

## OUR SECRETARY OF JUSTICE PEDRO TUASON

Notorious in the pre-constitution days was the politics inspired "rigodon de jueces" or shuffling of judges. The public denounced it, the press ridiculed it, and the Supreme Court condemned it time and again. Nobody like it except the politicians and the politicians liked it because it served their sinister purpose well. For their part, many district judges accepted it as a necessary evil. For one thing it enabled them to fatten on per diems; for another, it offered them a chance to prove their loyalty and servility to the powers-that-be and hasten their promotion.

So vocal had public criticism become that when the Constituent Assembly began to draft the Constitution in 1934, the delegates decided to do away with the "rigodon." It was, they argued, a flagrant violation of the democratic doctrine of separation of powers. The Secretary of Justice, an extension of the Chief Executive, has no business encroaching on the judiciary. An attempt was made to let the President himself do the shuffling, but it was frustrated. Thus the Constitution now provides: "No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court."

Strangely enough, when some jurists who have frowned upon the "rigodon" find themselves occupying the post of secretary of justice, they change their attitude. They begin to wonder whether it is not better, after all, that they should be permitted to wield the power they used to deprecate, not for the sake of politics, but, so they say, in the interest of the public and for the benefit of justice itself.

Because he had been reported as saying that "with or without the consent of the Supreme Court, the power of the Secretary of Justice to assign a judge from one district to another should be enlarged and made more adequate; otherwise the Department of Justice would be crippled," it would seem that the former Supreme Court Justice Pedro Tuason, concurrently Secretary of Justice, is no exception. Actually, however, this is not so. When queried further on this point, the present Secretary of Justice said: "I have not changed my attitude towards the so-called 'rigodon de jueces' and I should wish this made clear. I said that I would be inclined to favor modified or slightly modified 'rigodon', with or without the consent of the Supreme Court, only if the positions of judges-at-large and cadastral judges are abolished, and all judges are made district judges — a change which is being advocated in Congress and to which I concur."

In other words, Secretary Tuason believes that when a judicial district has its dockets clogged the Secretary of Justice should be able to assign another district judge to assist in clearing them in the interest of justice itself. But, it may be asked: Can't the judge-at-large or a cadastral judge do the work?

There would be no such judge if the current move in Congress for the abolition of the present classification of judges is adopted. Under this Congressional plan, to which Justice Tuason has expressed his conformity, the position of judge-at-large and cadastral judge would be abolished, every judge being classified as a district judge, earning the same proposed salary of at least ₱12,000.00 a year. Under such a setup, surely the powers of the Secretary of Justice should be enlarged so that he can assign a judge from one district to another in cases of emergency.

The Secretary of Justice, Justice Tuason insists, must naturally be "one who will not prostitute justice for the benefit of a man or a group of men." So upright and so honorable must he be that whenever he feels that he is being used as a tool for this or that party in power, he should immediately resign. But would a man less rigid and resolute than Justice Tuason be able to emulate so noble an example? Would he be able to resist the temptation of compromising, confronted as he would be with the exigencies of politics?

Secretary Tuason admits that the present Department of Justice needs revamping and that the provinces should be regrouped into judicial districts. The judiciary, too, should be reorganized because, in his opinion, "at present there are judges who are a



SEC. OF JUSTICE PEDRO TUASON

disgrace to the judiciary." He believes, however, that it will be well-nigh impossible to weed out undesirable judges for the simple reason that it is not so easy as the public thinks to prove charges. One thing is to allege; another, to prove the allegation by competent evidence. It is not enough, as many laymen think, to say that a person is bad; one must prove it to the satisfaction of the court.

The trouble today, Justice Tuason notices with regret, is that people who allege that a certain judge or official is venal or rotten to the core do not even bother to testify on oath that he is really that bad. And yet, they are so quick to suspect or impute evil motives. To make matters worse, the laws, Justice Tuason finds, confer many privileges on judges, privileges which constitute, according to him, "one of the prices we have to pay for our constitutional form of government and for the advantages with which the independence of the judiciary was conceived." The remedy, he thinks, is in the final analysis "to get good men." But how long will a good man last when he is tempted or when he stands under a terrific political pressure?

A province-mate of the late eminent jurist, Cayetano Arellano, onetime Chief Justice of the Supreme Court, Pedro Tuason was born in Balanga, Bataan, on September 15, 1884. He first studied in a public school; but when the American Army opened a school in his town, he immediately enrolled. He wanted to master the new language and learn the tenets of democracy and freedom. Such aptitude he displayed that in no time he was appointed teacher. His salary was eight pesos a month, barely enough for his immediate needs. For five years he taught, then took an examination for government scholarship. He passed it and was sent to the United States.

To New Jersey he went and attended the State Normal School at Trenton. From there he proceeded to the Georgetown University Law School. By 1908, he had his LL. B. He rushed to Yale for a post-graduate course. A year later, he returned to the Philippines. To his disappointment, he was given an assignment in the Bureau of Education: a classroom teacher. Probably to console him, the bureau promoted him to supervising teacher in his own home-town. There he fell in love with a charming townmate, Concepcion de Leon, for whom he gladly gave up his freedom.

Certain that he was a 'better lawyer than teacher, he transferred to the then Executive Bureau where he knew he could apply his knowledge of law. Not fully satisfied, he moved to the Bureau of Justice where in time he became private secretary to the Attorney General. There he remembered that a rolling stone gathers no moss. So in 1912, he took the bar examination. For his pains, he was named provincial fiscal of Misamis, Surigao,

(Continued on page 107)

regulations. The occupant of a market stall who sells his rights to another is not bound in warranty to his vendee in case of an eviction or disturbance of the latter by the municipality itself, but would be liable only for his own acts which interfere with the enjoyment of what he sells."<sup>125</sup>

A charter provision requiring that when any market belonging to a municipality is to be let to a private party the same shall, unless otherwise directed by a state official therein referred to, be let to the highest and best bidder refers to the leasing of a market in its entirety, and does not apply to distribution and award of spaces therein."<sup>126</sup>

*Illustration.* This case is here on appeal by the plaintiffs Julia Lorenzo and her husband Mariano Estrella from a decision of the Court of First Instance of Cavite, dismissing their complaint against the Municipal Council of Naic, Cavite and Pilar Dinio. For purposes of the present decision, the following facts gathered from the record may be briefly stated.

Prior to February 15, 1948, it seems that the municipal market of Naic, Cavite was conducted and maintained without much attention as to the order and classification of the business done in it by the vendors and stallholders, and that furthermore, there was lack of light and ventilation in said market. To remedy this situation the municipal council of that town passed Resolution No. 20 on February 15, 1948, rearranging, zoning and otherwise putting in proper order the mercantile transactions and the market space according to a scheme or plan. This is partly stated and described in paragraph 1 of said Resolution No. 20 which reads as follows:

"That for purposes of unity, better zoning system and for aesthetic reasons, all market stores and stalls are hereunder classified as regards the kind of goods they are to sell or dispose to the public, and that, no store or stall should be allowed to sell products or goods other than specifically provided."

All the stores and stalls previously maintained in front of the market building up to the fence were ordered removed and the space declared "off limits," the owners of said stores and stalls to be given spaces within the market proper. The scheme was graphically embodied in a plan prepared by the District Engineer and amended by the municipal council, and is now marked as Exhibit D.

Prior to the rearrangement and re-planning of the Naic market, Julia Lorenzo, the appellant herein, was occupying a stall or market space, which is the very same space appearing as lot No. 4 (with a circle in red pencil), east block, center column A, in plan Exhibit D, and now occupied by her. R. Manalaysay who previously occupied a space or stall in the portion declared "off limits," and because of the strategic position of said stall, was awarded a corner lot. Lot No. 2 (with a circle in red pencil),

<sup>125</sup> Lorenzo et al. v. Mun. Council of Naic, Cavite, 47 Off. Gaz. 2380.

## OUR SECRETARY

(Continued from page 57)

and Agusan. In a year, he was transferred to Ilocos Sur.

Promotion came in 1918. That was when he was designated assistant attorney in the Bureau of Justice. His merit was being recognized. In three years, he was acting Attorney General. It was while holding that position that he was nominated Under-secretary of Justice. Instead of getting his new promotion, he was kicked out — the Senate did not act on his appointment. His next job was that of general attorney for the Manila Railroad. The salary was much higher, but it lacked glamour and prestige.

Before long, he was designated judge of First Instance. For 12 years he was successively judge of Albay, Ambos Camarines, Tayabas, Rizal, and finally Manila, Branch I. In 1936, he was named Solicitor General. Two years later, he was elevated to the Court of Appeals where he sat quietly throughout the enemy occupation.

President Sergio Osmeña returned with the forces of liberation, swept the entire Court of Appeals out, then abolished it. Collaboration became a burning issue, a battle-cry. The appellate justices accepted their fate with becoming dignity. They rallied under the banner of Senate President Manuel Roxas who, they knew, would show them sympathy and understanding. He did. Elected President, he promptly named Justice Tuason chairman of a committee to investigate the Philippine Relief and Rehabilita-

east block, center column A, in the same Exhibit D. Pilar Dinio who was formerly occupying a space outside of the market was given lot No. 1 (with a circle in red pencil), east block, center column B, in the same exhibit. For reasons not known and not material to this case, and through a private agreement Manalaysay exchanged his lot No. 2 for lot No. 1 of Pilar Dinio. The award of lot No. 2 to R. Manalaysay, and his exchange of said lot for lot No. 1 of Pilar was protested by Julia, but the municipal council in its Resolution No. 28 overruled the protest. As a result, Pilar Dinio is now occupying lot No. 2 while R. Manalaysay occupies lot No. 1.

It should be stated in this connection so as to fully understand the reason why Julia brought this action, that before the zoning and rearrangement of the Naic market as per Resolution No. 20, the space occupied by Julia which is now lot No. 4 in Exhibit D was a corner lot or stall, lot No. 2 then being used as an alley. As a result of the rearrangement, Julia's lot No. 4 is no longer a corner lot, and according to her testimony, her daily sales had diminished by one-half, thereby materially reducing her gross income and her profits. Naturally, Julia is interested in lot No. 2 and she wants to have it or at least have a chance to get it.

Julia contends that the action of the Municipal Council of Naic in awarding lot No. 2 to R. Manalaysay was illegal and unconstitutional because it was not done thru public bidding and should have been done, and that furthermore, Resolution No. 28 of the same council approving the barter or exchange of lots 1 and 2 between Manalaysay and Pilar was equally illegal.

The trial court invoking section 2242 (q) of the Revised Administrative Code which imposes upon a municipal council the duty to establish or authorize the establishment of markets and inspect and regulate the use of the same, held that the municipal council of Naic was authorized to make the award of lot No. 2 to R. Manalaysay, which award the plaintiff could not very well question in the present case inasmuch as she did not include Manalaysay as party-defendant; and that furthermore, the alleged illegal exchange of lots 1 and 2 was clearly a private arrangement or agreement which concerns only the parties thereto. So, the trial court dismissed the complaint.

In her appeal Julia maintains that the trial court erred in not holding Resolution No. 20 illegal in so far as it approved the awarding of lot No. 2 to R. Manalaysay without any public bidding and without giving any chance to her to lease said lot, and that the lower occupying lot No. 2 for the reason that the exchange made between her and Manalaysay was illegal.

HELD: "The appellant does not question the right of the municipal council to dispose of a market space under the provisions of section 2242 (q) of the Revised Administrative Code. She insists, however, that under section 2319 of the same Code, a space in a municipal market should be let or awarded to the highest bidder.

Administration, some of whose officials seemed to have adopted the theory that to relieve and rehabilitate the country they must first relieve and rehabilitate themselves. Also due for investigation was the Emergency Control Administration, a number of whose officials were charged with having taken advantage of the emergency to place themselves, their relatives, and close friends, beyond control.

Before he could finish investigating the two administrations, he was elevated to the Supreme Court from which another President has recently taken him to head the Department of Justice. Asked which of the two positions he would prefer, he answered that the work of an associate justice was more suitable to his temperament, but that the secretaryship of justice was more interesting. In fact, he added, it is more important because it invests the occupant with tremendous powers for good or, or if he be so inclined, for evil.

Speaking of civil, Secretary Tuason thinks that the present high rate of criminality in the Philippines is due largely to the general disintegration of morals. Religious instruction, he feels, might help remedy the situation. It is for this reason that he is in favor of strict adherence to the constitutional provisions on religious teaching in the public schools. Unwilling to rush in "where angels fear to tread," he nevertheless believes that "any religion is better than no religion at all and that a man who believes in God becomes a better citizen."