THE ARANAS CASE

(UNCONSTITUTIONALITY OF REPUBLIC ACT NO. 1379)

In the October issue, we published the complaint filed by former Commissioner of Internal Revenue Mr. Arañas against the Solicitor General for prohibition with preliminary injunction, contending that Republic Act No. 1379 is unconstitutional for being an *ex post facto* law.

Solicitor General Barot opposed the issuance of the preliminary injunction. A reply to the opposition was filed by Atty. Francisco who represents Arañas. Judge Alvendia denied the issuance of preliminary injunction. We publish hereunder the aforesaid opposition, reply and the pertinent portion of the order of Judge Alvendia.

OPPOSITION OF SOL. GEN. BAROT

"The term *ex-post facto law* is a technical term used only in connection with crimes and penalties. It is not applicable to civil laws but to penal and criminal laws (Concepcion vs. Garcia, 54 Phil. 81).

Although Republic Act No. 1379 provides for forfeiture to the State of property which petitioner has not shown to have been lawfully acquired (Sec. 6), said forfeiture is imposed not as a penalty but as a civil remedy to recover that which never lawfully belonged to petitioner. The proceeding is akin to escheat which is nothing more or less than the reversion of property to the State, which takes place when title fails (Delaney vs. State, 42 N.D. 630, 174 N.W. 290, quoted in footnote 6, 19 Am. Jur. 381, cited in Rellosa v. Gaw Chee Hun, L-1411, Sept. 29, 1953). As applied to the right of the State to lands purchased by an alien, it would more properly be termed a "forfeiture" at common law (19 Am. Jur. 381, cited in Rellosa v. Gaw Chee Hun, *supra*). Although escheat and forfeiture are not strictly synonymous terms, the distinction between them is not clearly drawn in modern usage (19 Am. Jur. 380). Thus, the use of the term "forfeiture" in Republic Act No. 1379 does not necessarily make the statute penal in nature.

On the theory that such property was obtained by a public officer either as a gift given to him in consideration of his office or as monies which should have accrued to the Government in the first place, and both on the principle that a public office is a public trust and that no one should be permitted to enrich himself at the expense of another, it follows that the recovery of such property may be viewed as one for recovery of property held under an implied trust (Arts. 1445, 1447, 1891, Civil Code).

Even assuming for the sake of argument that petitioner's objections as to the *ex-post facto* character of the statute are valid, it will be seen however that the complaint filed against him (Appendix B of the Petition) contains charges of unexplained acquisitions made after June 18, 1955, the effective date of Republic Act No. 1379. In so far therefore as they are concerned, they cannot be subject to attack of invalidity on ground of *ex-post facto*. Petitioner, therefore, is not entitled to a writ of prohibition enjoining respondent from taking cognizance of the complaint.

The act of suspending the operation of a law by the trial court especially one intended to combat graft and corruption in the government, is a matter of extreme delicacy, because that is an interference with the official acts not only of the duly elected representatives of the People in Congress but also of the highest magistrate of the land.

The courts should, therefore, refrain from enjoining the enforcement of laws, and should not interfere with the actions of public officers performed under statutory authorization. A mere allegation of the invalidity of a statute will not warrant the exercise by the courts of the extraordinary injunctive power and stop the enforcement of the law (Borden's Farm Products vs. Baldwin, 293 US 194, 55 S Ct 187; State vs. Adams Exp. Co., 85 NEB 25, 42 LRA (rs) 896). This is specially so where in this case, the petitioner is not placed under any restraint of his freedom of action in his daily life by any doubtful provision of the law.

Furthermore, the constitutionality of the law can always be interposed as a defense in case of the filing of a complaint against petitioner."

REPLY OF ATTY. FRANCISCO

"In the course of the oral argument yesterday, the Solicitor General manifested to the court that he does not dispute the existence and correctness of the authorities cited in the Petition for Prohibition, which hold that forfeiture is a punishment for transgressing the law; that the effect of the forfeiture is to transfer the title of a specific property from the owner to the sovereign power, imposed by way of punishment for the transgression of the law, or the commission of some wrong; that a law creating forfeiture as punishment is a penal statute and that a penal statute that makes an action, done before its passage and which was innocent when done, criminal, and punishes such action is an *ex-post facto law*. However, he contended that although the law provides that whenever any public officer has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary and to his other lawful income, and said public officer is unable to show to the satisfaction of the court that he has lawfully acquired that property, the same should be forfeited in favor of the State, said forfeiture is imposed not as a penalty but as a civil remedy to recover that property which never lawfully belong to him but to the State, and that he, therefore, only held it in trust. "The proceeding" — the Solicitor General maintained — "is akin to escheat which is the reversion of property to the State which takes place when title fails." (Page 5, Opposition.)

No proposition could be more obviously fallacious.

1. Although we have cited a long line of authorities holding that the law which creates forfeiture as a punishment for the transgression of its provisions is a penal law (Petition for Prohibition, pp. 11-12), the Solicitor General was not able to cite a single authority holding the contrary. Having failed to find any authority holding that forfeiture is not penalty, he stretched his imagination and foisted the novel theory of escheat. But this is the most unfortunate argument that the Solicitor had advanced. The properties subject of escheat are those left by a person who died intestate, leaving no heir or person by law entitled to them (Rule 92, Rules of Court; Arts. 1011-1014, Civil Code). And, according to Manresa, 'the foundation of tho State's right over the properties of a person who died without a will and without leaving heirs, springs from the actual condition of abandonment of the properties so left upon the death of the owner and all persons having rights thereto." (7 Manresa 168.) In the case at bar, the properties that the Solicitor seeks to forfeit in favor of the State are properties that belong to the petitioner, not properties belonging to no one and, therefore, is not reversible to the State, as in the case of escheat.

Besides, in escheat there is no forfeiture but reversion of the property to the State. Reversion is defined as "the return of the property to the grantor after the grant is over." (Bouvier's Law Dictionary); the grantor in case of the escheat is the State. Forfeiture, on the other hand, is defined as "a punishment annexed by law to some illegal act in the owner of lands or hereditaments whereby he loses all his interests therein, and they become vested in the State." (Ibid).

Surely, the law in using the term "forfeiture" instead of "escheat," each of which terms has established meaning and connotation of its own and is distinct from the other, the law could not have contemplated "escheat." Otherwise, it would have employed the term "escheat" instead of "forfeiture." Why should the law use "forfeiture" if it meant "escheat"? The law must be taken to mean what it plainly and unequivocally says; it cannot be changed by the courts, much less by the Solicitor General.

> Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look or impose another meaning. In the case of such unambiguity, it is the established policy of the courts to regard the statute as meaning what it says, and to avoid giving it any other construction than that which its words demand. 50 *Am. Jur.* 205-207.
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> A statute may not, under the guise of interpretation, be modified, revised, amended, distorted, remodeled, or rewritten, or given a construction of which its words are not susceptible, or which is repugnant to its terms. The terms of the statute may not be disregarded. To depart from the meaning expressed by the words of a statute, is to alter it, and is not construction, but legislation. 50 *Am. Jur.* 213-214.

2. Pursuing this fantastic escheat theory, the Solicitor General advances the argument, equally fantastic, that the philosophy of the law in providing that property acquired by a public officer out of proportion to his salary and to his other lawful income is unlawful and shall be forfeited in favor of the State unless he can show to the satisfaction of the court that he has lawfully acquired the same, is that it belongs to the State and petitioner only held it entrust for the State. In the light of our contention that Republic Act 1379 is an *ex-post facto* law, let us apply said theory to properties acquired by the petitioner in 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, and 1954. The Solicitor admits—and he cannot deny—that those properties acquired by the petitioner in those years belong to him and that the presumption is that he acquired those properties lawfully. Even if there is no proof as to how a person has acquired a piece of property, his mere possession thereof under claim of ownership carries with it the legal presumption that he possesses it with just title, i.e., lawfully. Article 541 of the Civil Code provides that "a possessor in the concept of the owner has in his favor the legal presumption that he possesses a just title and he cannot be obliged to show or prove it." "Every person is taken to be honest and acting in good faith unless the contrary appears. The reason for this presumption is to protect owners from inconvenience. A contrary rule would oblige the owner to carry with him his titles in order to exhibit them to anyone who, with or without reason, may bring an action against him." (4 Manresa 248.) Since the complaint filed by the Anti-Graft Committee admits that the petitioner is the owner of those properties which he acquired in those years, the legal presumption is that he acquired the same lawfully. How then can the Solicitor General claim that since those properties are manifestly out of proportion to his income, the same were unlawfully acquired and held by him, only in trust for the State? Granting, for the sake of argument, that the amount of those properties were out of proportion to his income, was there any law at the time of their acquisition declaring that such acquisition is unlawful? Since it was only on June 18, 1955, that a law (Republic Act No. 1379) was passed declaring that properties acquired by a public officer out of proportion to his income is unlawful, we have to conclude that prior to this law the legal presumption is that the acquisition of such properties was lawful. And he being the lawful owner of those properties, it is absurd to maintain that he only held them in trust for the State.

3. In invoking the theory of trust, the Solicitor General does not of course have in mind an express trust but an implied trust, the concept of which is embodied in article 1456 of the Civil Code which provides:

> Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

From the above-quoted provision, it is clear (1) that in order that property may be considered held in implied trust, the same must have been acquired through mistake or fraud and (2) that the property is held for the benefit of the person from whom the property comes.

Now, considering that properties acquired by a public officer prior to the enactment of Republic Act No. 1379, regardless of whether or not it is out of proportion to his salary or to his lawful income is presumed to be possessed by him under a just title; that is, legally, how can those properties be deemed to have been acquired through fraud and thus held in implied trust?

And even assuming that those properties were acquired under circumstances creating an implied trust in accordance with the afore-quoted provision of the Civil Code, how can it be contended that those properties held for the benefit of the State, since the same admittedly do not come from the State? If at all, such properties are held in trust for the benefit of anyone, it is certainly not for the benefit of the State, but of the person from whom the property came. Property unlawfully acquired within the meaning of Republic Act No. 1379 cannot be considered to be held in trust for the State any more than property acquired through robbery, theft, or estafa.

4. There can be no doubt that in trying to slip across the idea that the proceedings provided by Republic Act No. 1379 is akin to escheat, the purpose of the Solicitor General is to cloak the *ex post facto* nature of the said Act with a civil mantle. This, of course, is futile:

> The *ex-post facto* effect of a law cannot be evaded by giving a civil form to that which was essentially criminal. *Burgesse vs. Slamon*, 97 *U.S.* 381, 24 *L. Ed.*, 1104.
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> A statute which deprives a man of his estate or any part of it for a crime which was not declared to be an offense by any previous law is void as an ex post facto law. *Fletcher vs. Peck*, 6 *Cranch* (*U.S.*) 87, *L. Ed.*, 162.

The Solicitor General further contended that even assuming for the sake of argument that Republic Act No. 1379 is an *ex post facto* law, the complaint filed against him contains charges of unexplained acquisition made before and after June 18, 1955, the effective date of the said Act, and that insofar as the properties acquired after the effectivity of said Act is concerned, the law cannot be attacked as an *ex post facto* law.

Citing the separability of provisions provided in Section 13 of the law, which reads: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby," the Solicitor General claims that although the complaint makes reference to properties acquired before passage of the law, it also makes reference to properties acquired after the passage of the law; therefore, as to the latter properties, the law cannot be attacked as *ex post facto*. Moreover, he argues, even if the law is *ex post facto*, the provision that makes the law ex post facto may be disregarded and separated from the rest of the law without affecting the remainder of the Act.

The entire argument of the Solicitor General rests on this false premise: that only part of the Act in question is *ex post facto* law and the remainder is not such. Nothing could be clearer than that it is the Act itself, not merely a part thereof, that is ex post facto; the Act itself penalizes acts performed prior to its enactment and innocent and not punishable at the time. The whole Act, therefore, is *ex post facto* and hence, unconstitutional and invalid in toto, pursuant to express provisional constitution which we again quote:

"No ex post facto law or bill of attainder shall be enacted." Section 1. (1) Article III, *Phil. Constitution.*

Moreover, it is apparent from the foregoing provision of the Constitution that it prohibits an *ex post facto* law, such as the law under consideration, absolutely, without any qualification as to severability. When a law is of that character, it becomes unconstitutional *in toto*, the constitution allowing no part to remain.

True, the ex post facto character of the Act proceeds from Section 14 of the law. But the fact remains that it is not solely Section 14 that is *ex post facto*, but the entire Act by reason of the said section.

Nor could Section 14 be separated from the rest of the Act, since it provides for the effectivity and operation of the entire law.

Neither is it possible to weed out any part of Section 14 from the rest thereof in order to remove the *ex post facto* character from the Act without amending the law and thus in effect resorting to judicial legislation. Section 13 reads: "This Act shall take effect on its approval and shall apply *not only* to property thereafter unlawfully acquired *but also* to property unlawfully acquired before the effective date of this Act." It is patent that we cannot remove the clause "but also to property unlawfully acquired before the effective date of this Act," since what would remain would be an incomplete incoherent idea, to wit: "This Act shall take effect on its approval, and shall not only apply to property thereafter unlawfully acquired." It will be seen that every part of this provision of Section 14, is interdependent and not severable from one another.

No matter how invoked, the rule must be employed with the qualification that if it is impossible to tell what part of a statute is intended to be operative when some of its provisions are unconstitutional, it is wholly invalid. Consequently, where the legislature intends to substitute a new system of taxation as a whole for the existing one, and all the provisions cannot be carried into effect because of constitutional infirmity, and it is impossible to tell what part the legislature would have adopted independently, the entire statute is void. 11 *Am. Jur.* 838-839.

Its unconstitutional character cannot be remedied except by amending the law thus: "This Act shall take effect on its approval and shall only apply to property thereafter unlawfully acquired," which would be the function of the legislature, and not of the Court.

It is a general rule that the courts, in the interpretation of a statute, may not take, strike, or read anything out of a statute, or delete, subtract, or omit anything therefrom. 50 *Am. Jur.* 219.

It is well settled that injunction will lie to restrain the enforcement of a penal law that is unconstitutional or the constitutionality of which is doubtful and fairly debatable (Yu Cong Eng vs. Trinidad, 47 Phil. 385) as well as where it is necessary for an orderly administration of justice or to prevent the use of the strong arm of the law in an oppressive manner (Recto vs. Castelo, 13, L. J. (1953) 560, Dimayuga vs. Fernandez, 47 Phil. 385) — which circumstances obtain in this case.

JUDGE ALVENDIA'S ORDER

In resolving the question of the issuance of the writ of preliminary injunction, Judge Carmelino Alvendia issued an order dated November 5, 1960 denying the issuance of the same on the claim of petitioner (Arañas) that Republic Act No. 1379 is unconstitutional, and adduced as reason thereof: "To do so would be equivalent to judging the cause on its merits before the issues are actually joined and hearing is held."

(*To be continued*)

BAR EXAMS . . . (*Continued from page* 349)

VII. *A*, possessing only a student license to drive motor vehicles, finds a parked car with the key left in the switch. He proceeds to drive it away, intending to sell it. Just then, *B*, the owner of the car arrives. Failing to make A stop, B boards a taxi and pursues *A* who in his haste to escape, and because of his inexperience, violently collides with a jeepney full of passengers. The jeepney was overturned and wrecked; one passenger was killed; the leg of another passenger was crushed and had to be amputated. The car driven by A was also damaged. What offense or offenses may *A* be charged with?

VIII. State the rule for the application of penalties which contain three periods (maximum, medium and minimum) in view of the presence or absence of aggravating and/or mitigating circumstances.

IX. (A) State one difference between arbitrary detention and illegal detention.

(B) *A*, is accused of robbery and is arrested by *B*, a constabulary sergeant, by virtue of a warrant of arrest. *A* put up bail and was ordered released by the court. Three days later sergeant *B* sees *A* at the cockpit and immediately arrests him and takes him to the constabulary guardhouse and was kept there till the next morning when *B* took him to the court. All along *A* was telling *B* that he was out on bail, but *B* would not believe him; neither did he, *B*, make any effort to verify if *A* had really been released on bail. What offense if any has *B* committed, and why?

X. Define complex crime and give an example.

PARITY . . . (*Continued from page* 325)

"legal safeguards," the "legal authority," the "legal way" out of a hopeless predicament once we have fallen into the grip of the imperialistic cobra. If we must go to hell, let's not furnish the rope to lead us there. If we must hang, let us at least refuse to sign our death warrant. If we must be subdued, let us at least refuse to submit.

CONCLUSION

Adverting our attention to the heavy demands for naval, aerial and military bases already disturbing us, to the most recent violations of our sovereignty in Palawan yet unpunished, to the heavy investment in big estates already starting, to the growing control of our army by military assistants from abroad, etc., etc., let this my last warning, if not heard, at least, be recorded:

Pass this amendment and you have turned the clock of Philippine history 400 years back. Pass this resolution and you have led our unhappy nation through the fatal gates where passed the nations of vanished or vanishing identities — Hawaii, Cuba, Persia, the Carribean countries, Korea, and a dozen others in Europe and Central America that have the misfortune of falling within the orbit of mighty powers. Pass this amendment and you have consummated the greatest betrayal to the sublimest national cause, and the worst destruction to the memories of the heroes and leaders who fought and fell in 300 revolutions and three wars that constitute the sum total of our epic crusade for freedom. Pass this amendment and when the tragic consequences of this act will assume a reality showing our posterity orphaned of their birthright and their freedom — you will weep but too late with the anathema of history on your head told in the words of Ateiza, the mother of weeping Boadbil expelled king of Granada, when she said, "Weep like a woman for the loss of the kingdom which you did not defend like a man."