local Autonomy Act insofar as the former provides in Sec. 34 that the President may remove at pleasure the chief of police, among others. Section 5 of Republic Act No. 2259 provides that "all other city officials now appointed by the President of the Philippines may not be removed from office except for cause." [110] The Chief of Police

[105] Citing Rodriguez v. del Rosario, 49 O.G. 5427.
[106] Libarnes v. The Hon. Executive Secretary, et al., G.R. No. L-21505, Oct. 24, 1963.
[107] Fernandez v. Ledesma, et al., G.R. No. L-18878, March 30, 1963.
[108] Rep. Act No. 2259.
[109] Rep. Act No. 2260.
[110] The entire section runs thus: "The incumbent appointive City Mayors, Vice-Mayors and Councilors, unless sooner removed or suspended for cause, shall continue in office until their successors shall have been elected in the next general elections for local officials and shall have qualified. Incumbent appointive city secretaries shall, unless sooner removed or suspended for cause, continue in office until an elective city council or municipal board shall have been elected and qualified; thereafter, the city secretary shall be elected by majority vote of the elective city council or municipal board. All other city officials now

of Zamboanga City being a member of the civil service system [111], he cannot be "removed or suspended except for cause as provided by law and after due process." [112]

Respondents argued that Sec. 5 of Republic Act No. 2259 does not apply because petitioner has not been removed; his term of office having merely expired when the President terminated his services. Suffice it to say, the Supreme Court held, this attempt to terminate petiioner's services was predicaed upon said Sec. 34 of Commonwealth Act No. 39, pursuant to which the Executive may "remove at pleasure" the petitioner, and this is the reason why Sec. 5 of Republic Act No. 2259 speaks also of removal to indicate that it seeks to withdraw or eliminate precisely such power to "remove at pleasure" under Commonwealth Act No. 39, among other pertinent laws.

On the other hand, in the case of *Fernandez v. Ledesma*, the Supreme Court affirmed the removal—or, particularly, termination of the services—of the Chief of Police of Basilan City. Petitioner, appointed ad interim Chief and whose appointment was subsequently confirmed by the Commission on Appointments, was suspended in 1957 for gross negligence, violation of law and dereliction of duty. He was later charged before the Basilan Court of First Instance with disobedience of an order of his superior officer and with oral defamation. He was acquitted of both charges but he remained suspended, though no formal administrative charges were filed against him. Subsequently, the Executive Secretary informed him that the President had terminated his services and had named respondent to take his place, which designation had been confirmed by the Commission on Appointments. Petitioner's petition for quo warranto was dismissed by the trial court on the ground that his removal was in accordance with Sec. 17 of the Basilan City Charter,[113] which authorizes the President to "remove at his discretion any of said appointive officers (including the Chief of Police) with the exception of the municipal judge, who may be removed only according to law."

Affirming the trial court's decision, the Supreme Court held that the legislative intent was to make the continuance in office of any of said appointive officers dependent upon the pleasure of the President. Otherwise, the Supreme Court explained, the Charter

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appointed by the President of the Philippines may not be removed from office except for cause."

Sec. 9 of the Act expressly repeals "all acts or parts of acts x x x inconsistent with the provisions" thereof.

[111] Rep. Act No. 2260, sec. 5.

[112] Sec. 33, *ibid.*

[113] Rep. Act No. 288.

would not have distinguished between removal of appointive officers in general and that of the municipal judge. Petitioner's contention that respondent's appointment amounts to his (petitioner's) removal from office without cause in violation of the Constitution [114] was turned down by the Court which held that, the position of Chief of Police not having a fixed term, the replacement of the petitioner was not removal but an expiration of his tenure, which is one of the ordinary modes of terminating official relations.[115]

The "midnight" appointments

The Supreme Court, in the case of Aytona v. Castillo,[116] laid down the rule that the President, when making *ad interim* appointments, should be prudent to insure approval of his selection by previous consultation with the members of the Commission on Appointments or by thereafter explaining to them the reason for such selection. And when "the Commission on Appointments that will consider the appointees is different from that existing at the time of the appointments, and when 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." However, "the filling 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." On the other hand, "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."

Several cases decided last year were found to fall within the category of "midnight" appointments, for the reasons stated above. Thus, in the case of *Valencia v. Peralta, Jr.*,[117] the Court found that petitioner's appointment as "Acting Chairman" of the Board of Directors of the NWSA on October 4, 1961 was void since his for-

[114] PHIL. CONST., Art. XII, sec. 4. Petitioner also invoked the rulings in the cases of De los Santos v. Mallare, 48 O.G. 1791, and Lacson v. Roque, 49 O.G. 93.

[115] Citing the case of Alba v. Alajar, 53 O.G. 1452, No. 5. The Court further held that Sec. 2545 of the Revised Administrative Code which was declared inoperative in the case of Santos v. Mallare, *ibid.*, is different from Sec. 8 of Rep. Act No. 603, the former referring to removal at pleasure and the latter to holding office at the pleasure of the President.

[116] G.R. No. L-19313, Jan. 19, 1962. See 38 PHIL. L.J. 183, No. 2 (March, 1963) for extensive discussion of the case.

[117] G.R. No. L-20864, Aug. 23, 1963.

mal appointment, dated November 6, 1961, was processed only on December 25, 1961 in the Office of the President and was never released therefrom. The Court further found that petitioner who never received a written certificate of his appointment had taken his oath on October 25, 1961 as an *ad interim* appointee when, in fact, he had been temporarily designated as *Acting* Chairman. This lack of correspondence between the office to which petitioner took an aoth and that stated in his temporary designation does not help his case any, the Court also stated. At any rate, his appointment as Acting Chairman was revocable and temporary and could not ripen into a permanent appointment, even if it was subsequently confirmed by the Commissioner on Appointments, because confirmation presupposes a valid nomination or recess appointment, of which there was no trace.[118]

The petitioner in the case of *Rodriguez, Jr. v. Quirino* [119] was likewise held to be disqualified from the position to which he had allegedly been appointed. It appears that while he was named *ad interim* Director of Public Libraries on June 1, 1961, no commission or paper evidencing the appointment was ever issued. His name was however included in the numerous appointments submitted by the President to the Commission on Appointments on December 26, 1961 and he was informed by telegram at 5:20 p.m. of December 30, 1961 of the fact. When he took his oath on January 5, 1962 before a notary public, the latter's commission had already expired and his oath did not appear to have been recorded in the proper government office.

The Court ruled that petitioner's appointment fell squarely within the ruling in the Aytona case, *supra*. Since an *ad interim* appointment contradicts the theory of checks and balances in that it permits the President to make an appointment effective and permanent without Congressional concurrence, it should only be made when there is an existing clear and present urgency caused by an impending obstruction or paralyzation of the functions assigned to the office to be filled if no immediate appointment is mode. In the absence of such urgency, the appointment constitutes an abuse of power by the Executive.

The Supreme Court, in the case of *Siguiente v. Secretary of Justice*,[120] held that the letter of the President to the Commission on Appointments submitting petitioner's name, among others, for con-

[118] The Court did not categorically rule on respondent's contention that petitioner was one of the "midnight" appointees whose designations were recalled by Pres. Macapagal in Administrative Order No. 2.

[119] G.R. No. L-19800, Oct. 28, 1963.

[120] G.R. No. L-20370, Nov. 29, 1963.

firmation, was at most a nomination which could be recalled—and was, in fact, recalled—by the incoming President. Even so, the inclusion of petitioner's name in that letter could not be considered a nomination because in the first place, the President did not intend it to be so, and, in the second place, the said Executive could not be presumed to make an invalid appointment since the Commission on Appointments would meet in January, 1962, after he had left the Presidency. Otherwise, he (the President) would be making an appointment to take effect after he has ceased to be President. An officer clothed with power of appointment to a public office has no right to forestall the rights and prerogatives of his successor by making a prospective appointment to fill an office, the term of which is not to begin until his own term and power have expired." [121]

From the above cases and two others decided by the Court,[122] the rule may thus be stated: appointments, especially if as numerous as those made during the closing hours of 1961, are void or at least revocable by the incoming Executive particularly if such appointments are in the nature of "designations" or in an "acting" capacity," [123] revocable at the pleasure of the appointing power.

Consequently, the appointment is valid if made before election day (1961) and if petitioner qualified and entered into office days before the "scramble" in Malacañang.[124] And in another case, it was found that petitioner was appointed December 13, 1961, he took his oath December 26 and his appointment was confirmed by the Commission on Appointments on April 27, 1962. These facts and the added fact that the appointment was transmitted through channels to petitioner in the ordinary course of official business attest to the regularity thereof and the absence of any of the irregularities and special circumstances attending the so-called midnight appointments confirm such regularity.[125]

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[121] Quoted from 67 C.J.S. 159 and 42 AM. JUR., sec. 99.

[122] Valer v. Briones, G.R. No. L-20033, Nov. 29, 1963; Ronquillo v. Galano, G.R. No. L-21117, Nov. 29, 1963.

[123] Citing Austria v. Amante, 79 Phil. 780; Menandilla v. Onandia, G.R. No. L-17803, June 30, 1962; Mendez v. Ganzon, G.R. No. L-10483, April 12, 1957; Castro v. Solidum, G.R. No. L-7750, June 30, 1955; Madrid v. Auditor-General, G.R. No. L-13523, May 31, 1960; U.P. v. C.I.R., G.R. No. L-15416, April 28, 1960; Agapayan v. Ledesma, G.R. No. L-10535, April 25, 1957; Valencia v. Peralta, G.R. No. L-20864, Aug. 23, 1963.

In the case of Batario, Jr. v. Parentilla, Jr., G.R. No. L-20485, Nov. 29, 1963, the Court did not rule on whether petitioner's appointment was one of the "midnight" appointments, preferring to invalidate his designation as Justice of the Peace, on the ground that petitioner had been in the practice of law for only 2 years, 7 months and 4 days, short of the 3 years required by Rep. Act No. 2613 for appointees to the position. It appears that he was appointed in an *ad interim* capacity on Dec. 14, 1961, took his oath on Dec. 26 and forthwith performed his duties.

[124] Merrera v. Liwag, G.R. No. L-20079, Sept. 30, 1963.

[125] Soreno v. Sec. of Justice, G.R. No. L-20272, Dec. 27, 1963.

Power to grant amnesty

The Constitution gives the President the power to grant amnesty with the concurrence of the Congress.[126] Amnesty "looks backward and abolishes and puts into oblivion the offense itself . . . it so overlooks and obliterates the offense with which he is charged that the person released by amnesty stands before the law precisely as though he had committed no offense." [127] While this may be so, the rule presently is that the person seeking amnesty must allege or claim verbally or in writing the crime. This was reiterated by the Supreme Court in the case of *Vera v. People of the Philippines*.[128] The petitioners, charged with kidnapping with murder, tried to invoke the benefits of Amnesty Proclamation No. 8, series of 1946. They contended that "it is sufficient that the evidence, either of the complainant or the accused, shows that the offenders committed crimes within the terms of the Amnesty Proclamation." [129]

According to the Supreme Court, the cases relied on by petitioners have been superseded and deemed overruled by the subsequent cases of People v. Llanita and People v. Guillermo.[130] It was there held: "Amnesty presupposes the commission of a crime, and when an accused maintains that he has not committed a crime, he cannot have any use for amnesty. Where an amnesty proclamation imposes certain conditions,[131] it is incumbent upon the accused to prove the existence of such conditions. The invocation of amnesty is in the nature of a plea of confession and avoidance, which means that the pleader admits the allegations against him but disclaims liability therefor on account of intervening facts which, if proved, would bring the crime charged within the scope of the amnesty proclamation."

Emergency powers

The Constitution allows the Congress to authorize "the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy." [132] Pursuant thereto, the Congress pro-

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[126] Art. VII, sec. 10(6).

[127] Barrioquinto v. Fernandez, 82 Phil. 642 (1949).

[128] G.R. No. L-18184, Jan. 31, 1963.

[129] They cited the following cases: Barrioquinto v. Fernandez, *supra;* Prov. Fiscal of Ilocos Norte v. De los Santos, G.R. No. L-2502, Dec. 1, 1949, 85 Phil. 77; Viray v. Amnesty Commission, G.R. No. L-2540, Jan. 28, 1950, 85 Phil. 354.

[130] G.R. No. L-2082, April 26, 1950, 86 Phil. 219 and G.R. No. L-2188, May 18, 1950, 86 Phil. 395, respectively.

[131] Administrative Order No. 44, of Oct. 11, 1950, by the Dept. of Justice, implementing Amnesty Proclamation No. 8, required that "in order that the Amnesty Commission may take cognizance, the accused must allege or claim verbally or in writing (the crime)."

[132] Art. VI, sec. 26.

mulgated Commonwealth Act No. 671 shortly before the outbreak of the Second World War giving the President extraordinary powers to meet the forthcoming national emergency. One of the Executive Orders promulgated by the President under his authority granted by Commonwealth Act No. 671 was Number 49, series of 1945, declaring null and void "all deposits made with banking institutions during enemy occupation, and all deposit liabilities incurred by banks during the same period." By virtue of this Executive Order, the defendant in the case of *Jabalde v. Philippine National Bank* [133] refused to pay to the plaintiff the amount allegedly deposited with it on July 21, 1941 and August 30, 1943. Plaintiff attacks the constitutionality of said Executive Order, contending that it impairs the obligation of contracts and deprives him of property without due process of law.

Quoting from its decision in the case of Hilado v. de la Costa,[134] the Supreme Court overruled plaintiff's contentions and held that Executive Order No. 49 was "but the logical corollary and application to bank deposits in Japanese war notes of Executive Order No. 25, insofar as it declares that said notes are not legal tender in territories of the Philippines liberated from Japanese occupation, the validity of which is not, and cannot seriously be, questioned. Moreover, this Executive Order was a valid exercise of the extraordinary powers given to the President by Commonwealth Act No. 671 which empowers him, in Sec. 2 (a) (1) thereof, to "exercise such powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce its authority." Finally, the Court held that Executive Order 49 is clearly intended for permanent application, its operation not being limited to the period of the emergency.

Administration of immigration laws in executive department

The power to deport or expel undesirable aliens is carried into operation by that department of the government charged with the execution of the nation's laws. Its enforcement belongs peculiarly to the political department of the government. One of the principal duties of the chief executive being to preserve peace and order, the mere absence of legislation regulating the state's inherent right to deport or expel aliens is not sufficient to prevent the chief head of the government, acting in his own sphere and in accordance with his official duty, from deporting or expelling objectionable aliens.[135]

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[133] G.R. No. L-18401, April 27, 1964.
[134] 83 Phil. 471.
[135] Forbes v. Chuco Tiaco, 16 Phil. 334, quoted in I TAÑADA & CARREON, POLITICAL LAW OF THE PHILIPPINES 356.

Consequently, the administration of immigration laws is likewise the primary and exclusive responsibility of the Executive branch.[136] And the extension of stay of aliens is purely discretionary on the part of immigration authorities; the Philippine Immigration Act of 1940 (Commonwealth Act No. 613) being silent as to the procedure to be followed in this case, courts have no power to review the purely administrative practice of immigration authorities of not granting hearings in certain cases as the circumstances may warrant, for reasons of practicability and expediency.[137]

The power to expel or deport aliens is the corollary of the power to determine whether aliens should be admitted at all to the Philippines. The second power, involving the discretion of immigration authorities, may not be compelled by a writ of mandamus. So it was held in the case of *Sy Ha v. Galang* [138] that the determination of whether or not an applicant for a visa has a non-immigrant status, or whether his entry into this country would be contrary to public safety, is not a simple ministerial function, but one involving the exercise of discretion, which cannot be controlled by mandamus.[139]

Bureau of Immigration administers immigration laws

Within the executive branch of the government, it is the Bureau of Immigration which has sole authority over the administration and enforcement of immigration laws.[140] This being so, the Cabinet Resolution of February 9, 1956 empowering the Secretary of Justice and Secretary of Foreign Affairs to act on petitions for extension of temporary stay of aliens and to change their status from temporary to special non-immigrants is void. According to the Supreme Court,[141] this Resolution could not legally give this power to the two Secretaries because under the Immigration Law, it is the Commissioner of Immigration who has such power.[142]

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[136] Bisschop v. Galang, G.R. No. L-18365, May 31, 1963.

[137] *Ibid.*

[138] G.R. No. L-18513, April 27, 1693.

[139] Citing the cases of Blanco v. Board of Medical Examiners, 46 Phil. 190, Diokno v. Rehab. Finance Corp., G.R. No. L-4712, July 11, 1952, Ng Giok Lim v. Sec. of Foreign Affairs, 27 O.G. 5112.

[140] Lim Giok v. Vivo, G.R. No. L-20513, Dec. 26, 1963.

[141] *Ibid.;* Vivo v. Arca, G.R. No. L-21728, Dec. 27, 1963; Young, *et al.* v. Commissioner of Immigration, G.R. No. L-29784, Dec. 27, 1963.

[142] Lim Chiok v. Vivo, *ibid.*, citing Ang Liong v. Commissioner of Immigration, 51 O.G. 2893. Moreover, the Court further held, temporary visitors can not have their status changed without first departing from the country (Phil. Immig. Act of 1940, Sec. 9; Ong Se Lun v. Board of Commissioners, G.R. No. L-2017, Sept. 16, 1954; Sy Ong v. Commissioner of Immigration, G.R. No. L-10244, May 11, 1957; Ng Hin v. Commissioner of Immigration, G.R. No. L-13026, March 30, 1960.).

Policy on temporary visitors

The Supreme Court, in the case of *Kua Suy v. Commissioner of Immigration*,[143] held that aliens who voluntarily enter under temporary permits must be strictly required to abide by the periods fixed therein, because laxity in this matter would merely encourage entry under false pretenses. And in *Vivo v. Arca*,[144] it was held that an extension of an alien's period of stay, being a matter of grace, and not of right, should be strictly interpreted.

Consequently, it would not avail aliens seeking extensions of their stay here to base their request on the ground that their fathers and/or husbands have been granted naturalization papers and are just waiting for the two-year probationary period to elapse before they become full-fledged citizens.[145] Aside from the fact that anything can happen within the two-year period—including the commission by the alien of acts that would disqualify him from taking the oath—a mere naturalization decree does not bestow any right to the applicant's consort and next of kin to overstay.[146]

The President as commander-in-chief

It has been said that when war has been declared, or when it is recognized as actually existing, then the President's function as commander-in-chief become of the highest importance and his operations in that character are entirely beyond the control of the legislature.[147] To be sure, the powers of the President as commander-in-chief, while primarily to be exercised in times of war and with respect to activities of military nature,[148] may encompass undertakings not having direct connection with the conduct of war and military campaigns.[149] But always, it seems, these powers of the

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[143] G.R. No. L-13790, Oct. 31, 1963.

[144] *Supra* at note 141.

[145] *Ibid.*; Kua Suy v. Commissioner of Immigration, *supra* at note 59; Sy v. Vivo, *supra* at note 64; Lu Choy Fa v. Vivo, *supra* at note 60.

[146] Lu Choy Fa v. Vivo, *ibid.*

[147] BLACK, CONSTITUTIONAL LAW 115-116 (3rd ed.), 3 WILLOUGHBY 1565-1566, sec. 1031: both quoted in I TAÑADA & CARREON, POLITICAL LAW OF THE PHILIPPINES 303.

[148] Indeed, according to Corwin in his book on the US Constitution, ,the purely military aspects of the Commander-in-Chiefship were those which were originally stressed. He cites Hamilton who said the office "would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the confederacy." To the same effect, Corwin quotes Chief Justice Taney in the case of Fleming v. Page, 9 Ho. 63, 615, 618: "His duty and power are purely military." (CORWIN, THE CONSTITUTION AND WHAT IT MEANS TODAY 100 [12th ed.])

[149] One of the most extreme examples could be President Lincoln's Emancipation Proclamation. (*Ibid.*)

Chief Executive come into play only during wartime, either on an international scale or of local nature, such as the American Civil War.

And yet, last year, the President invoked his powers as Commander-in-Chief to carry out an activity that perhaps, in wartime, could be considered as essential to the successful prosecution of military campaigns and tactics. But there being no catastrophe approaching the magnitude of a full-scale war—even of a full-blown civil war—at that time, it did not appear quite proper for the Chief Executive to invoke such powers and, at the same time, violate an existing law. To this effect, the Supreme Court declared illegal the importation of rice from foreign countries, done under authority of the National Defense Act (Commonwealth Act No. 1).[150]

The petitioner, in this case of *Gonzales v. Hechanova,* sought to enjoin respondents, all members of the Cabinet and of a Presidential rice procurement committee, from implementing Hechanova's decision to import 67,000 tons of rice. Respondents alleged that the importation was authorized by the President as commander-in-chief "for military stockpile purposes" and that in cases of necessity, the President "or his subordinates may take preventive measure for the restoration of good order and maintenance of peace." They referred to the "worsening situation in Laos and Vietnam" as well as the "recent tension created by the Malaysia problem" as constituting "threats of war or emergency" which the President was "duty bound to prepare for . . . without waiting for any special authority."

The Court held that Republic Acts Nos. 2207 and 3452 are the laws properly applicable. The first provides that "it shall be unlawful for any persons, association, corporation or government agency to import rice and corn into any point in the Philippines" although it adds as an exception that "the President may authorize the importation of these commodities through any government agency that he may designate," if the conditions prescribed in Sec. 2 thereof are present. Similarly, Republic Act No. 3452 explicitly enjoins the Rice and Corn Administration "or any government agency" from importing rice and corn. Finally, the Court cited Commonwealth Act No. 138 which provides in Sec. 1 thereof that in all purchases by the Government, including those made by and/or for the armed forces, preference shall be given to materials produced in the Philippines. The importation involved, the Court held, violates this general policy, not to say the two laws above-cited.

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[150] Gonzales v. Hechanova, G.R. No. L-21897, Oct. 23, 1963.

The attempt to justify the importation by invoking reasons of national security overlooks the fact that protection of local planters of rice and corn in a manner that would foster and accelerate self-sufficiency in the local production of said commodities constitutes a factor that is vital to our ability to meet a possible national emergency. Section 5 of Commonwealth Act No. 2, upon which respondents rely, speaks only of a national mobilization, in the absence of which, by necessary implication, other laws such as Republic Acts Nos. 2207 and 2452 and Commonwealth Act No. 138 apply.

Concurring in the majority opinion, Mr. Justice Barrera warns against the implications of the respondents' contentions that the importation is for military stockpiling authorized by the President pursuant to his inherent power as Commander-in-Chief of the armed forces. This line of reasoning, Mr. Justice Barrera cautioned, sets a dangerous trend—that because the policies enunciated in Republic Acts Nos. 2207 and 3452 are for the protection of the producers and consumers, the army is removed from their application. This theory, in effect, proclaims the existence in the Philippines of three economic groups or classes: the producer, the consumers, and the Armed Forces.

At the same time, the Justice added, the conclusion that the importation is justified by recent international events in solely that of the Department of National Defense. The National Security Council, he recalled, which is precisely the highest consultative body which deliberates in times of emergency threatening to effect the security of the state, was not consulted at all.

Power to enter into executive agreements

As the "sole organ of the nation in its external relations, and its sole representative with foreign nations," [151] the President may enter into treaties with the concurrence of two-thirds of all the members of the Senate.[152] He may also sign executive agreements which need not be concurred in by the Senate. Both kinds of international agreements have the same effect, binding the signatory nations in both instances and to the same extent.[153] From the point of view of municipal law however, executive agreements stand on an inferior level with respect to treaties. The Supreme Court, in the case of *Gonzales v. Hechanova, supra,* held that while a treaty and a law

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[151] U.S. v. Curtis-Wright Export Corp., 299 U.S. 304, 81 L.ed. 255, quoting Marshall.

[152] PHIL. CONST., Art. VII, sec. 10(7).

[153] I TAÑADA & CARREON, POLITICAL LAW OF THE PHILIPPINES 337, citing USAFFE Veterans Association v. Treasurer of the Philippines, *et al.*, G.R. No. L-10500, June 30, 1959.

stand on equal footing, whichever comes last in point of time repealing the other,[154] it is not so with respect to executive agreements which must conform to existing laws. The President, the Court held, "cannot indirectly repeal (the latter) through an executive agreement."

THE JUDICIAL DEPARTMENT

Limitations on power of judicial review

Findings of fact by an administrative board or official, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his power or has been guilty of grave abuse of discretion.[155] The powers of the Secretary of Agriculture and Natural Resources and of the Director of Lands to issue timber licenses being executive and administrative in nature, the same may not generally be reviewed by the court.[156]

Effect of judicial decisions

The New Civil Code provides that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." [157] Quoting with approval the decision of the trial court, the Supreme Court, in the case of *Republic v. Prieto*,[158] held that the Congress overstepped its power or authority granted to it by the Constitution to expropriate landed estates [159] when it enacted Republic Act No. 1599. This law includes, among the lands that may be expropriated, those "which formerly formed part thereof." According to the Court, previous decisions promulgated by it have already interpreted the above Constitutional provision to apply only to large estates,[160] those already broken up and divided into parcels of reasonable area no longer being subject to expropriation. Consequently, these decisions cannot be subsequently abrogated by the Congress. For if under the doctrine of Endencia v. David [161] Congress cannot tax the salary of the Justices of the Supreme Court because this would be against its ruling in Perfecto

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[154] Citing COOLEY, PRINCIPLES OF CONSTITUTIONAL LAW 31-32.

[155] Suarez v. Reyes, G.R. No. L-19828, Feb. 28, 1963; citing Espinosa v. Makalintal, G.R. No. L-1334, Aug. 29, 1947, 45 O.G. 712, citing, in turn, Abad Santos v. Prov. of Tarlac, 67 Phil. 480 and Tan v. People, G.R. No. L-4289, April 27, 1951.

[156] *Ibid.*, citing Pajo v. Ago, G.R. No. L-15414, June 30, 1960.

[157] Art. 8.

[158] G.R. No. L-17946 and 18042, April 30, 1963.

[159] Art. XIII, sec. 4.

[160] Referring to Guido v. Rural Progress Administration, 47 O.G. 1848, 84 Phil. 847, among others.

[161] 49 O.G. 4822.

v. Meer,[162] by parity of reasoning, Congress can likewise not authorize the expropriation of lands only forming part of landed estates or haciendas because this would run counter to the consistent holding in the aforesaid line of Supreme Court decisions.

Review of executive agreements

It is one of the powers of the Supreme Court to review all cases in which the constitutionality or validity of any treaty is in question. The case of *Gonzales v. Hechanova, supra,* is authority for the rule that "treaty" includes executive agreements. And it is no argument that the Court, pursuant to the principle of separation of powers, cannot rule on the validity of Executive acts relative to foreign relations, the Constitution being clear on the matter.[163]

THE COMMISSION ON ELECTIONS

Appointment and tenure of commissioners

Section 1, Article X, of the Constitution provides:

> "There shall be an independent Commission on Elections compostd of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years . . ."

Last year, the Supreme Court promulgated a nine-page decision which, together with two concurring and five dissenting opinions, made a staggering total of 42 pages. The case *Visarra v. Miraflor,*[164] appears to have confused an already confused issue, that involving the tenure and appointment of Commissioners to the Comelec.[165]

Pursuant to Commonwealth Act No. 657, implementing Article X of the Constitution, the Court in the case of Republic v. Imperial [166] considered June 12, 1941 as the common starting date of the terms

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[162] 85 Phil. 552.

[163] One statement of the Court in this connection bears notice, to wit: "The Supreme Court, pursuant to this provision, may thus nullify a *treaty,* not only when it conflicts with the Constitution, but also when it runs counter to an *Act of Congress.*" (Emphasis supplied.) This seems to contradict another statement made at an earlier portion of the decision, to wit: "In case a law and a treaty conflict with each other, that which is later in point of time must control." It is submitted that the Court did not exactly mean what it said in the first statement. The word "treaty" there used should only refer to "executive agreement,," not to a treaty proper, signed by the President and concurred in by two-thirds of all the members of the Senate.

[164] G.R. No. L-20508, May 16, 1963.

[165] Surprisingly, in spite of the very close voting (6-5) and of the very strong dissents of Messrs. Justice Concepcion, J. B. L. Reyes,, and Barrera, the petitioner did not attempt to file a motion for reconsideration. It might have had a good chance.

[166] 51 O.G. 1886.

of the three Commissioners first appointed, this being the date of the effective organization of the Commission under the said Commonwealth Act. Accordingly, the terms of first three Commissioners were arranged thus: the first chairman, Jose Lopez Vito, started June 21, 1941 and ended June 20, 1950; the second member, Francisco Enage, started June 21, 1941 and ended June 20, 1947; and the third member (vacant) began June 21, 1941 and ended June 20, 1944. Vicente de Vera was appointed member, filling the vacant post and holding office from June, 1945 to June, 1953.

Rodrigo Perez was appointed to post vacated by Enage and was to hold the position for nine years, expiring June, 1956. Chairman Lopez Vito died in 1947 and de Vera was promoted to his position, but only for the unexpired portion, i.e., until June 20, 1950. Leopoldo Rovira was appointed member, to fill the vacancy left by de Vera's assumption of the chairmanship but only for the unexpired term of de Vera's original term, i.e., until June, 1953.[167] Upon the expiration of Chairman Vera's term [168] on June 20, 1950, Domingo Imperial succeeded him with a term until June 20, 1959.

Gaudencio Garcia was named member in May, 1955, for a term ending June 20, 1962, to succeed Rovira who died about the time his own (i.e., de Vera's original term) ended. In December, 1956, Sixto Brillantes was appointed member to succeed Perez whose nine-year term had just expired, the former to hold office until 1965. And in May, 1958, Jose P. Carag was named to succeed Imperial who had resigned as Chairman, Carag's term being only for less than two years, the unexpired portion of Imperial's original nine-year term. When Carag left office on June, 1959, his term having terminated, Gaudencio Garcia was promoted to his post, to hold office up to June, 1962.[169]

Genaro Visarra was appointed member on May 12, 1960.[170] Juan V. Borra was named chairman to succeed Garcia whose term ended June, 1962. In November, 1962, Miraflor was named member by President Macapagal, on the assumption that Visarra's term ended June, 1962.

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[167] Citing N.P. v. Bautista, 47 O.G. 2356.

[168] That is to say, the term of Lopez Vito, who had been appointed to a term of nine years from 1941 to 1950.

[169] If Garcia is to leave in 1962, this means that the term he follows is his original term. Consequently, the term pertaining to the Chairman would be vacant. The latter term would properly pertain to Visarra who would stay until *1968*, starting from 1960 the year Carag resigned as Chairman). Borra, appointed in 1962, would then follow the only vacant term, that pertaining to Garcia's original line—the term of which expired in 1962—and Borra would stay until *1971*. Since Brillantes was still to hold office until *1965*, Miraflor was appointed to a *non-existent* post in 1962. See dissenting opinions, *infra*.

[170] The majority held that Visarra filled the post left vacant by Garcia's promotion, and only for the unexpired term, until 1962. But see footnote 169.

Visarra challenges Miraflor's right to hold the office of member, claiming that when Garcia was promoted to the position of Chairman, he (Garcia) did not leave his position in the third line of succession (i.e., that started by de Vera and continued by Rovira); so that the vacant place which he (Visarra) filled was that left vacant by Carag, the fixed term of which expires in 1968 yet. Borra, on the other hand, should be deemed to occupy the position left by Garcia in the third line.

The Court held that following the ruling in Republic v. Imperial, there are three lines of succession: (1) that of chairman; (2) that of the second member; and (3) that of the third member. Garcia, in May, 1960, was in the third line of succession, his term ending June, 1962. When he was named chairman in May, 1960, he left that line and entered the line of succession of the chairman, with his tenure still to expire June, 1962. Therefore, upon his appointment, Visarra merely occupied the position left by Garcia whose fixed term of office as third member ended June 20, 1962.[171] Visarra's appointment could neither affect nor extend such fixed term.

Visarra's contention, cited above, were overruled by the Court as being contrary to the decision in Republic v. Imperial, to wit: when Commissioner Vera was appointed Chairman, he left the third line of succession to enter the first, *viz*, that of Chairman; and upon his assumption of the Chairmanship, his position as member became vacant.[172]

Therefore, the Court determined the terms of the three Commissioners thus: Chairman Borra occupies the position of Chairman, with a term ending June 20, 1968, and his tenure beginning August, 1962 ends June 20, 1968; the position of member Brillantes carries a term ending June 20, 1965 and his term ends on the same date; and the term of member Miraflor ends June, 1971.[173]

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[171] See note 169, *supra* ond dissenting opinions, *infro.*

[172] According to Mr. Justice Concepcion, this was inferred from a statement in Republic v. Imperial, to wit: "The second vacancy happened upon the death of Chairman Jose Lopez Vito, who died in May 7, 1947, more than two years before the expirotion of his full term. To succeed him as Chairman, Commissioner Vicente de Vera was appointed. Such appointment. *if at all valid*, could legally be only for the unexpired period of Lopez Vito's term, up to June 20, 1950." (Itaicizing supplied).

Note that if the last statement were to be followed strictly—as the majority did in Visarra v. Miraflor—Visarra would really have no right to stay in office. This so, because Garcia would then be following the term pertaining to the first line—that of the Chairman; hence, the third line would be vacant at the time of Visarra's appointment in 1960. Therefore, Visarra would have to leave in 1962—as in fact he had to. But see dissenting opinions on the issue of whether the portion above quoted should be *stare decisis or obiter dictum.*

[173] Mr. Justice Barrera, dissenting, said of this particular ruling: "(It) may provoke other controversies, because although it upholds the validity of the appointments of Borra and Miraflor, it shortens the tenure of Borra from

Mr. Justice Concepcion raises two issues in his dissenting opinion: (1) May a member, who has held office for less than nine years, be promoted as Chairman, provided that his aggregate tenure for the two offices does not exceed nine years? and (2) May the Chairman or a member, who has served for less than nine years, be reappointed to his aforementioned office, provided that his aggregate tenure under the first and second appointments does not exceed nine years?

Mr. Justice Bautista Angelo, concurring, answers both questions in the affirmative. Reappointment may be made in favor of a Commissioner who has held office for less than nine years, provided it does not preclude the appointment of a new member every three years, and provided further that the reappointee's term does not exceed nine years in all. For the same reasons, the Justice opined, a member may be promoted to Chairman provided that his aggregate tenure does not go beyond nine years.

Mr. Justice Concepcion however holds that a promotion is in effect a new appointment, prohibited by the Constitution. He argues that since it is the theory of the majority that a promotion produces the effect that the one promoted leaves his own line and term and assumes those of the Chairman, both entirely distinct from his own original position and term, such a promotion is a re-appointment falling within the Constitutional injunction. The fundamental law, the Justice opined, is not limited to reappointment to the same identical position but includes promotional appointment, for the evil sought to be avoided by outlawing reappointment is obviously even greater in the case of promotional appointment.

The theory of the majority is based upon the case of Republic v. Imperial, particularly the portion quoted by Mr. Justice Concepcion, from which, he said, the majority inferred its ruling.[174] The Justice stated there was no clear statement that Vera left his own third line and occupied that of the Chairman. It simply stated that his promotional appointment, *if at all valid,* would be only for the

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1971 to 1968 contrary to his appointment, and extends Miraflor's tenure beyond the expiry date stated in his appointment from 1968 to 1971. There is thus created another constitutional problem: can Miraflor continue holding office beyond 1968, the expiry date stated in his appointment, wothout any further action on the part of the appointing power but on the strength merely of the declaration to that effect in the majority opinion? On the other hand, can the President now amend Miraflor's *ad-interim* appointment by inserting therein 1971 as the expiry date of his term and tenure, to conform with the majority opinion, in spite of the fact that Miraflor has already accepted his appointment with an earlier date of expiration and after actually taking his oath, assuming the office, and discharging the functions thereof,"

[174] See footnote 172 for text of quotation.

unexpired period of Lopez Vito's term. Even this, the Justice said, was not a categoric statement; it is but a conditional assumption expressly and purposefully qualified by the phrase "if at all valid." He reminded the majority that the only rulings made in Imperial were: (1) The constitution "evinces a deliberate plan to give a regular rotation or cycle in the membership"; (2) "the terms of the first three Commissioners should start on a common date, irrespective of the variations in their dates of appointment and qualifications"; (3) that common date was June 21, 1941, when the reorganization of the Commission was completed by the approval of Com. Act No. 657; and (4) "any vacancy due to death, resignation or disability before the expiration of the term" of any member, including the Chairman, "should only be filled for the unexpired balance of the term."

Hence, Mr. Justice Concepcion continued, when Visarra was appointed on May 12, 1960, there were two members of the Commission, namely, Garcia, ,whose term was nine years, from June 21, 1953 (upon the expiration of de Vera's original term, partly served by Rovira) to June 20, 1962, and Brillantes, whose term is nine years, from June 21, 1956 (upon the expiration of Perez' term) to June 20, 1968. Visarra was consequently appointed for that vacant position, whose subsequent term of nine years began June, 1959 and ends June 20, 1968. The promotional appointment of Garcia could not affect Visarra's term because, aside from against the Constitution, it was for a term expiring June, 1962. Garcia therefore did not shift to the line vacated by Carag, the next term of which was from June, 1959 to June, 1968, the term given to Visarra. This view is confirmed by the appointment of Borra as Chairman "for a term expiring June, 1971," which is the very term following that of Garcia, as member. It is therefore clear that when Miraflor was appointed, here was no vacancy to which he could be so named.

The other dissenter, Mr. Justice J. B. L. Reyes, who wrote the majority opinion in Republic v. Imperial, agreed with Mr. Justice Concepcion. He also warned against the implications of the majority opinion which would sanction: (1) re-appointment (via promotion); (2) increase of salary (via promotion); (3) control of the Commission of the President (through the creation of vacancies by promoting Commissioners already in office)—all prohibited by the Constitution.[175]

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[175] The other dissenters, Messrs. Justices Barrera, Paredes and Dizon merely reiteratd the arguments of Messrs. Justices Concepcion ant J. B. L. Reyes.

Power of Commission over Board of Canvassers

The other case decided last year involving the Commission on Elections—*Olano v. Ronquillo* [176]—concerns the power of this body to order boards of canvassers to make new proclamations on the basis of amended returns. In the elections of 1959, the Municipal Board of Canvassers of San Isidro, Samar, proclaimed as councilors, the candidates who got the first four positions. The Commission ordered the Board to proclaim the next two candidates, on the ground that the municipality was entitled to six councilors. Reclassified as a 7th class municipality in 1958, the town was entitled, under Republic Act No. 2368 (1959) to elect six councilors. The Commission found that the change in the number of councilors was duly published among the voters, that in fact the official ballots carried six spaces for councilors, and that the Nacionalista and Liberal parties presented six candidates each for councilors.

Petitioner, the president of the party that would lose its majority in the council if the resolution of the Commission is effected, contended that the board of canvassers, having already made its canvass and proclamation, has become *functus officio,* and can therefore no longer be reconvened to make a new and/or additional proclamation.

The Court affirmed the Commission's resolution, holding that where an election return has, ,after the proclamation, been amended by court order, ,the board of canvassers—even after it had already made the proclamation—may be required to make a new proclamation in accordance with the amended return. And where a board of canvassers wrongfully or erroneously excluded the election returns from a certain precinct, the Commission may—even after said board had made a proclamation—order it to reconvene and make a new canvass by including the return of the omitted precinct.[177] It was the ministerial duty of the board of canvassers to make the proclamation according to the returns from all the precincts. In this instant case, it was the ministerial duty of the board of canvassers to proclaim the six candidates for councilors. In both cases, ,the Commission has the power, by virtue of its functions, to compel the board to perform their duty.

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[176] G.R. No. L-17912, May 31, 1963.

[177] Citing Dizon v. Prov. Board, 52 Phil. 47, and Abendante v. Relato, G.R. No. L-6813, Nov., 1953. The Court declared the ruling in Bautista v. Fugoso, 60 Phil. 383, inapplicable—that after having performed its work of canvass and proclamation, the municipal board is deemed *functus officio.*