na ang halagang aming inutang ay ibabalik o babayaran namin sa kanya sa katapusan ng buwan ng Enero, taong 1949.

Pinagkasunduan din naming magasawa na sakaling hindi kami makabayad sa taning na panahon ay aming ipifrenda o isasangla sa kanya ang isa naming palagay na niogan sa lugar nang Cororocho, barrio ng Balogo, municipio ng Santa Cruz, lalawigang Marinduque, kapuluang Filipinas at ito ay nalilibot ng mga kahanganang sumusunod:

Sa Norte — Dalmacio Constantino
Sa Este — Catalina Reforma
Sa Sur — Dionisio Ariola
Sa Weste — Reodoro Ricamora

na natatala sa gobierno sa ilalim ng Declaracion No. ..... na nasa pangalan ko, Josefa Postrado.

The defendants-appellants admit the execution of the document, but claim, as special defense, that since the 31st of January, 1949 they offered to pledge the land specified in the agreement and transfer possession thereof to the plaintiff-appellee, but that the latter refused said offer. Judgment having been rendered by the justice of the peace court of Sta. Cruz, the defendants-appellants appealed to the Court of First Instance. In that court they reiterated the defense that they presented in the justice of the peace court. The case was set for hearing in the Court of First Instance on August 16, 1951. As early as July 30 counsel for the defendants-appellants presented an "Urgent Motion for Continuance," alleging that on the day set for the hearing (August 16, 1951), they would appear in the hearing of two criminal cases previously set for trial before they received notice of the hearing on the aforesaid date. The motion was submitted on August 2, and was set for hearing on August 4. This motion was not acted upon until the day of the trial. On the date of the trial the court denied the defendants-appellants' motion for continuance, and after hearing the evidence for the plaintiff, in the absence of the defendants-appellants and their counsel, rendered the decision appealed from. Defendants-appellants, upon receiving copy of the decision, filed a motion for reconsideration, praying that the decision be set aside on the ground that sufficient time in advance was given to the court to pass upon their motion for continuance, but that the same was not passed upon. This motion for reconsideration was denied.

The main question raised in this appeal is the nature and effect of the actionable document mentioned above. The trial court evidently ignored the second part of defendants-appellants's written obligation, and enforced its last first part, which fixed payment on January 31, 1949. The plaintiff-appellee, for his part, claims that this part of the written obligation is not binding upon him for the reason that he did not sign the agreement, and that even if it were so the defendants-appellants did not execute the document as agreed upon, but, according to their answer, demanded the plaintiff-appellee to do so. This last contention of the plaintiff-appellee is due to a loose language in the answer filed with the Court of First Instance. But upon careful scrutiny, it will be seen that what the defendants-appellants wanted to allege is that they themselves had offered to execute the document of mortgage and deliver the same to the plaintiff-appellee, but that the latter refused to have it executed unless an additional security was furnished. Thus the answer reads:

> 5. That immediately after the due date of the loan Annex "A" of the complaint, *the defendants made efforts to execute the necessary documents of mortgage and to deliver the same to the plaintiff, in compliance with the terms and conditions thereof*, but the plaintiff refused to execute the proper documents and insisted on another portion of defendants' land as additional security for the said loan; (Underscoring ours)

In our opinion it is not true that defendants-appellants had not offered to execute the dead of mortgage.

The other reason adduced by the plaintiff-appellee for claiming that the agreement was not binding upon him also deserves scant consideration. When plaintiff-appellee received the document, without any objection on his part to the paragraph thereof in which the obligors offered to deliver a mortgage on a property of theirs in case they failed to pay the debt on the day stipulated, he thereby accepted the said condition of the agreement. The acceptance by him of the written obligation without objection and protest, and the fact that he kept it and based his action thereon, are concrete and positive proof that he agreed and consented to all its terms, including the paragraph on the constitution of the mortgage.

The decisive question at issue, therefore, is whether the second part of the written obligation, in which the obligors agreed and promised to deliver a mortgage over the parcel of land described therein, upon their failure to pay the debt on a date specified in the preceding paragraph, is valid and binding and effective upon the plaintiff-appellee, the creditor. This second part of the obligation in question is what is known in law as a facultative obligation, defined in Article 1206 of the Civil Code of the Philippines, which provides:

> Art. 1206. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.

This is a new provision and is not found in the old Spanish Civil Code, which was the one in force at the time of the execution of the agreement.

There is nothing in the agreement which would argue against its enforcement It is not contrary to law or public morals or public policy, and notwithstanding the absence of any legal provision at the time it was entered into governing it, as the parties had freely and voluntarily entered into it, there is no ground or reason why it should not be given effect. It is a new right which should be declared effective at once, in consonance with the provisions of Article 2253 of the Civil Code of the Philippines, thus:

> Art. 2253. x x x. But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin.

In view of our favorable resolution on the important question raised by the defendants-appellants on this appeal, it becomes unnecessary to consider the other question of procedure raised by them.

For the foregoing considerations, the judgment appealed from is hereby reversed, and in accordance with the provisions of the written obligation, the case is hereby remanded to the Court of First Instance, in which court the defendants-appellants shall present a duly executed deed of mortgage over the property described in the written obligation, with a period of payment to be agreed upon by the parties with the approval of the court. Without costs.

Paras, Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo and *Concepcion, J.J.*, concur.

VII

Clotilde Mejia Vda. de Alfafara, Petitioner-Appellant, vs. Placido Mapa, in his capacity as Secretary of Agriculture and Natural Resources, Benita Compana, et al., Respondents-Appellees. G. R. No. L-7042, May 28, 1954, Bautista Angelo, J.

1. PUBLIC LAND LAW, DISPOSITION OF PUBLIC LANDS; DIRECTOR OF LANDS CAN NOT DISPOSE LAND WITHIN THE FOREST ZONE. — Where the land covered by the homestead application of petitioner was still within the forest zone or under the jurisdiction of the Bureau of Forestry, the Director of Lands had no jurisdiction to dispose of said land under the provisions of the Public Land Law and the petitioner acquired no right to the land.

2. ID.; ID.; EFFECT OF CONTRACT OF LANDLORD AND TENANT EXECUTED IN GOOD FAITH. — Even if the permit granted to petitioner's deceased husband by the Bureau of

Forestry to possess the land and work it out for his benefit was against the law and as such could have no legal effect. yet where he had acted thereon in good faith honestly believing that his possession of the land was legal, and had entered into a contractual relation of landlord and tenant with the respondents in good faith, the contract had produced as a necessary consequence the relation of landlord and tenant; therefore, his widow should be given the preference to apply for the land for homestead purposes.

3. ID.; DECISION RENDERED BY DIRECTOR OF LANDS AND APPROVED BY THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, CONCLUSIVE EXCEPTIONS. — The doctrine that "a decision rendered by the Director of Lands and approved by the Secretary of Agriculture and Natural Resources, upon a question of fact is conclusive and not subject to be reviewed by the courts, in the absence of a showing that such decision was rendered in consequence of fraud, imposition, or mistake, other than error of judgment in estimating the value or effect of evidence" does not apply to a decision of the Director of Lands which has been revoked by the Secretary of Agriculture and Natural Resources. Even if there is unanimity in the decision, still the doctrine would not apply if the conclusions drawn by the Secretary from the facts foun dare erroneous or not warranted by law.

Mariano M. Florido for the petitioner and appellant.

Abundio A. Aldemita for respondents and appellees Benito Campana, et al.

Assistant Solicitor General Guillermo E. Torres and Solicitor Jaime de los Angeles for respondent and appellee Placido Mapa.

DECISION

BAUTISTA ANGELO, *J.*:

This is a petition for certiorari filed in the Court of First Instance of Cebu in which petitioner seeks to nullify a decision rendered by the Secretary of Agriculture and Natural Resources in D.A.N.R. Case No. 224 concerning lot No. 741 of the Carcar cadastre on the ground that he acted in excess of his jurisdiction or with grave abuse of discretion.

It appears that petitioner and respondents filed separately with the Bureau of Lands an application claiming as homestead lot No. 741 of the Carcar Cadastre. After an investigation conducted in accordance with the rules and regulations of said Bureau, a decision was rendered in favor of petitioner thereby giving course to her application and overruling the application and protests of respondents. In due course, respondents appealed to the Secretary of Agriculture and Natural Resources, who reversed the decision of the Director of Lands. And her motion for reconsideration having been denied, petitioner interposed the present petition for certiorari.

Respondents in their answer alleged that, under Section 3 of the Public Land Law, the Secretary of Agriculture and Natural Resources is the executive officer charged with the duty to carry out the provisions of said law relative to the administration and disposition of the lands of the public domain in the Philippines; that the decision which is now disputed by petitioner was rendered after a formal investigation conducted in accordance with the rules and regulations of the Department of Agriculture and Natural Resources and on the basis of the evidence adduced therein and, therefore, said Secretary has not abused his discretion in rendering it; and that the decision of the Secretary of Agriculture and Natural Resources on the matter is conclusive and not subject to review by the courts, in the absence of a showing that it was rendered in consequence of fraud, imposition, or mistake other than an error of judgment in estimating the value or effect of the evidence presented, citing in support of this contention the case of Ortua vs. Singson Encarnacion, 59 Phil., 440.

The lower court, after the reception of the evidence, upheld the contention of respondents, and dismissed the petition, whereupon petitioner took the case on appeal to the Court of Appeals. The case, however, was certified to this Court on the ground that the appeal involves purely questions of law.

The facts of this case as found by the Director of Lands are: By virtue of an application filed by Maximo Alfafara, the Bureau of Forestry granted him a permit on February 1, 1923, by virtue of which he was authorized to construct and maintain a fishpond within lot No. 741 of the Carcar cadastre. Said permittee constructed fishpond dikes along the side of the land facing General Luna street and running parallel to the river. Said dikes were destroyed by the flood which occurred in the same year. In 1926, the permittee abandoned the idea of converting the land into a fishpond and, instead, he decided to convert it into a ricefield. To this effect, the permittee entered into an agreement with respondents whereby the latter would convert the land into a ricefield on condition that they would take for themselves the harvests for the first three years and thereafter the crop would be divided share and share alike between the permittee and the respondents. In 1930, the permittee ceded his rights and interests in the land to his son, Catalino Alfafara, who continued improving the same by constructing more rice paddies and planting nipa palms along its border. Having converted the land into a ricefield, Catalino Alfafara filed a homestead application therefor in his name while at the same time continuing the same arrangement with respondents as share croppers. Upon the death of Catalino Alfafara in 1945, the respondents, after the harvest in 1946, began asserting their own right over the land and refused to give the share corresponding to Catalino Alfafara to his widow, the herein petitioner.

The claim of respondents that they improved the land in their own right and not with permission of petitioner's predecessors-in-interest, was not given credence by the Bureau of Lands, for its agents found, not only from the evidence presented, but also from their ocular inspection, that the land has been under the rightful possession of Maximo Alfafara since 1923, and that respondents were only able to work thereon upon his permission on a share basis. By virtue of these findings of the Director of Lands, the homestead application of petitioner was given due course.

On appeal however to the Secretary of Agriculture and Natural Resources, this official reversed the decision of the Director of Lands invoking the ruling long observed by his department in connection with the disposition of public lands which are formerly within the forest zone or under the jurisdiction of the Bureau of Forestry. He held that neither petitioner nor any of her predecessors-in-interest had acquired any right under the homestead application filed by each inasmuch as the land covered by them was still within the forest zone when applied for and that, for that reason, the Director of Lands had no jurisdiction to dispose of said land under the provisions of the Public Land Law. He likewise held that, inasmuch as the Alfafaras have not established any right to the land at the time they entered into the contract with respondents to work on the land on a share basis, the relation of landlord and cropper between them did not legally exist and as such did not produce any legal effect. Consequently, —he held— the Alfafaras cannot be considered as landlords of respondents, and between an actual occupant of an agricultural land which is released from the forest zone and certified as dispcsable under the Public Land Law, and an applicant whose application expired prior to its certification, the actual occupant is given preferential right thereto over the applicant.

The ruling above adverted to reads as follows:

"It is the rule in this jurisdiction which has been followed consistently in the disposition of forest land which have been declared agricultural lands that occupation of a forest land prior to the certification of the Director of Forestry that the same is released from the forest zone and is disposable under the provisions of the Public Land Law does not confer upon the occupant thereof the right of preference thereto under the said law. In the same manner, this office does not give and does not recognize any right of preference in favor of homestead whose applications were filed prior to the certification that the

land covered thereby has already been released from the forest zone and is disposable under the provisions of the Public Land Law. In other words, prior to the certification by the Bureau of Forestry that a parcel of forest land is already released from the forest zone and is disposable under the provisions of the Public Land Law, this Department does not recognize any right of preference in favor of either the actual occupant thereof or any homestead applicant therefor. The reason for this is that any permit or license issued by the Bureau of Forestry for a parcel of forest land can not bind the Bureau of Lands to recognize any right in favor of the Public Land Law; and any homestead application filed prior to the certification by the Director of Forestry is ineffective and subject to rejection. From the time, however, that a parcel of forest land is released from the forest zone and certified as disposable under the provisions of the Public Land Law, the occupation of the actual occupant becomes effective and is recognized by the Public Land Law under Section 95 thereof. Also the homestead application filed prior to the certification by the Director of Forestry will become effective from the date of the certification, if the same had not been rejected prior to such certification. But, between the actual occupant of a parcel of agricultural land and an applicant therefor whose application was filed prior to its certification as such by the Director of Forestry, this Office always recognizes the preferential right thereto of the actual occupant thereof. In a long line of decisions in appealed cases, this Office always recognizes the preferential right thereto of the actual occupant thereof. In a long line of decisions in appealed cases, this Office always maintains that agricultural lands already and actually occupied and cultivated cannot be applied for under the homestead law except by the actual occupant thereof." (Vicente Ruiz et al. v. H. A. [New], Mariano Ba. Mancao, Isabela, City of Zamboanga, decision dated April 13, 1949 and order dated July 22, 1949.)

The question now to be determined is: Has the Secretary of Agriculture and Natural Resources abused his discretion in reversing the decision of the Director of Lands?

At the outset, it should be stated that the findings of fact made by the Director of Lands had been substantially upheld by the Secretary of Agriculture and Natural Resources. They only differ on the conclusions derived therefrom and on the effect upon them of the law regarding the disposition of public lands which formerly were within the forest zone or under the jurisdiction of the Bureau of Forestry.

Thus, the first question decided by the Secretary of Agriculture and Natural Resources is: Has petitioner or any of her predecessors-in-interest acquired any right to the land under the provisions of the Public Land Law? And the Secretary, following the ruling above stated, answered in the negative. His reasoning follows: "Neither Clotilde Mejia Vda. de Alfafara nor any of her predecessors-in-interest could acquire any right under the homestead application filed by each of them inasmuch as the land covered thereby was still within the forest zone and that for that reason, the Director of Lands had no jurisdiction to dispose of said land under the provisions of the Public Land Law." To this we agree, for it appears that the land was released from the forest zone only on August 10, 1949, and the permit granted to Maximo Alfafara to possess the land for the purposes of homestead was in 1923. And with regard to Catalino Alfafara, his son, his application was filed only in 1930.

The second question decided by the Secretary is: What is the legal effect of the contractual relation of landlord and tenant existing between the Alfafaras and the respondents? The answer of the Secretary is: "Considering that none of the Alfafaras has established any right whatsoever to the land in question at the time the contractual relation began, this office is of the opinion and so holds that the relation of landlord and cropper could not and did not produce any legal effect because the supposed landlords, the Alfafaras, have no title or right to the land in question under the provisions of the Public Land Law. In other words, this office cannot see how any of the Alfafaras could be considered landlord of the claimants on the land in question when none of them has any right over said land under the Public Land Law."

With this conclusion we disagree. Even in the supposition that the permit granted to Maximo Alfafara by the Bureau of Forestry to possess the land and work it out for his benefit be against the law and as such can have no legal effect, the fact however is that Maximo Alfafara has acted thereon in good faith honestly believing that his possession of the land was legal and was given to him under and by virtue of the authority of the law. Likewise, it cannot be reasonably disputed that when Maximo Alfafara entered into a contract with the respondents for the conversion of the land into a ricefield with the understanding that the respondents, as a reward for their service, would get for themselves all the harvests for the first three years, and thereafter the harvests would be divided between them and Maximo Alfafara share and share alike, both Alfafara and respondents have acted in good faith in the honest belief that what they were doing was legal and in pursuance of the permit granted to Alfafara under the authority of the law. Having entered into that contractual relation in good faith no other conclusion can be drawn than that such contract has produced as a necessary consequence the relation of landlord and tenant so much so that the respondents worked the land only on the basis of such understanding. And this relation continued not only when Maximo Alfafara assigned his right under the permit to his son Catalino, but also when the latter died and his widow, the herein petitioner, took over and continued possessing the land as successor-in-interest of her husband. And it was only in 1946, after the death of Catalino Alfafara, that respondents got wise and, taking advantage of the helplessness of his widow, coveted the land and decided to assume the right over it by filing their own application with Bureau of Lands. Such a conduct cannot be said as one done in good faith, and, in our opinion, cannot be a basis for a grant of public land under the ruling invoked by the Secretary of Agriculture and Natural Resources.

The possession therefore of the land by respondents should be considered as that of a tenant and in this sense that possession cannot benefit them but their landlord, the widow, in contemplation of the rule. As such, the widow should be given the preference to apply for the land for homestead purposes.

We are not unmindful of the doctrine laid down in the case of Ortua vs. Singson Encarnacion, 59 Phil., 440, to the effect that the decision rendered by the Director of Lands and approved by the Secretary of Agriculture and Natural Resources, upon a question of fact is conclusive and not subject to be reviewed by the courts, in the absence of a showing that such decision was rendered in consequence of fraud, imposition, or mistake, other than error of judgment in estimating the value or effect of evidence." But we hold that this doctrine does not apply here because we are not concerned with a decision of the Director of Lands which was approved by the Secretary of Agriculture and Natural Resources, but one which has been revoked. The philosophy behind this ruling is that if the decision of the Director of Lands on a question of fact is concurred in by the Secretary of Agriculture and Natural Resources, it becomes conclusive upon the courts upon the theory that the subject has been thoroughly weighed and discussed and it must be given faith and credit, but not so when there is a disagreement. And even if there is unanimity in the decision, still we believe that the doctrine would not apply if the conclusions drawn by the Secretary from the facts found are erroneous or not warranted by law. These conclusions can still be the subject of judicial review. These are questions of law that are reserved to the courts to determine, as can be inferred from the following ruling laid down in the same case of Ortua:

> "There is, however, another side to the case. It certainly was not intended by the legislative body to remove from the jurisdiction of courts all right to review decisions of the Bureau of Lands, for to do so would be to attempt something which could not be done legally. Giving force to all possible intendments regarding the facts as found by the Director of Lands,

yet so much of the decision of the Director of Lands as relates to a question of law is in no sense conclusive upon the courts, but is subject to review. In other words, any action of the Director of Lands which is based upon a misconstruction of the law can be corrected by the courts." (Shepley v. Cowan [1876], 91 U.S., 330; Moore v. Robbins [1878], 96 U.S. 530; Marquez vs. Frisbie [1879], 101 U.S., 473; Black v. Jackson [1900], 177 U.S., 349; Johnson v. Riddle, *supra*.)

Wherefore, the decision appealed from is reversed. The court sets aside the decision of the Secretary of Agriculture and Natural Resources dated September 15, y949 as well as his order dated January 3, 1950, reaffirming said decision. The court revives the decision of the Director of Lands dated March 18, 1948 and orders that it be given due course. No pronouncement as to costs.

Bengzon, Montemayor, Jugo, Labrador and *Concepcion, J.J.*, concur.

Mr. Justice Alex. Reyes took no part.

PARAS, *C.J.*, dissenting:

It is true that Maximo Alfafara was granted on February 1, 1923, a permit to construct and maintain a fishpond within lot No. 741 of the Carcar cadastre, but it nevertheless appears that said permit was cancelled in 1926 after said fishpond was destroyed by a typhoon. In said year, Maximo Alfafara induced the respondent Benita Campana, et al. to convert the former fishpond into a riceland, the agreement being that the crops for the first three years would be for said respondents and that thereafter the crops would be divided equally between the former and the latter. According to the findings of the Secretary of Agriculture and Natural Resources, not contradicted in any way by those of the Director of Lands, Maximo Alfafara and his successors-in-interest never worked on the land or spent, anything for the improvements thereon. The question that arises is, after the land was declared available for homestead purposes by certification of the Director of Forestry in 1949, or long after the permit of Alfafara had been cancelled, whether the Alfafaras should be preferred to those who actually worked on the land. After the cancellation of his permit, Maximo Alfafara ceased to have any right or authority to continue holding the land. Yet, he was given for several years one half of the crop harvested by the respondents who took over the land in good faith and could already occupy it in their own right. It may fairly be considered that the original holder had impliedly parted with his rights, if any, for valuable consideration. It is plainly unjust, under the circumstances, to deprive the respondents of their priority to the portion of the land actually held by them as a homestead. It appears, however, that there were occupants of other portions of the lot who did not apply for homesteads, with the result that said portions may be awarded to the Alfafaras if they are still entitled thereto under the law.

I vote for the affirmance of the appealed decision.

Concurro con esta disidencia.

(*Fdo.*) *Guillermo F. Pablo*

VIII

Luis Manalang, Petitioner, vs. Aurelio Quitoriano, Emiliano Morabe, Zosimo G. Linato, and Mohamad de Venancio, Respondents, G. R. No. L-6898, April 30, 1954, Concepcion J.

1. LAW ON PUBLIC OFFICERS; REMOVAL OF PUBLIC OFFICERS. — Where the petitioner has never been commissioner of the National Employment Service, he could not have been, and has not been, removed therefrom.

2. ID.; ID.; ABOLITION OF OFFICE. — To remove an officer is to oust him from his office before the expiration of his term. A removal implies that the office *exists* after the ouster. Such is not the case of petitioner herein, for Republic Act No. 761 expressly abolished the Placement Bureau and, by implication, the office of director thereof, which petitioner held.

3. CONSTITUTIONAL LAW; ABOLITION OF BUREAU EXTINGUISHES RIGHT OF INCUMBENT TO THE OFFICE OF DIRECTOR THEREOF; NO VIOLATION OF CONSTITUTIONAL MANDATE ON CIVIL SERVICE. — Where the law expressly abolished the Placement Bureau, by implication, the office of director thereof, which cannot exist without said Bureau, is deemed abolished. By the abolition of said Bureau and of the office of its director, the right thereto of petitioner was necessarily extinguished thereby. There being no removal or suspension of the petitioner, but abolition of his former office of Director of the Placement Bureau, which is within the power of Congress to undertake by legislation, the constitutional mandate to the effect that "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law" is not violated.

4. ID.; ID.; TRANSFER OF QUALIFIED PERSONNEL FROM ONE OFFICE TO ANOTHER. — Where the law abolishing the Placement Bureau explicitly provided for the transfer, among others, of the qualified personnel of the latter to the National Employment Service, such transfer connotes that the National Employment Service is different and distinct from the Placement Bureau, for a thing may be transferred only from one place to *another*, not to the same place. Had Congress intended the National Employment Service to be a mere amplification or enlargement of the Placement Bureau, the law would have directed the *retention* of the "qualified personnel" of the latter, not their *transfer* to the former.

5. ID.; ID.; NECESSITY OF NEW APPOINTMENT; EFFECT ON RIGHT OF INCUMBENT TO THE OFFICE. — Where, as it is admitted by petitioner, there is necessity of appointing Commissioner of the National Employment Service, it follows that he does not hold or occupy the latter's item, inasmuch as the right thereto may be acquired only by appointment.

6. ID.; SCOPE OF TERM "QUALIFIED PERSONNEL". — If the Director of the Placement Bureau were included in the phrase "qualified personnel" and, as a consequence, he automatically became Commissioner of the National Employment Service, the latter would have become organized *simultaneously* with the approval of Republic Act. No. 761, and the same would not have conditioned the transfer to the Service of the "qualified personnel" of the Placement Buureau "upon the organization of the Service." which connotes that the new office would be established at some *future* time. In common parlance, the word "personnel" is used generally to refer to the subordinate officials or clerical employees of an office or enterprise, not to the managers, directors or heads thereof.

7. ID.; PUBLIC OFFICERS; POWER OF CONGRESS TO APPOINT COMMISSIONER OF NATIONAL EMPLOYMENT SERVICE; APPOINTING POWER EXCLUSIVE PREROGATIVE OF PRESIDENT; LIMITATIONS ON POWER TO APPOINT. — Congress can not, either appoint the Commissioner of the Service, or impose upon the President the duty to appoint any particular person to said office. The appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, except those resulting from the need of securing the concurrence of the Commission on Appointments and from the exercise of the limited legislative power to prescribe the qualifications to a given appointive office.

8. ID.; ID.; RECORD OF PUBLIC SERVANT DOES NOT GRANT COURT POWER TO VEST IN HIM LEGAL TITLE; DUTY OF COURT. — Petitioner's record as a public servant — no matter how impressive it may be as an argument in favor of his consideration for appointment either as Commissioner or as Deputy Commissioner of the National Employment Ser-