FOOTNOTE TO PARITY: MORE QUESTIONS ON AMERICAN LANDHOLDINGS

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The New Constitution wrote *finis* to the Parity Amendment but not to the problem of American landholdings. When the Parity Amendment expired on July 3, 1974, the president declared a one-year moratorium on rights over private lands acquired by Americans during the effectivity of Parity. Thereafter, Presidential Decree No. 713[1] was promulgated allowing certain Americans to continue holding and to transfer private residential lands acquired by them in good faith under the Parity Amendment.

Not surprisingly, the decree provokes some very disturbing questions: Should it be read as a mandate for Americans to transfer the ownership of private lands, acquired by them before July 4, 1974, to qualified persons or entities? Is the decree in keeping with the nationalization policy of the Old and New Constitutions? How do Presidential Decree No. 713 and the New Constitution affect the ruling in *Quasha v. Republic*[2] where a unanimous Court declared that the transfer of private residential lands to non-Filipinos is prohibited by the Constitution and is beyond the scope of the Parity Amendment?

No less than the national interest is at stake in the early settlement of these questions. And even if it were not so, the problem of American landholdings should be settled once and for all, because it is in consonance with fair play. In effect, the question which looms largest is: What rights did Americans really acquire over private lands conveyed to them during the effectivity of Parity?

The question is of course, a leading one. Considering however the wording of the Constitution, the validity of which seems to have already been laid at rest by the Supreme Court of the Philippines,[3] there is no longer any doubt that the Americans acquired some rights over private lands transferred to them during the effectivity of the Parity Amendment. But what exactly these rights are have to explained. Whatever these rights are, they remain inextricably woven into the fabric of long-standing Philippine-American special relations, and for this reason, these relations merit more than cursory historical reference.

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1 May 27, 1975.

2 G.R. No. L-30299, August 17, 1972, 46 SCRA 160 (1972).

3 Javellana v. Executive Secretary, G.R. No. L-36142, March 31, 1973, 50 SCRA 30 (1973). In an 6-4 decision, the Court held that there is no longer any judicial obstacle to giving the new Constitution full force and effect.

For purposes of this discussion and to afford common frames of reference, "public lands" shall be understood to mean alienable and disposable lands of public ownership, other than timber or mineral, and governed by the Public Land Act.[4] "Private lands" are lands of private ownership and include public lands when acquired through any of the modes of disposition authorized under the Public Land Act, namely, sale, homestead and confirmation of imperfect or incomplete title.[5] There are more classifications of public lands under the New Constitution but they do not substantially affect the classification of public lands under the Public Land Act. It may be said that the constitutional classifications only particularize what kinds of lands of public ownership are alienable and disposable. The New Constitution no longer qualifies the phrase "private lands" with the word "agricultural," thus erasing any doubt that even private lands other than agricultural may not be acquired by aliens.

POLICY VERSUS PARITY

Although parity is commonly understood to mean equality,[6] the Americans have always managed to have equal rights with Filipinos, but not vice-versa. Under the first Public Act,[7] citizens of the United States and corporations or associations organized under Philippine or American laws were allowed to acquire or lease lands of the public domain. The superseding law permitted aliens to acquire public agricultural lands for industrial or residential purposes.[8] But no such reciprocal rights were available to Filipinos in the United States.

For a country that has always had vivid memories of a painful colonial past, a Constitution clearly setting forth a policy of nationalization comes as no surprise. The 1935 Constitution bravely declared in its preamble that one of the ideals of the Filipino people was to "conserve and develop the patrimony of the nation." So does the New Constitution. In particular, the old Constitution prohibited the alienation of natural resources except public agriculatural lands. Public agricultural lands and private lands were reserved for Filipinos and corporations in which Filipinos owned at least 60% of the capital stock. Only in case of hereditary

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[4] Com. Act No. 141 (1936), sec. 6, classifies public lands into alienable and disposable lands, timber lands and mineral lands. However, certain government lands like patrimonial property, friar lands and landed estates are not directly governed by the Public Land Act but by special laws.

[5] PENA, PHILIPPINE LAW ON NATURAL RESOURCES 7 (2nd ed., 1970).

[6] BLACK'S LAW DICTIONARY 1271 (4th ed., 1968).

[7] Act No. 926 (1903).

[8] Act No. 2874 (1919). See Coquia, *Annulment of Public Land Titles*, in 52 SCRA 365, 369 (1974).

succession[9] was an alien permitted to acquire private agricultural land. In 1936, the Public Land Act imposed the same citizenship requirements for the acquisition of public lands for agricultural purposes.[10] The Public Land Act of 1936 has been amended several times but it is still the governing law on alienable and disposable public lands.

The pertinent nationalization provisions of the 1935 Constitution relate to public agricultural lands and other natural resources, private agricultural lands and public utilities, respectively:

> ART. XIII, SEC. 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant.
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> ART. XIII, SEC. 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations or associations qualified to acquire or hold lands of the public domain in the Philippines.
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> ART. XIV, SEC. 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty *per centum* of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires.

Nevertheless, the Tydings-McDuffie Law was appended to the 1935 Constitution in the form of an ordinance providing that citizens and corporations of the United States shall enjoy all civil rights of citizens and corporations, respectively, of the Commonwealth. Although the ordinance was automatically abrogated on July 2, 1946, Section 1(1), Article XVII

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[9] It is believed that "hereditary succession" should be strictly construed to mean "forced heirs" in order to avoid circumvention of the nationalistic spirit of the Constitution. See Noblejas, *Real Property Ownership and Alienage*, in U.P. LAW CENTER, PRACTICE IN LAND TITLES AND DEEDS, 1972, 155-156 (1973).

[10] See Com. Act No. 141 (1936), secs. 12, 22, 33 and 34.

of the Constitution thoughtfully and specially provided that effective upon the proclamation of Philippine Independence, existing property rights of citizens or corporations of the United States would be respected to the same extent as property rights of Filipinos. Except for vested rights of Americans, the intention apparently was to bring Americans within the coverage of the nationalization policy after July 4, 1946. It was not to be so.

A Score for Parity

On March 11, 1947, parity scored a victory against policy when the Filipino people ratified the Parity Amendment which was to be appended to the Constitution as an ordinance.[11] The Parity Amendment extended for 28 more years, but in no case beyond July 3, 1974, the right of American citizens and corporations owned or controlled directly or indirectly by such citizens over the following: the disposition, exploitation, development and utilization of all agricultural, timber and mineral lands of the public domain and other natural resources of the Philippines, and the operation of public utilities.

The new ordinance read as follows:

> Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven Hundred and Thirty Three, but in no case beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development and utilization of all agricultural, timber and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions im-

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[11] The Americans made the passage of the Parity Amendment a condition to the release of war damage claims of the Filipinos. See Recto's comments on what he considered the "shameful manner" in which the Parity Amendment was approved, quoted in CONSTANTINO, THE MAKING OF A FILIPINO 222 (1969).

In the case of Mabanag v. Vito, 78 Phil. 1 (1947), three senators and eight representatives of the Coalition Minority filed a petition for prohibition to stop the enforcement of the Congressional resolution proposing the amendment of the Constitution giving parity rights to Americans. For alleged electoral frauds, the three senators had been suspended and the eight congressmen, though not suspended nor formally charged, had been denied the right to vote during congressional deliberations on the amendment. Had their votes been counted, the resolution would have fallen short of the 3/4 vote required by the Constitution for an amendment. The Court dismissed the petition for being a political question.

> posed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.[12]

Mutual recognition of the disparity in parity led to a restudy of the trade agreement, culminating in the Laurel-Langley Agreement.[13] Ostensibly, the Agreement gave Filipinos reciprocal rights in the utilization of natural resources and the operation of public utilities in the United States. Nevertheless, the Agreement limited Filipinos to natural resources subject to federal control. As Claro M. Recto observed pointedly at the time,[14] apart from the doubtful question regarding availability of Filipino capital for export, very few natural resources of the United States were really under federal control because most of them were controlled by the individual States. The right of Filipinos and of Filipino corporations to own land in the United States was not affected by the Agreement but the states of the Union reserved the right to control or limit activities of Filipinos.

It was clear that the conflict between parity and policy was far from over.

CASES BEFORE *Quasha*

Even a fervently nationalistic Constitution can be compelled to admit to an exception. As will soon be realized, the Parity Amendment created an exception that was at once taken to be sweeping in its effects. From then on, Americans felt assured, rightly or wrongly, that they could exercise the same property rights as Filipinos and that their acquisitions of land would bear the stamp of legitimacy.

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[12] CONST. (1935). For comparative purposes, the controversial equal rights" provision of the Philippine Trade Act, Sec. 342 states: "The disposition, exploitation, development and utilization of all agricultural, timber and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by the United States citizens." The draft of this provision as originally submitted by Congressman Bell on January 12, 1946 to the House of the U.S. Congress gave "the same rights as to property, residence and occupation as citizens of the Philippine Islands. Such rights shall include, rights to acquire land of the public domain, to acquire grazing, forestry, fishing and mineral rights, and to engage in the ownership and operation of public utilities, and all such rights shall be acknowledged, respected and safeguarded to the same extent as the same right of the citizens of the Philippine Islands..."

[13] Effective January 1, 1956, the Laurel-Langley Agreement was authorized by Rep. Act No. 1355 (1954).

[14] Claro M. Recto and then Sen. Lorenzo Sumulong had a running debate on parity which is discussed in Cortes, *"The Status of American Interests in Philippine Natural Resources and Public Utilities — Anticipated Problems,"* 40 WASH. L. REV. 477-500 (1965).

It was otherwise with the other aliens. The cases prior to the *Quasha* decision affecting the validity of transactions transferring title to private lands amply demonstrate that as to other aliens, the nationalistic provisions of the Constitution were fully enforced. These cases were of two general types: they either were attempts by the Filipino vendor to recover the land from the alien buyer, or, arose out of the refusal of the register of deeds to issue a certificate of title in the alien vendee's name. Most of these cases involved Chinese vendees. In the cases, the Court did not hesitate to declare the sale of private residential land to an alien void for being in contravention of Section 5, Art. XIII of the Constitution.

However, as to whether the Filipino vendor should be allowed to recover, the Court appears to have followed two schools of thought. For the sake of convenience, we shall refer to these schools of thought as the *pari delicto* rule and the constitutional-prohibition rule.

1. THE *Pari Delicto* RULE

The *pari delicto* doctrine, as applied to contracts of sale of land to an alien buyer, simply means that where the parties knowingly enter into such a prohibited contract, neither may recover from the other.[15] Since both vendor and vendee are in bad faith, they shall both be considered in good faith. The Filipino vendor cannot invoke the illegality of the sales to demand the return of the land; nor can the alien buyer demand the return of the price.

Under the cases decided by the Supreme Court, the consequences flowing from the *pari delicto* rule may be outlined as follows.[16]

1. The sale is null and void for being in contravention of Section 5, Article XIII of the Constitution;[17]

2. The Filipino vendor cannot recover from the alien buyer or the latter's transferee or successor-in-interest, even though the latter

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[15] CIVIL CODE, art. 1412(1).

[16] Elma, *Scope and Effects of the Quasha Decision on Private Agricultural Lands Acquired by American Under the Parity Amendment*, in 46 SCRA 180-259 (1972).

[17] Rellosa v. Gaw Chee Hun, 93 Phil. 827 (1953); Caoile v. Yu Chiao Peng, 93 Phil. 862 (1953); Cortes v. O Po Poe, G.R. No. L-2943, October 30, 1953; Cortes v. Dee Chian Hong & Sons, Inc., G.R. No. L-3107, November 27, 1953; Dinglasan v. Lee Bun Ting, 52 O.G. 3566 (July, 1956), 99 Phil. 427 (1956). In the following cases, *pari delicto* was invoked as an additional reason to bar the Filipino seller from trying to recover the land: Cabauatan v. Uy Hoo, 88 Phil. 103 (1951); Bautista v. Uy Isabelo, 93 Phil. 843 (1953); Talento v. Makiki, 93 Phil. 859 (1953) and Arambulo v. Chua, 95 Phil. 749 (1954).

is not qualified to acquire private lands;[18] more so, if the transferee is a Filipino;[19]

3. The Filipino seller cannot likewise recover from the alien buyer if the latter has become naturalized[20] or repatriated[21] before the Filipino seller's action, in which cases, title to the land vests in the naturalized or repatriated buyer from the moment of acquisition of the land, and not from the moment of naturalization or repatriation;

4. Since the Filipino vendor is not allowed to recover, the remedies are:
   a. Escheat or reversion proceedings by the State
   b. Legislative action providing for policy and procedure concerning dealings with private agricultural lands.[22]

The first case applying the *pari delicto* rule merely invoked it as an additional reason to nullify the sale of land to an alien. The issue in *Cabauatan v. Uy Hoo*[23] was whether the sale of private agricultural land on March 18, 1943 to a Chinese citizen was valid. In refusing recovery of the land by the Filipino vendee, the Court relied mainly on the ground that the Constitution, being political in nature, was not in force during the Japanese Occupation when the sale took place. Since the Constitution was not then in force, the *Krivenko v. Register of Deeds*[24] ruling to the effect that aliens were prohibited from acquiring private residential lands under the Constitution could not be applied. Moreover, the Court noted that during the Japanese Occupation when the sale took place, the Commander-in-Chief of the Imperial Japanese Forces issued a proclamation on January 3, 1942 making effective in the Philippines all the laws in force prior to the outbreak of the war. One of these laws was the Civil Code of Spain, Article 1306 (1) of which prevents the parties in *pari delicto* from recovering from each other.

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[18] Dinglasan v. Lee Bun Ting, *supra*, note 17 and Soriano v. Ong Hoo, 103 Phil. 879 (1958).

[19] Alberto v. Tan Sing, G.R. No. L-6336, November 17, 1953.

[20] Vasquez v. Li Seng Giap, 96 Phil. 447 (1955). This case has been criticized for validating a void sale by mere naturalization. Moreover, title is acquired by the alien vendee at the time of the void sale, not at the time of naturalization, in affect giving naturalization retroactive legal effect. The Court said, however, that once the alien vendee has become naturalized, there is no longer a violation of the constitutional prohibition.

[21] Bautista v. Uy Isabelo, *supra*, note 17.

[22] Rellosa v. Gaw Chee Hun, *supra*, note 17.

[23] *Supra*, note 17.

[24] 79 Phil. 461 (1947)

Two years after the *Cabauatan* case, the Court had occasion again to resolve the validity of a sale of private agricultural land to a Chinese vendee. This time the Court relied principally on the *pari delicto* principle in denying recovery to the Filipino vendor. Quoting the *Cabauatan* case, the Court in *Rellosa v. Gaw Chee Hun*[25] said that during the Japanese Occupation, the existing Republic of the Philippines, adopted a constitution on September 4, 1943. This constitution also provided that "no private agricultural land shall be transferred or assigned except to individuals, corporations or associations qualified to acquire or hold lands of the public domain of the Philippines." Since the sale in question took place on February 2, 1944, the sale was void. However, the Court stated that on the basis of the *pari delicto* principle alone, the Filipino vendor should not be allowed to recover.

In an *obiter,* the Court in *Rellosa* conceded that the application of *pari delicto* in prohibited contracts is not absolute. If public policy would be advanced by allowing either party to sue for relief, then the Court would not apply *pari delicto;* but the contract must first be shown to be intrinsically contrary to public policy. In the *Rellosa* case, remarked the Court, the sale was illegal not because it was contrary to public policy, but because it was contrary to the Constitution. Therefore, the case did not come within the purview of the exception to *pari delicto.*

It is interesting to note that the Court failed to explain the essential difference, if indeed there was, between public policy and the Constitution. In imputing knowledge of the prohibition of law to the parties, the Court maintained that everyone is presumed to know the law. Since the Filipino vendor could not recover, the Court stressed that it is for Congress to enact a law on the matter and for administration agencies to be more militant by performing one of two things: reversion proceedings under the Public Land Act[26] or escheat proceedings, as a consequence of the violation of the Constitution. The Court also said that reversion and escheat differ only in procedure but produce the same effects.

All the other cases applying the *pari delicto* rule in transactions involving sale of land to an alien merely echoed the *Cabauatan* case if the sale took place during the war but before September 4, 1943, or the *Rellosa* case if the sale took place after September 4, 1943.

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[25] *Supra,* note 17.
[26] Secs. 122 & 124.

II. THE CONSTITUTIONAL PROHIBITION RULE

The application of *pari delicto* creates a stalemate which virtually permits a continuing violation of the Constitution. This, in brief, is the main objection of justices who pursue the constitutional prohibition rule. This second school of thought subscribes to the supremacy of the Constitution over the civil law concept of *pari delicto*. According to this point of view, the sale of private residential land to an alien is definitely void for being violative of the Constitution, therefore the parties should be restored to where they were before the sale. By reason of the important public policy involved, the *pari delicto* rule should not be applied. The constitutional prohibition regarding alien acquisition of private land should be meaningless if the land remains with the alien buyer inasmuch as the law fails to provide for an adequate procedure governing reversion or escheat of such lands to the state. In other words, the constitutional prohibition rule applies the exception to the *pari delicto* rule.

The consequences flowing from this mode of reasoning may be outlined as follows:[27]

1. The sale is null and void for being in contravention of Section 5, Article XIII of the Constitution and the parties are entitled to mutual restitution;[28] but
2. Mutual restitution will not be allowed if by reason of the vendee having become naturalized or repatriated, there is no more constitutional mandate that is violated, and title vests from the moment of acquisition of the land, not from the moment of naturalization;[29]
3. The Filipino seller can recover from the alien buyer's transferee or successor-in-interest, unless such transferee or successor-in-interest is a qualified person.[30]

The case which definitely settled the issue whether an alien, under the Constitution, could acquire private residential land was *Krivenko v. Register of Deeds*.[31] The plaintiff was a white Russian who bought a residen-

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[27] Elma, *supra*, note 16.

[28] Dissenting opinions of Justices Pablo and Reyes in Rellosa, *supra*, note 17; of Justice Pablo in Bautista *supra*, note 17; of Justices Pablo and Padilla in Talento, *supra*, note 17 and in Caoile, *supra*, note 17; of Justices Pablo and Reyes in Cortes v. O Po Poe, *supra*, note 17; of Justice Reyes in Cortes v. Dee, *supra*, note 17; of Justice Pablo in Arambulo, *supra*, note 17, and of Justices Padilla and Reyes in Dinglasan, *supra*, note 17. See also dissenting opinion of J.B.L. Reyes in Soriano, *supra*, note 18.

[29] Vasquez v. Li Seng Giap, *supra*, note 20.

[30] Dissenting opinion of Justice J.B.L. Reyes in Soriano v. Ong Hoo, *supra*, note 18. See also Herrera v. Luy Kim Guan, 110 Phil. 1020 (1961).

[31] *Supra*, note 24.

tial land from the Magdalena Estates in December 1941. However, he attempted to register the land only in May 1945. The register of deeds refused to do so. Krivenko brought this action to compel the register of deeds to register his title. Krivenko averred that since the Constitution expressly prohibited only alien acquisition of public and private agricultural lands, residential lands were outside the ban.

The Court held that enumeration of lands of the public domain in the Constitution was exclusive. Lands must be agricultural, timber or mineral. Since residential land was neither timber nor mineral, it could only be agricultural. The Court construed Section 1, Article XIII of the Constitution as referring only to public agricultural land and Section 5, Article XIII as referring only to private agricultural lands. Both lands may not be acquired by aliens. The register of deeds cannot therefore be compelled to register the title of the plaintiff.

With respect to the terms *private* and *public*, the Court said that such terms only designate ownership, not the class of land; and for the conservation of the national patrimony, what is important is not whether the land is owned by the State or its citizens, but that said lands do not fall into alien hands. Thus:

> No distinction should be made because private residential lands are as much an integral part of the national patrimony as the residential lands of the public domain. Specially is this so where, as indicated above, the prohibition as to the alienation of public residential lots would become superfluous if the same prohibition is not equally applied to private residential lots. Indeed, the prohibition as to private residential lands will eventually become more important, for time will come when in view of the constant disposition of public lands in favor of private individuals, almost all, if not all, the residental lands of the public domain shall have become private residential land.[32]

The strong drift of the *Krivenko* decision was that the Court would, or might have, allowed the Filipino vendor to recover, had this case been an action for recovery by the Filipino vendor. This, by reason of compelling constitutional considerations. But since Krivenko became a naturalized Filipino some time after the decision, the issue had become moot and academic as to him.

The rash of cases filed by Filipino vendors to recover lands sold to alien vendee was the immediate impact of the *Krivenko* case. However, the decisions in these cases showed that the constitutional prohibition rule

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[32] *Ibid.* The decision was penned by Mr. Justice Moran. Consider however, the strong dissenting opinions of Justices Paras, Padilla, Bengzon and Tuason.

was the minority view and that the *pari delicto* rule had the upper hand. Before 1967, the constitutional prohibition rule appeared only in isolated dissenting opinions of Justices G. Pablo, Alex Reyes, S. Padilla and J.B.L. Reyes, either alone or with one another. But in 1967, the majority view applied the constitutional prohibition rule in *Philippine Banking Corporation v. Lui She*.[33] The issue was whether a contract of lease for 99 years, with an option to buy within 50 years, of a residential and commercial land to a Chinese citizen is valid.

Speaking through Justice Castro, the Court found as a fact a scheme to circumvent the constitutional prohibition regarding the transfer of land to aliens. Said the Court:

> Taken singly, the contracts show nothing that is necessarily illegal, but considered collectively, they reveal an insiduous pattern to subvert by indirection what the Constitution directly prohibits. To be sure, a lease to an alien for a reasonable period is valid. So is an option giving an alien the right to buy real property on condition that he is granted Philippine citizenship.

The contracts of lease and option to buy were annulled by the Court and the land was returned to the estate of the Filipino owner, because the Court said that under Article 1416 of the Civil Code, there is an exception to the *pari delicto* rule:

> ART. 1416. When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may if public policy is thereby enhanced, recover what he has paid or delivered.

Apart from public policy, another reason the Court cited for not applying *pari delicto* was equity. The original parties were dead and it seemed unfair to impute bad faith on their successors-in-interest or heirs.

In a concurring opinion, Justice Fernando criticized the *Rellosa* case and subsequent cases adopting the *pari delicto* rule with respect to sales of land to aliens. Said the Justice, there was no bad faith between the parties because under Article 526(3) of the Civil Code, "Mistakes upon a doubtful or difficult question of law may be the basis of good faith."

Nonetheless, it should be noted that the *Lui She* case involved a lease, and not a sale of private land. However, the lease here amounted to a virtual transfer of ownership when coupled with the option to buy. In an earlier case,[34] the Court justified a lease for twenty-five years, renewable for twenty-five years, to an alien corporation on the ground that it was still within the 25-year limitation of the Public Land Law. In an *obiter,*

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[33] G.R. No. L-175871, September 12, 1967, 21 SCRA 52 (1967).
[34] Smith Bell & Co. v. Register of Deeds, 96 Phil. 54 (1954).

the Court further remarked that under Article 1643 of the Civil Code, an alien could lease land for a maximum of 99 years. This ruling has been severely criticized.[35]

The Supreme Court also stated in *Lui She*: "to the extent that our ruling in this case conflicts with that laid down in *Rellosa v. Gaw Chee Hun* and subsequent similar cases, the latter must be considered as *pro tanto* qualified." Did this means that the *pari delicto* rule had been thrown over board by the Court? This was an open question at the time, because the Court did not categorically reject the Rellosa doctrine. Moreover, what was involved was a lease. It was felt that the Court might have been prompted to reject the *pari delicto* rule in this case due to long legislative inaction regarding the procedure for escheat proceedings in cases of annulled sales of land to alien vendees, the practical effect of which had been to continue ownership by such aliens.[36]

RELATED CASES

Religious associations administered by aliens did not escape judicial inquiry respecting lands held in the name of such associations. In the case of *Register of Deeds of Rizal v. Ung Siu Temple*,[37] the Court held that Act No. 271 of the Philippine Commission allowing all religious associations to hold lands in the Philippines should be deemed repealed by Section 5, Article XIII of the Constitution. Thus, the donation of private land to an alien religious corporation was void.

On the other hand, the Court in *Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission and Register of Deeds of Davao City*[38] in effect created an exception to the above rule in so far as the Roman Catholic Church was concerned, although it did not say so in so many words. The Court justified its decision by reasoning that a corporation sole with a Canadian citizen as administrator did not come within the constitutional prohibition because lands held by such corporation sole were only held in trust for the faithful residing within its territorial jurisdiction. The Court took judicial notice of the fact that the Catholic population of Davao were overwhelmingly Filipino.

With the passage of the Retail Trade Law[39] on June 19, 1954, the issue shifted from land to business. The Retail Trade Law limited the retail

[35] Balguna & Mabus, *Validity of Long-Term Leases in Favor of Aliens*, 4 U.M. L. GAZ. 377 (1954).
[36] Elma, *supra*, note 16.
[37] 97 Phil. 58 (1955).
[38] 102 Phil. 596 (1957).
[39] Rep. Act No. 1180 (1954).

business to citizens of the Philippines and corporations, one hundred percent of whose capital stock is owned by such citizens. The same year, Secretary of Justice Tuason rendered an opinion that the Retail Trade Law did not apply to Americans by virtue of the Parity Amendment. Nine years later, Secretary of Juctice Liwag issued an opinion that parity rights did not exempt the Americans from being subject to the Retail Trade Law.[40] The validity of the law had earlier been challenged for being in violation of the Treaty of Amity between the Philippines and China on April 18, 1947.[41] The Court held that even if the Retail Trade Law infringed on the Treaty, "it should be remembered that a Treaty is always subject to qualification or amendment by a subsequent law. A treaty may never curtail or restrict the police power of the state."[42]

Because of a decision (Civil Case No. 5717 of the Manila CFI — titled *"Philippine Packing Corporation v. Hon. Teofilo Reyes, et al"*) rendered by Judge Jarencio (the decision was not yet final), Mayor Villegas of Manila decided to deny permits for American citizens and corporations wholly owned by Americans to engage in retail trade. A presidential directive was thereupon issued, dated December 31, 1966 ordering all offices under the Executive Department to act in conformity with the opinion of the Department of Justice that Parity rights exempted American citizens and corporations wholly owned by them from the Retail Trade law, until the Jarencio case had been resolved by the Court. The opinion of the Department of Justice was based mainly on Article VII of the Laurel-Langley Agreement which granted Americans national treatment or the same treatment as Philippine nationals.

Mayor Villegas filed an original suit in the Supreme Court questioning the validity of the Presidential directive.[43] Although the Court refused to rule on whether or not American citizens and corporations could engage in retail trade, the petition was dismissed for failure of the Mayor to show *prima facie* that the directive and the opinion were contrary to law. It was therefore incumbent upon the Mayor to follow the directive of the highest executive official charged with the enforcement of the Agreement.

A case which did not pertain to land but which also involved partly the scope of American privilege under the Parity Ordinance was *Palting v. San Jose Petroleum, Inc.*[44] A Panamian corporation which was in turn controlled by two Venezuelan corporations claimed to be owned by Ameri-

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[40] Salans & Belman, *An Appraisal of the United States-Philippines Special Relationship*, 40 WASH. L. REV. 447 (1965).
[41] Inchong v. Hernandez, G.R. No. L-7995, May 31, 1957, 101 Phil. 1155 (1957).
[42] PARAS, INTERNATIONAL LAW AND WORLD ORGANIZATION 22 (1971).
[43] Villegas v. Teehankee, G.R. No. L-29028, January 18, 1967, 19 SCRA 42 (1967).
[44] G.R. No. L-14441, December 17, 1966, 18 SCRA 924 (1966).

can citizens. The plaintiff was a prospective stockholder who wanted to know whether the corporation was authorized to exercise parity privileges under the Parity Ordinance, Laurel-Langley Agreement and Petroleum Law.

The Court held negatively. According to the Court, the meaning of "indirectly" in the Parity Amendment cannot be unduly stretched by tracing the ownership or control of stocks in a corporation *ad infinitum*. Even granting that individual stockholders of the Venezuelan corporations were American citizens, it was necessary under the Laurel-Langley Agreement that the respondents establish that the different states of which such American stockholders were citizens, allow Filipinos and Filipino corporation to engage in the exploitation of the natural resources of those States.[45]

Though the Court refused to rule on the question whether American corporations should be subject to the same limitations as Filipino corporations under the Corporation Law, it not being necessary to the resolution of the case, the decision indicated that American corporations, or any alien corporation for that matter, should never have more rights than those granted to Filipino corporations.[46]

THE *Quasha* VALEDICTORY

Thus, in the 1970's the status of American private lands become a cause for concern on the part of Americans, and controversy on the part of the Filipinos. Already, the stirrings of political consciousness ripened into a maxim: Think Filipino and re-examine history. The air hung heavy with nationalistic speeches. The Constitutional Convention was busily reframing the Constitution.

An American by the name of William Quasha filed a petition for declaratory relief with the Court regarding his rights over a private residential land acquired by him on November 26, 1954, upon the expiration of Parity on July 3, 1974. Since the Laurel-Langley Agreement took effect later than the sale, that is, on January 1, 1956, the law governing was the Parity Amendment.[47]

Tracing the history of the Parity Amendment, the Court said that it gave the Americans only two rights: (1) the exploitation, development

[45] See Art. VI, par. 3 of the Laurel-Langley Agreement.

[46] Under the Articles of San Jose Petroleum, the Court observed that directors need not be stockholders and could vote by proxy (the proxy being not necessarily a stockholder); thus directors were not culpable for any contract executed by them except in fraud of the corporation. While Panama laws might allow these practices, the Filipino corporation would not, under Philippine laws, be allowed to indulge in such practices.

[47] Quasha v. Republic, *supra*, note 2.

and utilization of public lands, and other natural resources of the Philippines, and (b) the operation of public utilities. Therefore, since Parity made express exception only to Section 1, Article XIII and Section 8, Article XIV of the Constitution, said Parity should not be extended to private agricultural lands which is governed by Section 5 of Art. XIII of the Constitution. Parity, being in derogation of sovereignty and an exception to the constitutional policy, should be strictly construed, as the Court has already held.[48] The exceptional rights granted to Americans would expire on July 3, 1974. As modified by the Amendment, the Constitution only authorized one of two things with respect to rights acquired under Parity:

1. Alienation or transfer of rights less than ownership.
2. Resoluble ownership that would be extinguished not later than July 3, 1974.

Of added interest was the fact that the *ponente* of the case, Mr. Justice J.B.L. Reyes penned the decision on the eve of his retirement. It should be recalled that in two cases affecting the validity of a sale of private land to Chinese citizens, the Justice had upheld the constitutional prohibition rule as against the *pari delicto* rule. In the *Vasquez* case,[49] he concurred in validating the sale only because the action to annul came after the effectivity of the naturalization of the vendee. Otherwise, he stated that the action to annul would have progressed. He dissented in the *Soriano*[50] case which absolutely denied recovery of the land sold in violation of the Constitution by the Filipino vendor. He would allow the Filipino vendor to recover unless the alien's transferee or successor-in-interest was a qualified person.

In the *Quasha* case, Justice J.B.L. Reyes in no uncertain terms called Parity "certainly rank injustice and inequity" because it placed Filipinos in a more disadvantageous position than U.S. citizens in the disposition and exploitation of the public lands and other natural resources, something which the Court had only hinted at in the *Palting*[51] case. As for the contention that the Legislature had not yet by law provided for the procedure governing escheat proceedings, despite the exhortation of the Court in the *Rellosa* case,[52] the Court through Justice J.B.L. Reyes said:

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[48] Commissioner of Internal Revenue v. Guerrero, G.R. No. L-20442, September 22, 1967, 21 SCRA 180, 181 (1967).

[49] *Supra*, note 20.

[50] *Supra*, note 18.

[51] *Supra*, note 44.

[52] *Supra*, note 17.

> That the Legislature has not yet determined what is to be done with the property when the respondent's right thereto terminates on 3 July 1974 is irrelevant to the issues in this case. The law-making power has until that date full power to adopt the opposite measures, and it is expected to do so.

Petitioner Quasha filed a motion for reconsideration but the Supreme Court, in a resolution dated December 7, 1972 denied the motion for lack of merit.[53]

It will be noted that the Court in the *Quasha* case cannot be considered to have really taken into account the application of the *pari delicto* rule as against the constitutional prohibition rule, which it had done in past cases involving the validity of sales of private lands to other aliens. The reason for this was the nature of the petition involved. While past cases involved petitions of Filipino vendors seeking annulment of the sale and reconveyance of the land sold, or petition for *mandamus* by the alien vendee to compel the Register of Deeds to register the land sold or leased, petitioner Quasha was merely asking for a declaratory relief. In the *Quasha* case, there was no Filipino vendor involved or interested in recovering the land sold.

However, the Court did say that the Legislature should "adopt the opposite measures," governing what was to be done with American private lands. Significantly, the Court did not say whether it meant a law governing escheat or reversion proceedings. In view of the fact that the Court spoke of resoluble ownership and alienation of rights less than ownership, could it have meant also a law allowing American vendees to hold the land and/or to transfer the same to qualified persons? Since the remedy rests with Legislature, the practical effect of the decision is that Filipino vendors cannot recover the land sold, unless Legislature provides otherwise. Impliedly, the Court seemed to have reverted to the *pari delicto* rule.

It is submitted that the Court in *Quasha,* in directing the Legislature "to adopt opposite measures," was referring to a law governing escheat or reversion proceedings. The reason for this is that the Court's decision rested mainly on the fact that Americans were not authorized to acquire private agricultural lands under the Parity Amendment. If that acquisition is void, the Court could not have asked the Legislature to validate it. Furthermore, this interpretation would be in keeping with the Court's similar direction to Legislature in *Rellosa,* a direction which the Legislature failed to heed. The *Rellosa* case would apply, having been reapplied by the Court in several subsequent cases, in so far as validity of alien land-

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[53] Elma, *Recent Developments Affecting the Right, Title, or Interest of Americans Over Their Private Agricultural Lands Acquired Under the Parity Amendment,* in 50 SCRA 414 (1973).

holdings is concerned, because American private landholdings are not protected by Parity rights.

On the other hand, the Court in *Quasha,* brushing aside the contention that Section 2, Article VI of the Laurel-Langley Agreement states that 'This provision does not affect the right of citizens of the United States to acquire or own private agricultural lands in the Philippines . . .' said that the right referred to is the right of U.S. citizens to acquire or own private agricultural lands before Philippine independence. After July 4, 1946, no such right existed anymore for the Americans. In the words of the Court:

> If the reopening of only public lands to Americans required a Constitutional Amendment, how could a mere Trade Agreement, like the Laurel-Langley, by itself enable United States citizens to acquire and exploit private agricultural lands, a right that has ceased to exist since the independence of the Philippines by express prescription of our Constitution?

It must be remembered though that since the *Quasha* case involved only private land acquired by an American before the Laurel-Langel Agreement modified the Parity Amendment, it should be authority only for private lands acquired by Americans during the effectivity of the Parity Amendment. The Court's pronouncements on rights acquired by Americans over public agricultural lands under Parity and American property rights under the Laurel-Langley Agreement are *obiter dicta.*

THE NEW CONSTITUTION: CERTAINTY AND UNCERTAINTY

With the advent of the New Constitution, the loose ends of the law governing American property rights under Parity were expected to be tied up. Pursuant to the strict language of the Parity Amendment that it was in no case to extend beyond July 3, 1974, the New Constitution declared the automatic termination of Parity on that date. However, it left American property rights uncertain. These certainty and uncertainty are found in Section 11, Article XVII:

> ART. XVII, SEC. 11. The rights and privileges granted to citizens of the United States or to corporations or associations owned or controlled by such citizens under the Ordinance appended to the 1935 Constitution shall automatically terminate on the third day of July, 1974. Titles to private lands acquired by such persons before such date shall be valid as against other private persons only.

However read, the above provision clearly gives the American vendee some rights. He can assert his right over the land against the Filipino vendor and the whole world, except only as against the State. If he disposes of the land before reversion proceedings are instituted to qualified

persons, then the title of the latter becomes indefeasible because there will be no more violation of the Constitution.[54]

As it has been observed, "It was as if the Constitution had adhered to the *pari delicto* rule and its concomitant effects."[55] In so doing, the Constitution follows American decisions regarding the validity and effect of sales of private lands to aliens.[56] Translated into simple terms, the sale is void but the Filipino vendor may not recover from the American vendee, his transferee or successor-in-interests, the remedy being for the Legislature to provide for the procedure in escheat or reversion.

Speaking before the Philippine Council of the International Chamber of Commerce, Solicitor-General Estelito Mendoza stated:

> What are the implications? The previous owner may not recover from the American buyer. The American buyer may validly convey the land to a qualified individual or corporation, and when this is done, the State may no longer seek reversion of the property. Or if the American holder be a corporation, it may either convey the property to a qualified individual or corporation or restructure its corporate holding into 60-40 ratio. If it conveys the property, it may thereafter, if it so desires, lease it back.[57]

Except for the following changes, the new Constitution retains substantially the nationalization provisions of the 1935 Constitution: (1) Alienable and disposable lands of the public domain are no longer limited to the broad term agricultural lands but include specifically industrial, or commercial, residential and resettlement lands;[58] (2) More specific reclassification of lands of the public domain into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and such other classes as may be provided by law;[59] (3) Filipinization can be extended by the National Assembly only in certain traditional areas of investment as the national interest may require;[60] (4) The validity of service contracts with foreign entities for the use of natural resources is affirmed;[61] (5) Domestic, as well as alien corporations can only lease, not own, alienable public lands;[62] (6) Private land, which cannot be conveyed to aliens except in case of hereditary suc-

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[54] Alberto v. Tan Sing, *supra*, note 19.

[55] Elma, *supra*, note 16.

[56] *Ibid.*, citing 27 AM. JUR. 2d *Escheat*, sec. 19 (1966).

[57] *Ibid.*, 421.

[58] CONST. (1935), Art. XIV, sec. 8.

[59] *Ibid.*, sec. 10.

[60] *Ibid.*, sec. 3. Prof. Bacuñgan observes that the Court in Inchong v. Hernandez, 101 Phil. 1155 (1957) upheld the constitutionality of laws Filipinizing certain economic activities, but now there is specific mention of "certain traditional areas of investments." What about economic activities which are not traditional, he asks. (48 PHIL. L. J. 494 [1973]).

[61] *Ibid.*, sec. 9.

[62] *Ibid.*, sec. 11.

cession, is no longer qualified by the word "agricultural"[63] and (7) Foreign investors are not allowed to participate in the Board of Directors of any public utility enterprise, to the extent of their proportionate share in the capital thereof.[64] In addition, notwithstanding these provisions on the National economy, the Prime Minister may enter into international treaties or agreements as the national welfare and interest may require.[65] He may also review all contracts and privileges for the use of natural resources acquired before the ratification of the Constitution.[66]

Other Filipinization provisions include limiting the ownership and management of mass media to Filipino citizens and to corporations or associations wholly owned and managed by Filipinos;[67] requiring the Board of Directors of entities in the business of telecommunications to be controlled by Filipinos,[68] and for the first time, declaring that educational institutions other than those established by religious orders should be owned solely by Filipinos or entities at least sixty per cent of whose capital is owned by such citizen.[69]

From the above enumeration, it is at once apparent that the new Constitution applies more vigorously the nationalization scheme of the 1935 Constitution, and this can only be because of the continuing validity of that policy. According to the framers of the 1935 Constitution, nationalization of the natural resources of the country was intended:

> (1) to ensure their conservation for Filipino posterity;
> (2) to serve as an instrument of national defense; helping prevent the extension into the country of foreign control through peaceful economic penetration, and
> (3) to prevent making the Philippines a source of international conflicts with the consequent danger to its internal security and independence.[70]

NATIONALIZATION BY PRESIDENTIAL DECREES

Since Proclamation No. 1081, Presidential Decrees have provided for the implementation of the constitutional nationalization provisions. Suffice that we mention a few of the most important for our purposes. Presidential Decree No. 2 proclaimed the entire country a land reform area.[71] This was followed by Presidential Decree No. 27 decreeing the emancipation of the tenant from the bondage of the soil and transferring

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[63] *Ibid.*, sec. 14.
[64] *Ibid.*, sec. 9.
[65] *Ibid.*, sec. 15.
[66] *Ibid.*, sec. 12.
[67] *Ibid.*, Art. XV, sec. 7(1).
[68] *Ibid.*, sec. 7(2).
[69] *Ibid.*, sec. 8(7).
[70] 2 ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 606 (1949).
[71] September 26, 1972.

to them the ownership of private agricultural lands devoted to rice and corn which they till, regardless of the citizenship of the owner.[72] Pursuant to Section 8, Article XIV of the Constitution, Presidential Decree No. 471 fixed the maximum period for lease of private lands at twenty five years, renewable for another twenty-five years, or the same period at which public lands may be leased.[73] Under Presidential Decree No. 471, an agreement in violation of the decree is *void ab initio*. The decree punishes both parties to the violation by a fine or imprisonment or both. In the case of a corporation, the officers thereof are liable criminally.[74]

As an incentive to hasten the transfer of private lands acquired by Americans under the Laurel-Langley Agreement to qualified entities, Presidential Decree No. 697 (effective May 9, 1975) authorized the exemption from payment of donor's tax and recognized as deductible business expense all irrevocable donations of said lands. On the same date, Presidential Decree No. 698 exempted from gift taxes and recognized as deductible business expense irrevocable donations of said lands to the National Development Company.

In a crisis government such as ours, presidential decrees have taken the place of legislation. In the words of the Constitution:

> ART. XVII, SEC. 3(2). All proclamations, orders, decrees, instructions, and acts promulgated, issued or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding and effective even after the lifting of martial law or the ratification of this Constitution unless modified, revoked, or superseded by subsequent proclamations, orders, decrees instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly.

PRESIDENTIAL DECREE NO. 713 IN PARTICULAR

At the outset, let it be said that the earlier version of Section 11, Article XVII of the Constitution lodged in the National Assembly the power to determine the rights of Americans acquired under parity. In the belief that the Prime Minister could do a better job, the Constitutional Convention finally provided that the incumbent President or *interim* Prime Minister may review all contracts and privileges for the use of natural resources acquired before the Constitution was ratified, and that all treaties, executive agreements and contracts entered into by the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations are thereby recognized as valid.[75]

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[72] October 21, 1972.

[73] May 24, 1974. For other penal sanctions of nationalization laws, see also Com. Act Nos. 18 (1936), 108 (1936) as amended, 421 (1936) and 473 (1939).

[74] *Ibid.*

[75] Elma, *op. cit. supra*, note 16.

Presidential No. 713 was promulgated to soften the harshness of the strict application of the direct implication of Section 11, Article XVII of the New Constitution, which is, escheat to the State of lands acquired by Americans during the effectivity of the Parity Amendment. Presidential Decree No. 713 validates the titles to private residential lands acquired by certain Americans and allows them to transfer ownership of such lands to qualified persons. In so doing, Presidential Decree No. 713 creates an exception to the *Quasha* decision.

A. *Coverage*

The following persons are covered by Presidential Decree No. 713:

(1) American citizens who were formely Filipino citizens;

(2) American citizens, who on the date of the decree[76] have resided in the Philippines continuously for at least 20 years; and

(3) American citizens who become permanent residents of the Philippines.

To be entitled to the privileges under the decree, the following requisites must be present: (1) The person claiming the privilege must be an American citizen falling under the above classification; (2) The land claimed must be a private residential land (3) The land must not exceed five thousand (5,000) square meters; (4) The land must be for family dwelling purposes; (5) The land must have been acquired at some time during the effectivity of the Parity Amendment, and (6) The American citizen must have acquired the land in good faith.[77]

The decree does not purport to settle all problems concerning American private lands acquired under Parity. Its application is limited to private residential land. It does not say what is the status of title over private agricultural, commercial or industrial lands, acquired by Americans under Parity. In view of the area limitation, it would seem that if the American claiming under the decree has 5,500 square meters of private residential land, he can claim title only up to 5,000 square meter thereof. But the decree is silent on what is to be done with the excess, which in the example is 500 square meters.

By any standard, 5,000 square meters is a substantial area. It is easy to imagine a situation where an American covered by Presidential

[76] May 27, 1975.

[77] The requirement of good faith appears in the title of the decree, as well as in the first paragraph forming part of the preamble of the decree. However, in the body of the decree, the requirement does not appear with respect to American citizens who become permanent residents. Considering the purpose of the decree, it is submitted that the omission is mere inadvertence.

Decree No. 713 may have acquired several parcels of private residential lands but not exceeding 5,000 square meters collectively. Would the decree protect all such parcels of land as long as they do not exceed 5,000 square meters? The decree states "5,000 square meters for a family dwelling." Considering that the decree grants exceptional rights, the constitutional rule being that "titles to private lands acquired by such persons before July 3, 1974 shall be valid only against other private persons," and not against the State, it would seem that the decree should protect only one parcel of land for a family dwelling.

As for the fourth requirement, the decree expressly specifies that the land claimed is for family dwelling purposes. A dwelling is, of course, a place where one lives. Therefore, a family dwelling is a place where a family lives. Can one person constitute a family? The term family is susceptible of many meanings. In a broad sense, it is a collective body of any two persons living together in one house as their common home for a time. In a strict sense, it means the father, mother and children, whetheir living or not.[78] For homestead purposes is the United States, a family is "a collection of persons living together under one hand... and which cannot consist of but one person."[79]

When should Parity be deemed to take effect? One view would be that since the executive agreement between th U.S. and Philippine President was signed on July 4, 1946, parity should be deemed to start from that date. From this view, Americans continued to possess the right to acquire public lands without any interruption until July 3, 1974. A second view might be inferred from the *Quasha* decision which emphasized the ratification of the Parity Ordinance only on November 1946, thus giving the impression that Americans had no rights from July 4, 1946 to November 1946[80] except perhaps those which were available to other aliens as well.

Good faith in the preamble of Presidential Decree No. 713 includes "the honest belief that they (the Americans) may continue holding the same even after the expiration of parity." The good faith of a person is a state of mind which may be proven only through his actions. Under Article 526(3) of the Civil Code, "Mistakes upon a doubtful or difficult question of law may be the basis of good faith." Paragraph one of the same article defines a possessor in good faith as one who has no notice of any defect in his title. Article 527 of the Civil Code also states that good faith is presumed. But would Americans acquiring private re-

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[78] BLACK'S LAW DICTIONARY 727 (4th ed., 1968).
[79] *Ibid.*, 729.
[80] Castro, *Commercial Law*, 48 PHIL. L. J. 206, 232, (1973).

sidential lands after the *Quasha* decision but before the expiration of Parity be in good faith? It would seem that such Americans would be in bad faith, including those who on such a period acquired other private agricultural lands. But those Americans who acquired private residential lands before the *Quasha* decision do not have to prove their good faith because of the presumption in their favor.

B. *Ambiguities within the Decree*

Must the decree be read as a mandate for Americans to transfer ownership of private residential lands acquired in good faith before the expiration of parity to qualified entities? The affirmative view finds able support in Presidential Decree No. 713 itself. First of all, Section 1 of the decree uses the conjunctive *and*: "may continue to hold such lands and to transfer ownership over such lands." The conjunctive suggests that the right to hold private residential land must necessarily be followed by its transfer to qualified persons. Secondly, paragraph two of the preamble of the decree reiterates Section 11, Article XVII of the New Constitution, and therefor, titles over private residential lands acquired by Americans are not valid against the State. If Americans do not transfer ownership of such lands to qualified persons, they live in danger of any law that might at any time provide for escheat proceedings. The third reason flows from the second: One must always take the interpretation that keeps the law within constitutional boundaries. Finally, this view is consistent with Presidential Decree Nos. 697 and 698 providing incentives for the transfer of American-owned private lands acquired under the Laurel Langley Agreement to Filipinos or qualified entities.

But, as the decree is worded, and here lies the danger, it is possible to read into it the negative view. Whatever effect the conjunctive *and*, instead of *or*, may have, that seems to have been neutralized by the word *may* preceding it. Certain Americans who have acquired private residential lands in good faith before July 3, 1974 "may continue to hold such lands and to transfer ownership over such lands to qualified persons." The decree appears only to be permissive, both with respect to the right to hold and to transfer. This interpretation also appears justified by the fact that no period within which the transfer should take place is provided for by the decree. The effect of the omission of this vital date would be that such Americans could indefinitely and as surely remain owners of the land as if the decree had not provided that such lands ought to be transferred to qualified persons. A third reason is found in the purpose and coverage of the decree.

The three classes of Americans benefited by the decree are persons whose attachment to the Philippines extends beyond mere ownership of land therein. They are the very people who would be interested in taking up residence here, if they have not in fact already done so. Noting further that the decree is limited to private lands for family dwelling purposes, the conclusion can only be that the decree seeks to encourage permanent residence here of such Americans by validating their title even as against the Government. Indeed, the decree speaks of former-Filipinos turned-Americans, Americans who become permanent residents and Americans who have continuously resided in the Philippines for the past twenty years. The use of the present tense with respect to the second class of Americans, considering the requirement of twenty years past residence for the third class of Americans, means that an American with all the other requisites necessary to claim the privilege in the decree, except only residence, may still claim the privilege by merely indicating his intention to become a permanent resident. If that is the case, the requirement of 20 year continuous residence is superfluous because mere intention to reside permanently is sufficient to invoke the protection of the decree.

Significantly, the decree ignores the *Quasha* decision, but only in the sense that the latter is not adverted to, expressly. The rationale for the decree and its basic premises (found in its preamble) speak only of the good faith of the enumerated classes of Americans who believed honestly that they could continue to hold their private residential lands after Parity of Section 11, Article XVII of the New Constitution, and of "special consideration and compassion" to the enumerated classes of Americans. Does the decree modify or overrule the *Quasha* decision?

C. *Effect on Quasha and the Nationalization Policy*

It will be recalled that in our discussion of the *Quasha* case in this paper, we specially pointed out that the Court had no occasion to touch on *pari delicto* as against the constitutional prohibition rule because there was no need to. It follows that the Court in *Quasha* did not rule on the issue of good faith. That being the case, even if *Quasha* ruled squarely on American rights over private lands acquired under Parity, it cannot strictly speaking, be considered overruled by Presidential Decree No. 713. At most, Presidential Decree No. 713 removes from the effect of the Quasha decision private residential lands of a certain size, for a certain purpose if acquired by certain Americans. *Quasha* is still authority for other private lands acquired by Americans under Parity. And as far as the Constitution goes, such other private lands not included in Presidential Decree No. 713 and acquired by Americans under Parity will be subject to escheat as soon as a law therefor is passed.

Does not Presidential Decree No. 713 conflict with the nationalization policy of the Constitution? There is difficulty in answering this question because one must always balance the general national interest with particular justice. If doing particular justice unduly endangers national interest, then the former should give way to the latter. If, however, it is possible to do particular justice without hampering national interest, then there is no reason why particular justice should not prevail.

That we have done justice to the Americans is borne out by the rights that we gave them under Parity. Under the *Quasha* decision, Americans acquired the right to dispose, exploit, develop and utilize land of the public domain and other natural resources and the right to operate public utilities. Were we to have demanded similar rights from them, as the perceptive Claro M. Recto observed, we would ironically be "met with the observation, which is unanswerable, that it is not within the power of the United States government to grant any such equal rights to citizens of another country."[81] Although homestead may be applied for only by a natural-born, never by a naturalized Filipino under the Public Land Act, there is no doubt under Parity, American citizens or even corporations owned by them directly or indirectly might apply for homestead.

According to the *Quasha* decision, reading the strict wording of the Parity Ordinance "in no case to extend beyond July 3, 1974," the rights acquired by Americans are either alienation of rights less than ownership or resoluble ownership. Under the Constitution, Americans who acquired title to private lands during Parity can assert their title against private parties only. Under Presidential Decree No. 713, certain Americans who had in good faith acquired private residential land not exceeding 5,000 square meters for a family dwelling may continue to hold and to transfer such lands to qualified persons. But these are not all.

Americans, like other aliens, have been and are, allowed to acquire rights less than ownership in this country, but not because of Parity. Aliens are permitted to lease both public and private lands. The maximum period for such lease is now fixed by Section 8, Article XIV of the Constitution for public lands, and Presidential Decree No. 471 for private lands, at twenty-five years renewable for another twenty-five years. Under Republic Act No. 133 as amended by Republic Act Nos. 4381 and 4882, private real property may be mortgaged to aliens.[82]

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[81] *Supra*, note 11.

[82] Rep. Act No. 133 was originally approved in 1947. The latest amendment is on June 17, 1967. But the alien mortgagee cannot participate in the bidding in case of foreclosure.

Aliens are not precluded from owning buildings either. By special provision of the Condominium Act,[83] aliens are allowed to own condominium units but the common areas cannot be owned by persons other than Filipino citizens or corporations, sixty per cent of whose capital stock is owned by Filipinos.[84] If they wish, aliens could even apply for Filipino citizenship, especially now that naturalization proceeding are simpler.

CONCLUSIONS

To summarize, under the laws and jurisprudence on the matter, aliens have been allowed to acquire both public and private lands in the Philippines through the following modes:

(1) By virtue of their rights having vested before the adoption of the 1935 Constitution which prohibited alien acquisition of public and private lands;[85]
(2) By hereditary succession in case of private agricultural lands;[86]
(3) By naturalization;[87]
(4) By repatriation;[88] and
(5) By administering a corporation sole (Roman Catholic Chuch).[89]

In refusing recovery to the Filipino vendor because of the *pari delicto* rule, the Court has practically allowed alien ownership of lands even in cases not falling under the above enumeration, since the lawmaking power has so far neglected to pass a law governing the policy and procedure on escheat or reversion.

Because of special relations between the United States and the Philippines, Americans were also allowed to continue acquiring public and private lands even after the adoption of the 1935 Constitution but before July 4, 1946. In addition, Americans acquired the following rights under the Parity Amendment, an arrangement unique in the world legal system:

(a) The right to dispose, exploit, develop and utilize lands of the public domain and other natural resoucres; and
(b) The right to operate public utilities.[90]

Interpreting the Parity Amendment and the Constitution, the Court has held that Americans acquired rights less than ownership or a resoluble ownership over lands of the public domain conveyed to them before July

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[83] Rep. Act No. 4726 (1966).
[84] *Ibid.*, sec. 5.
[85] Philippine National Bank v. Ah Sing, 69 Phil. 611 (1940).
[86] CONST. (1935), art. XIII, sec. 5.
[87] Vasquez v. Li Seng Giap, *supra*, note 20.
[88] Bautista v. Uy Isabelo, *supra*, note 17.
[89] Roman Catholic Apostolic Administrator of Davao, Inc. v. Land Registration Commission and Register of Deeds, *supra*, note 38.
[90] Quasha v. Republic, *supra*, note 2.

4, 1974. Parity did not grant the Americans the right to acquire private lands. However, as the law now stands, American title to private lands acquired during the effectivity of the Parity Amendment will be valid if acquired by hereditary succession or if such title complies with the requirements of Presidential Decree No. 713.

Presidential Decree No. 713 in so far as it makes an exception to the *Quasha* rule and the constitutional provision should be deemed valid until contested in a proper case. At such a time, the Court would be the proper forum to decide whether amendment to the Constitution by presidential decree is valid or not. Until that time, the decree must be taken to be the latest expression of public policy.

To remove the cloud of doubt hanging over the decree it is urgent that the period within which the private residential lands spoken of in the decree should be transferred to qualified persons be fixed.

Though indeed, the government has been in part to blame for illegal acquisitions of private lands by Americans because it allowed the acquisition and registration of such properties in the name of Americans, it is not too late in the day to correct the error. To perpetuate the error would only compound it. It is high time we heed the words of Sinco:

> The principles that land and other natural resources should belong exclusively to the nation and its citizens is based upon considerations that transcend sentimental reasons. It is based on the necessities of self-defense...[91]

Whatever international commitments may have been entered into cannot be more important than self-preservation. In a small developing country that places a premium on independence, the imperatives of a nationalization policy cannot, and should not, justify special relations that would grant national treatment, where a most-favored-nation treatment should have been more than sufficient. Having protected the Americans for so long, such that we gave them more rights than we dared to give ourselves, should we not now start protecting ourselves more seriously? Could it be another way, when already, we are finding ourselves, as Sinco would say, living as it were, in a house that no longer belongs to us?

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[91] U.P. LAW CENTER, CONSTITUTIONAL REVISION PROJECT 841 (1970).