ren respecto a dichos recursos naturales en la fecha de la inauguración del Gobierno que se establece bajo esta Constitucion. Con excepción de los terrenos agrícolas del dominio público, no serán enajenados los recursos naturales, y no se otorgará ninguna licencia, concesión o arrendamiento para la explotación, desarrollo o aprovechamiento de cualesquiera recursos naturales, por un período mayor de veinti-cinco años, prorrogable por otros veinticinco, excepto en cuanto al aprovechamiento de aguas para fines de riego, abastecimiento, o para pesquerías u otros usos industriales, que no, sean la producción de energía, respecto a los cuales el uso provechoso podrá ser la medida y el límite de la concesión."

Si la Constitucion no prohibe el arrendamiento de terrenos públicos a ciudadanos extranjeros ¿por qué el Congreso va a prohibirles, por medio del Código Civil nuevo, el arrendamiento de los bienes de la propiedad privada? ¿Para que los propietarios no reciban la renta de sus fincas? El arrendamiento de terrenos públicos fomenta su desarrollo y los mejora. Si se limitase su arrendamiento solamente a los naturales, la mejora sería lenta. Tenemos un ejemplo: El área ganada al mar (Port Area) de Manila y Cebú se da en arrendamiento a cualquiera persona por 99 años, y al expirar el plazo, toda la mejora se convierte en propiedad del Estado. Con este sistema de arrendamiento muchas mejoras se han hecho en al área y al cabo del término ganará el gobierno las mejoras hechas sin invertir un solo céntimo. Otro: En la ciudad de Cebú, los extranjeros construyen edificios de concreto en lotes arrendados y al cabo de diez años las mejoras se convierten en propiedad de los dueños de dichos lotes. De suponer es que los congresistas y senadores cebuanos en particular y los miembros del Congreso en general tenían conocimiento de todo esto; el Congreso no podía haber prohibido el arrendamiento a extranjeros de bienes inmuebles. Ello retardaría la mejora del área ganada al mar y de los terrenos de propiedad privada en Cebú, una ciudad completamente arrasada por la última guerra.

En Zamboanga, Cagayán de Oro y Davao existen también espacios (para pier) disponibles para arrendamiento.

El contrato de venta o arrendamiento de terreno con título Torrens no obliga a terceras personas, a menos que esté inscrito; sólo obliga a las partes contratantes. Por eso, como medida de precaución, se ordena su inscripción.

El artículo 193 de la Ley No. 2711 y el artículo 57 de la Ley de Registro de Torrenos, disponen que es deber del Registrador de Título inscribir todas las escrituras relativas a terrenos registrados cuando la ley exige o permite su registro. La obligación del Registrador de Título de inscribir un contrato de arrendamiento es ministerial. (67 Phil., 222.)

Y, por último, el artículo 1643 del Codigo Civil de Filipinas dispone en parte lo siguiente: "x x x However, *no lease for more than ninety-nine years shall be valid.*"

El contrato, cuyo registro es hoy objeto de litigio, solamente dura 25 años, prorrogable en otros 25: no llega a 99 años. Por tanto, está de acuerdo con la ley, es válido: solamente es nulo el arrendamiento por más de 99 años.

Se ordena al Registrador de Títulos de la ciudad de Davao que registre el contrato de arrendamiento otorgado por la Atlantic Gulf & Pacific Co. a favor de la recurrente.

Bengzon, Jugo, Bautista Angelo, Concepción y *J. B. L. Reyes, MM.*, están conformes.

Padilla y Montemayor, MM., están conformes con el resultado.

PARAS, *C.J., concurring*:

In the case of Alexander A. Krivenko vs. Register of Deeds, City of Manila, 44 O. G. (2) 471, this Court (at least the majority) held that aliens are disqualified from acquiring private agricultural land which includes private residential land. This ruling was based on section 5 of Article XIII of the Constitution, providing that "save in cases of hereditary succession, no private agricultral 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."

Article 1646 of the new Civil Code provides that the persons disqualified to buy referred in articles 1490 and 1491 are also disqualified to become lessees of the things mentioned therein; and article 1491, paragraph (6), disqualifies from acquiring by purchase, in addition to the persons enumerated in paragraphs (1) to (5) thereof, "any others specially disqualified by law." In the case at bar, the petitioner, an alien corporation, seeks to register a lease in its favor of a lot in Davao. Applied strictly, paragraph (6) of article 1491 may easily refer to all persons in general, who are disqualified by any law, and not merely to those who have confidential relations with the property to be purchased. If paragraph (6) simply provides "and others," the principle of *ejusdem generis* would apply. As the petitioner is disqualified from acquiring private agricultural land (which includes residential land) not only by a law but by the Constitution which is more than a law, it cannot hold in lease the lot in question. Even so, I concur in this decision, because it in effect is in conformity with my dissent in the Krivenko case.

Se concede el recurso.

III

Honorable Marciano Roque, Etc., Petitioners, vs. Pablo Delgado, et al., Respondents, No. L-6770, August 31, 1954, Paras, C.J.

1. INJUNCTIONS; APPEALS; DISCRETION OF TRIAL COURT TO RESTORE WRIT PENDING APPEAL OR IN ANTICIPATION OF APPEAL. — Under section 4, Rule 39 of the Rules of Court, when an appeal is taken from a judgment granting, dissolving or denying an injunction, the trial court, in its discretion, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal. Although this provision speaks of an appeal being taken and of the pendency of the appeal, the court may restore the injunction before an appeal has actually been taken. As a matter of fact, there is authority to the effect that the trial court may restore a preliminary injunction in anticipation of an appeal.

2. ACTIONS; PARTIES; SEPARATION OF PARTY WHO IS A GOVERNMENT OFFICER; DISMISSAL IF NO SUBSTITUTION IS MADE. — Another reason why the present petition was dismissed, is that although the petitioner had ceased to hold the office in virtue of which he instituted the petition, no substitution was made in accordance with section 18 of Rule 3 of the Rules of Court.

First Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Pacifico P. de Castro* for petitioners.

Amador E. Gomez for respondents.

DECISION

PARAS, *C.J.*:

On September 6, 1952, the Acting Executive Secretary issued an order for the closure of a cockpit known as "Bagong Sabungan" located in barrio Calios, municipality of Sta. Cruz, province of Laguna, being only some 500 meters from the Seventh Day Adventist Church, in violation of Executive Order No. 318, series of 1941. On November 21, 1952, Pablo Delgado, Eugenio Zamora and Pio Manalo filed in the Court of First Instance of Laguna a petition for certiorari and prohibition, Civil Case No. 9616, against Hon. Marciano Roque as Acting Executive Secretary, Hon. M. Chipeco as Provincial Governor of Laguna, and Patricio Robeque as Municipal Secretary of Sta. Cruz, Laguna, praying for the issuance of a writ of preliminary injunction restraining said respondents from carrying out the order of closure above mentioned. On November 22,

1952, Judge Nicasio Yatco issued the corresponding writ. On March 6, 1953, a decision was rendered in Civil Case No. 9616, dismissing the petition for certiorari and prohibition and dissolving the writ of preliminary injunction. On April 23, 1953, the petitioners in Civil Case No. 9616 filed a motion, praying that under the provision of Rule 39, Section 4, of the Rules of Court, the writ of preliminary injunction issued on November 22, 1952, be restored, and on June 1, 1953, Judge Yatco granted the motion in the following order:

> "Acting upon the motion filed by Atty. Amador Gomez under date of April 23, 1953 and after hearing both counsel Atty. Gomez and Assistant Provincial Fiscal Mr. Nestor Alampay on the matter, and the consideration of the facts and the circumstances surrounding the case, the Court, in consideration of Rule 39, Section 4, of the Rules of Court, makes use of its discretion in ordering the suspension of the dissolution of the injunction during the pendency of the appeal of the judgment rendered by this Court in its decision of March 6, 1953, by thereby reinstating the writ of preliminary injunction pending appeal. The Court further took into consideration the importance of the case and the tense situation of the contending parties, at this stage of the proceedings. The Executive Secretary and all other authorities concerned are hereby instructed to abide by this Order, made effective upon receipt hereof, for the maintenance of the status quo."

The First Assistant Solicitor General, in representation of the Acting Executive Secretary, filed an urgent motion for reconsideration dated June 3, 1953, which was denied by Judge Yatco on June 11, 1953. On June 26, 1953, Hon. Marciano Roque, Acting Executive Secretary, through the First Assistant Solicitor General, instituted in this Court the present petition for certiorari with preliminary injunction against Pablo Delgado, Eugenio Zamora, Pio Manalo and Judge Nicasio Yatco of the Court of First Instance of Laguna, for the annulment of the order of June 1, 1953, issued in Civil Case No. 9616.

It is contended for the petitioner that the respondent Judge acted with grave abuse of discretion or in excess or lack of jurisdiction, because when the order restoring the writ of preliminary injunction was issued, there was no pending appeal. It appears, however, that in the petition dated April 23, 1953, filed in Civil Case No. 9616, it was expressly alleged that, in their projected appeal, the petitioners therein would in effect assail the correctness of the decision in said case. Section 4 of Rule 39 provides that "the trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party." Although this provision speaks of an appeal being taken and of the pendency of the appeal, we cannot see any difference, for all practical purposes, between the period when appeal has been taken and the period during which an appeal may be perfected, since in both cases the judgment is not final. As a matter of fact there is authority to the effect that the trial court may restore a preliminary injunction in anticipation of an appeal. (Louisville & N. R. Co. et al. v. United States et al., 227 Fed. 273.)

It is also argued for the petitioner that at the time the order of June 1, 1953, was issued by the respondent Judge, the act sought to be enjoined had already been performed, the cockpit in question having been actually closed on May 24 and 31, 1953. In answer to this argument, it may be recalled that as early as April 23, 1953, the petitioners in Civil Case No. 9616 filed a petition to suspend the decision of March 6, 1953 and to restore the preliminary injunction previously issued, which petition was not resolved until June 1, 1953, with the result that, if there was any closure, it should be deemed to be without prejudice to the action the respondent Judge would take on said petition dated April 23.

Another contention of the petitioner is that the respondent Judge was inconsistent in holding in his decision of March 6, 1953, that the location of the cockpit is in open violation of Executive Order No. 318, and in subsequently restoring the writ of preliminary injunction that would allow the continued operation of said cockpit. It is significant that, under section 4 of Rule 39, the respondent Judge is vested with the discretion to restore the preliminary injunction; and when we consider that the order of June 1, 1953, took into account "the facts and the circumstances surrounding the case," as well as "the importance of the case and the tense situation of the contending parties, at this stage of the proceedings," in addition to the fact that in his order of June 11, 1953, denying the motion for reconsideration filed by the First Assistant Solicitor General on June 3, the respondent Judge expressly stated that he acted "on the basis of the new facts and circumstances registered on record on the date of the hearing" of the petition of April 23 filed by the petitioners in Civil Case No. 9616, we are not prepared to hold that the respondent Judge had acted with grave abuse of discretion. The allegation in the herein petition that the petitioner was not notified of the hearing of the petition of April 23, is now of no moment, since the petitioner, through counsel, had filed a motion for the reconsideration of the order of June 1, 1953.

Another reason, though technical, why the present petition should be dismissed, is that although the petitioner, Hon. Marciano Roque, had ceased to hold the office in virtue of which he instituted the petition, no substitution has been made in accordance with section 18, Rule 3, of the Rules of Court.

Wherefore, the petition is hereby denied, and it is so ordered without costs.

Pablo, Padilla, A. Reyes, Bautista Angelo, Concepcion, Bengzon, Montemayor, Jugo, Labrador and *J. B. L. Reyes, J.J.*, concur.

IV

Federico Magallanes, et al., Petitioners, vs. Honarable Court of Appeals, et al., Respondents, No. L-6851, September 16, 1954, Paras, C.J.

1. PATERNITY AND FILIATION; SUCCESSION; NATURAL CHILDREN NOT LEGALLY ACKNOWLEDGED NOT ENTITLED TO INHERIT. — Natural children not legally acknowledged are not entitled to inherit under article 840 of the old Civil Code.

2. ID.; ID.; ID.; ACTION FOR COMPULSORY RECOGNITION MUST BE BROUGHT WITHIN FOUR YEARS AFTER DEATH OF NATURAL FATHER. — The action for compulsory recognition must be instituted within four years after the death of the natural father.

Vicente Castronuevo, Jr. for petitioner.

Diosdado Caringalao for respondents.

DECISION

PARAS, *C.J.*:

In Civil Case No. 1264 of the Court of First Instance of Iloilo, Maximo Magallanes, et al., plaintiffs vs. Federico Magallanes, et al., defendants, a decision was rendered on May 28, 1951, with the following dispositive part:

> "In view of the foregoing considerations, the Court finds that the preponderance of evidence is that the above properties are of Justo Magallanes and that both plaintiffs and defendants are the legal heirs of Justo Magallanes, therefore, they should share proportionately in the properties in question. Each child of Justo Magallanes from both wives is entitled to 1/7 of the undivided share of the land in question. Inasmuch as the plaintiffs paid ₱220.00 for the mortgages as shown in Exhibits D and C, the other heirs are obliged to reimburse proportionately the said amount of ₱220.00 to the plaintiffs."

Upon appeal by the defendants to the Court of Appeals, the latter Court rendered on April 22, 1953, a decision the dispositive